

General Terms and Conditions of Business (Terms) of ait-deutschland GmbH

valid from 01.01.2015

1. General

1.1 The following general terms of sale, delivery and payment of ait-deutschland GmbH (hereinafter: ait) shall apply to the business fields and brands:

- ❖ ait-deutschland GmbH
- ❖ Alpha-InnoTec
- ❖ KKT chillers
- ❖ Novelan

1.2 They shall apply towards merchants, entrepreneurs, public-law entities and public-law funds.

1.3 The terms shall apply to deliveries and services by ait (including subsidiary services such as proposals and consultancy).

1.4 Customer's general terms and conditions of procurement are contradicted. They have been ruled out unless ait has acknowledged them in writing.

1.5 Quotations from ait shall be subject to change without notice. Delivery agreements and all other agreements (including side-agreements), likewise declarations by representatives or agents of ait shall only become legally binding for ait following written confirmation.

1.6 The documents belonging to quotations or orders such as illustrations, diagrams, statements of weight and dimension etc. shall only be approximate if they are not expressly designated as binding by ait. Amendments made in general to construction or equipment by the manufacturers shall not entitle Customer to complaints or to withdrawal from the order. Estimates of costs shall be non-binding.

1.7 The quotations with all annexes shall remain property of ait, they may not be forwarded to third parties without express written approval and shall be returned to ait or, by request of ait, remunerated according to the fees ordinance for engineers valid at the time if a contract does not come about. Misuse shall result in an obligation to pay for damages.

1.8 Business correspondence printed by text processing systems (e.g. order confirmations, invoices, credits, account statements, payment reminders) shall be legally binding even without a signature.

2. Prices

2.1 To the extent not agreed to the contrary, prices shall be understood ex works or warehouse inclusive of original packaging and exclusive of value added tax to the amount valid by law at the time.

2.2 If changes in the price basis occur before or on the date of delivery, ait reserves the right to a matching adjustment of the prices. This shall however only apply to delivery periods of more than 4 months and price adjustments up to 12%. For higher rates, a new agreement of prices shall be necessary. If such an agreement is not reached, ait shall have the right to withdraw from the contract within 14 days by means of written notification.

2.3 For orders for which no prices have been agreed, the prices of ait valid on the date of delivery shall apply.

2.4 Confirmed prices shall only apply for purchase of the confirmed quantities.

2.5 Partial deliveries shall be charged separately to the extent that nothing to the contrary has been expressly agreed.

3. Payment terms

3.1 Payments shall be made according to payment terms agreed separately.

3.2. To the extent that payment terms have not been agreed in writing, invoices shall be paid no later than 30 days after receipt of the invoice. Payments shall only be deemed made on the day on which ait can dispose of the amount.

3.3. To the extent that no earlier invoices are open and no specific agreements exist, ait shall grant 2% discount on the net sale price of the goods (exclusive of the costs for freight, insurance premiums and similar) for payment within 10 days of the date of invoice or for advance payment. After-sales invoices and other service invoices shall be due for payment immediately without deduction.

3.4 Cheque payments shall only be accepted on account of payment and subject to acceptance in the individual case.

3.5 Without regard for other directives by Customer, all payments shall always be offset against interest and costs first and thereafter against our oldest claims.

3.6 In arrears of payment, ait shall charge default interest in the statutory amount. The right to claim further damages has not been ruled out. If the payment period is exceeded, ait shall be entitled to perform further deliveries against payment in cash only. If a customer falls into arrears with a partial payment, ait reserves the right to demand the entire residual claim, due for payment immediately. Apart from this, the statutory consequences of arrears shall apply.

3.7 In arrears of payment, non-honouring of cheques, cessation of payment, initiation of proceedings serving to regulate debts, failure to comply with the payment terms or existence of circumstances suited to reducing the customer's creditworthiness, all claims of ait shall become due for payment immediately - also in the event of a respite of payment. In addition, ait shall be entitled to perform deliveries still outstanding against advance payment in cash only or, following setting of a suitable period of grace, to withdraw from the contract and to demand damages in lieu of performance.

3.8 Customer can only offset with claims which are undisputed or legally effective. It shall not be allowed to exercise a right of retention from earlier or other transactions in the ongoing business relationship.

3.9. In the event of agreement of assembly services, the following shall apply additionally:

3.9.1 If the assembly costs are included in ait's price, Customer shall in any case take on the laying and connection of electricity lines to the machine, switches and sources of light and water supply and removal lines at its own expense. The same shall apply to the necessary plumbing, painting and carpentry work; masonry and breakthrough work; provision of machine foundations, platforms or consoles. Costs of accommodation and catering for fitters shall be charged to Customer. The prices of the quotations shall only apply to ordering of the entire system quoted and for uninterrupted assembly and commissioning afterwards.

3.9.2 If delivery or assembly is delayed through Customer's fault, the additional costs incurred by ait as a result, the fitters' waiting time and the fitters' allowances shall be remunerated separately by Customer according to the rates valid at the time. Work not contained in the scope of quotation shall be commissioned by Customer and shall likewise be charged to it according to the wage and material costs actually incurred.

4. Retention of title

4.1 Deliveries by ait shall exclusively be under retention of title (conditional commodities).

Ownership shall only pass to Customer when it has redeemed its entire liabilities (including all and any subsidiary claims) from the delivery of the goods. Placement of individual claims to a current account and drawing a balance and acknowledgement thereof shall not affect this retention of title. In current account, the conditional ownership shall be deemed securing of our balance claim, even if payments are made for claims which have been particularly designated.

4.2 Machining and processing of goods supplied by and still in possession of ait shall always be done by order of ait without ait incurring any liabilities herefrom. If the goods supplied by ait are mixed or combined with other goods, Customer shall assign the (co-)ownership to the objects originating therefrom to ait in the ratio of the invoice value of the conditional commodities to the invoice value of the other goods used.

4.3 Customer may only sell the goods supplied in regular business dealings or use them (e.g. within the framework of a contract for works or works and delivery) if its client has not ruled out assignment of the claim from the resale or the reuse. Customer shall be obliged to ensure that its client grants all and any approval reserved for assignment to us in the necessary form. Transfer by way of security and pledging of the conditional commodities shall not be permitted for Customer.

4.4 Interventions against the conditional commodities by third parties shall be reported to ait immediately. Customer shall notify ait without delay of a seizure, even if it is only forthcoming, or any other kind of impairment of the ownership rights by third parties, in particular of the existence of general assignments and factoring agreements, and confirm ait's ownership rights in writing towards both third parties and also ait. In the event of seizures, a copy of the seizure record shall be sent to ait.

4.5 If Customer falls into arrears of payment, ait shall be entitled to demand return of the conditional commodities and to procure direct possession of them by ait itself or authorised agents, regardless of where they are located. Customer shall be obliged to return the conditional commodities to ait and to give ait the information and to hand over documents necessary to claim the rights. The request for return shall not be deemed withdrawal from the contract. The same shall apply to taking back the conditional commodities.

4.6 To secure all claims from the business relationship, also those originating in the future, Customer here and now assigns all claims against third parties (including those from current account) accruing to it from the resale and other use of the conditional commodities (e.g. blending, processing, integration into a building) with subsidiary rights to ait.

4.7. In the event of resale for cash payment, the yield shall directly replace the goods, in which context the yield is to be forwarded without delay.

4.8 If sale or other use of the conditional commodities - regardless of the condition - is done together with the sale or other use of objects to which third parties' rights exist and/or in connection with the rendering of services by third parties, the advance assignment shall be limited to the invoice value of the ait invoices.

4.9 Customer shall be entitled to collect the claims assigned to ait. In arrears of payment, cessation of payments, application for or opening of insolvency or extrajudicial composition proceedings or other economic deterioration of Customer, ait can revoke the collection authorisation. By request, Customer shall notify ait of the assigned claims and their debtors, give all the information necessary for collection, hand over the pertinent documents and notify the assignment to the debtors. ait shall also be entitled to notify Customer's debtors of the assignment and to request that they pay to ait.

4.10 If the realisable value of the collateral accruing to ait according to the above provisions exceeds the value of ait's claims by more than 10%, ait shall be obliged to release the excess collateral at its own choice by request of Customer.

5. Delivery

5.1 Delivery shall be freight forward ex works or warehouse for Customer's account, in dispatch by truck to the place of use, not unloaded, provided the place of use is accessible on roads which can be used by heavy goods vehicles independent of the weather.

5.2 Dispatch route, transport and packaging or other securing shall be at ait's choice. The transport risk shall be borne in all cases by Customer. ait shall be entitled, but not obliged, to insure deliveries on Customer's behalf and for its account.

5.3 To the extent that freight costs are assumed by ait, recognisable transport damage shall be stated on the freight papers by Customer directly at delivery. Transport damage not externally visible must be notified no later than 7 days after delivery, otherwise flawless delivery shall be assumed.

6. Delivery time and delivery obstacles

6.1 Statements of delivery times shall be agreed as only being approximate. Delivery periods shall start on the date of the ait order confirmation, albeit not before clarification of details of performance and all other preconditions to be procured by Customer for the proper handling of the contract. The same shall apply accordingly to delivery dates. Premature and partial deliveries shall be admissible. The date of dispatch ex works or warehouse shall be deemed the date of delivery.

6.2 If Customer breaches its cooperation duties (e.g. by not calling in good time or rejecting acceptance), ait shall, following a fruitless expiry of a period), be entitled to take the necessary measures itself and to supply the goods or to withdraw from the part of the delivery contract not yet fulfilled. The right to demand damages on account of breach of duties or damages in lieu of performance shall remain unaffected.

6.3 Punctual and correct supply to ait shall remain reserved for objects of delivery which ait does not manufacture itself, unless ait is answerable for the delay or lack of delivery.

6.4 Incidents of force majeure or other impairments of our possibilities of delivery through no fault of ours shall extend the delivery period suitably and entitle ait to withdraw from the contract partly or totally. Strikes, lock-outs, transport obstacles, delays in supply of raw materials, operational disturbances or other unforeseen circumstances for which ait is not answerable and which make delivery considerably more difficult or impossible for ait shall be equated to force majeure. This shall also apply if these incidents occur at a time at which ait is in arrears in delivery, unless ait has caused the delay by malice aforethought or gross negligence. This shall also apply if the aforementioned circumstances occur with a sub-supplier.

6.5 Exceeding the period of an agreed date shall give Customer the right to request ait to declare within two weeks whether it is withdrawing from the contract or wishes to supply within a suitable period of grace of no less than 4 weeks. If ait makes no declaration, Customer can withdraw from the contract to the extent that performance is of no interest to it.

6.6 Supplies ordered on call shall be purchased within 6 months of order confirmation. If there is no acceptance or it is not in good time or complete, ait shall be entitled to store or dispatch the goods at Customer's expense and risk, as a result of which the goods shall be deemed accepted.

6.7. In the event of agreement of assembly services, the following shall apply additionally:

Customer shall make all and any agreements with the building inspection authorities, the factory inspectorate, the technical monitoring association (TÜV), the electricity and water works which may become necessary and also the radio and television protection devices which may become necessary at its own expense. Further, it shall ensure flawless access routes and possibilities of delivery at the building site up to and including the place of erection of the various parts of a system at its own expense.

7. Returns

Returning of material from deliveries has been ruled out as a matter of principle.

8. Claims from defects

8.1 The object of delivery is free of defects in quality if it fulfils the product description or - to the extent that no product description exists - the generally acknowledged rules of engineering. Changes in the construction and/or finish impairing neither the functionality nor the value of the object of delivery shall remain reserved and shall not entitle to a notification of defects. In the event of defects not or only inconsiderably impairing the value and/or the usefulness of the object supplied, no claims from defects shall exist.

8.2 Guarantees for the property and shelf life of the object of delivery shall only be deemed assumed to the extent that ait has expressly declared the guarantee as such in writing, ait shall only vouch for public statements, in particular in advertising, if ait has arranged for them. Claims for defects can only be made on the basis of such a statement if the statement has actually influenced Customer's decision to buy. Guarantees assumed by suppliers in guarantee declarations, relevant advertising or in other product documents have not been arranged by ait. They exclusively obligate the supplier which declares this assumption of guarantee. Sub-section 1 of this section shall remain unaffected.

8.3 Notifications of defects shall be made without delay and shall be ruled out if they do not reach ait within 2 weeks of receipt of the delivery. Defects which could not be discovered within this period despite very careful examination shall be reported to ait without delay, albeit no later than 2 weeks after discovery. Section 5.3 shall remain unaffected.

8.4 If the object supplied contains defects or does not meet a guaranteed property, ait shall remedy the defect within a suitable period free of charge either by reworking or by supplying an object free of defects, at its own discretion (subsequent performance). Customer shall give ait or its authorised agent time and opportunity to do so. If this is not done or if changes or repairs are performed on the object giving rise to complaint, ait shall be released from liability for defects.

8.5 If subsequent performance fails or is not done within a suitable period of grace set for ait by Customer, Customer can demand a reduction of the remuneration or withdraw from the contract.

8.6 Customer's claims on account of the expenditure necessary for the purpose of subsequent performance (Section 8.4) or cancellation following withdrawal from the contract (Section 8.5), in particular transport, travelling, working and material costs, have been ruled out to the extent that the expenditure is increased because the object of delivery has been installed at a location with difficult access. The same shall apply if the object of delivery has been installed outside the territory of the Federal Republic of Germany.

8.7 Damages caused by failure to comply with the directives and terms of ait for installation, assembly, commissioning, treatment, operation or maintenance or by use of unpurposeful or other control devices, fuels, kinds of firing or electricity and voltages other than those prescribed, by customary wear and tear, defective or negligent treatment, improper amendments or maintenance by Customer or third parties done without approval from ait, shall not substantiate claims from defects. The same shall apply to non-compliance with VDI Guideline 2035 for avoidance of damage in water heating systems, overload, corrosion and for damage to water/water heat pump systems caused as a result of iron clogging and the use of unsuitable water, unless ait is liable for such damage on the basis of Section 9.

8.8 The statutory guarantee periods shall apply in each case to barring by limitation of claims from defects.

8.9 The statutory periods of barring shall apply in the event of injury to life, limb or health and in the event of a deliberate or grossly negligent breach of duty by ait and in the event of deceitful withholding of a defect or in the event of assumption of a property guarantee.

8.10 Software supplied by ait has been developed with the greatest possible care, complying with acknowledged programming rules. It shall fulfil the function contained in the product description valid at conclusion of the contract or separately agreed. The precondition for warranty shall be reproducibility of a defect. Customer shall describe it sufficiently. If the software is defective, ait shall remedy the defect within a suitable period free of charge either by reworking or by supplying an object free of defects, at its own discretion (subsequent performance).

8.11 Apart from this, Section 9 shall apply to claims for damages. Further-reaching claims by Customer on account of defects have been ruled out.

8.12 Insofar as ait has assumed planning aid over and above the delivery obligation by specific request of Customer, ait shall only be liable herefor to the extent that ait corrects or re-renders planning aid proven to be defective, at its own discretion. Any further-reaching liability for planning aids has been ruled out to the extent that ait is not liable according to Section 9.

9. Liability

9.1 ait shall only be liable for damages and reimbursement of vain expenditure (§ 284 German Civil Code) on account of a breach of contractual or extra-contractual duties (e.g. on account of arrears or tort):

- in cases of malice aforethought or gross negligence,
- on account of culpable injury to life, limb or health,
- on account of deceitful withholding of a defect or assumption of a property guarantee or
- according to the Product Liability Act for personal damage or for property damage to objects in private use

9.2 In addition, ait shall be liable on account of a breach of cardinal contractual duties in slight negligence. In such a case, liability shall however be limited to the damage typical for the contract at the time reasonably foreseeable of the conclusion of the contract.

9.3 To the extent the liability has been ruled out or limited, this shall also apply to the personal liability of the employees, statutory representatives and vicarious agents of ait.

9.4 A change of the onus of proof to Customer's detriment has not been connected with the above regulations.

10. Place of jurisdiction and place of performance

10.1 These terms and conditions of business and the entire legal relationships between the firm of ait and the contracting partner shall exclusively be governed by the law of the Federal Republic of Germany.

10.2 ait's headquarters shall be place of performance and place of jurisdiction for all disputes directly or indirectly resulting from the contractual relationship.

11 Severability clause

If individual provisions of the agreement between ait and Customer are or become ineffective or contestable, the remaining provisions shall not be affected. To the extent that a provision of these general terms and conditions of delivery and payment is or becomes ineffective or contestable, the remaining provisions shall be interpreted taking the commercial purpose intended with the ineffective or contestable provision into due account.

Data protection reference

ait informs Customer that ait processes Customer's personal data with the help of electronic data processing in accordance with the provisions of the Federal Data Protection Act - exclusively for business purposes such as processing of orders, dispatch of advertising documents and other inquiries (e.g. guarantee inquiries). Within the framework of handling of orders, certain data (name, address, invoice data and, if applicable, information about non-contractual handling of payments by Customer) may be transmitted to credit reference agencies.