General terms and conditions of the ATOMA-MULTIPOND company group

§ 1 General provisions

(1) All of our deliveries, services and proposals are made exclusively, even without express reference during the course of negotiations, on the basis of these conditions. Our GTC apply to all agreements with business organizations, corporate bodies under public law and special funds under public law and also to all future business ties, even if they are not expressly agreed from the beginning. Our GTC are regarded as accepted on acceptance of the goods at the latest.

(2) Conflicting terms and conditions or terms and conditions of the customer's at deviance from our terms and conditions apply only if we have agreed to their use expressly and in writing. Even if we refer to letters of the customer's in which his GTC or an allusion to them are embodied, this is not deemed as an approval.

(3) Legally relevant declarations and notifications of the purchaser's in relation to the agreement (e.g. setting a deadline, notice of defects, cancellation or reduction) must be submitted in writing, i.e. in written or text form (e.g. letter, e-mail, telefax). Legal formal requirements and other supporting documents, in the event of doubts about the legitimation of the party making the declaration in particular, remain unaffected.

(4) Any references to the application of statutory provisions are for the purposes of clarification only. Even without a clarification of this type, the statutory provisions apply as a consequence of this, insofar as they are not directly modified or expressly precluded in these GTC.

§ 2 Proposal, conclusion of agreement, documentation, forms and tools

(1) Our salespersons are not authorized to make verbal side agreements or assurances that go beyond the contents of the written agreement. Every stipulation of this agreement is recorded in written contractual documents. Verbal side agreements do not exist.

(2) Delivery time information is approximate and non-binding, unless its binding nature has been expressly agreed. Information about the delivery item (e.g. technical data, tolerances, dimensions, weights, etc.) and its presentation are mere descriptions and labels that are binding only if expressly confirmed by us. The right to effect standard technical and design modifications to the delivery items is reserved, insofar as they do not cause unacceptable inconvenience to the customer and provided that they do not affect the fitness for use of the purchased item.

(3) Our offers are subject to change and non-binding up to the point in time of the conclusion of agreement.

(4) We reserve ownership and copyrights to design drawings, samples, quotations and similar company items of a physical or immaterial nature. They are treated as strictly confidential at all times. They must not be made accessible to third parties without our consent. In the event of a breach of these obligations, the customer is fully liable in accordance with the statutory provisions. Reference advertising involving our name and the like is permitted only with prior consent.

(5) The customer's order of goods is regarded as a binding contractual offer. Unless otherwise stipulated in the order, we are entitled to accept this contractual offer within 4 weeks after its receipt by us.

(6) The acceptance can be agreed either in writing (e.g. by order acknowledgment) or by delivery of the goods to the customer.

§ 3 Prices

(1) Our prices are quoted ex works, excluding shipping, excluding packaging. Deviations from this must be in writing and require our express written consent. Unloading and warehousing are the customer's concern. The statutory value-added tax is added to the prices on the invoice date. The customer bears the cost - unless otherwise agreed - of any transport or similar insurance agreed to. In the event of partial deliveries, each delivery can be invoiced separately. Customs duties and charges as well as taxes of any kind in the country of the place of fulfillment which must be paid in accordance with applicable law are likewise precluded or must be accepted by the customer if they are imposed on us.

(2) If changes in pricing (e.g. price increases in the case of primary product, material, wage, transport or storage costs) arise on a day of delivery which falls four months after the conclusion of agreement, we reserve a corresponding price adjustment once the customer has been informed. The increase in price can be declared by us only within two months after the incidence of the said price increases. The individual cost elements and their increase have to be appropriately weighted in the course of the creation of the new price. If individual cost elements increase, others by contrast decrease, this too has to be taken into account in the creation of the new price.

(3) If no prices have been agreed by the conclusion of agreement, our prices on the day of delivery apply.

§ 4 Terms of payment

(1) Unless otherwise stipulated in the order acknowledgment (alternatively in the invoice), the price is due for payment net (in full) within 10 days of the date of invoice. However we are entitled at any time, within the scope of an ongoing business relationship as well, to make a delivery in whole or in part solely on advance payment. We declare an appropriate reservation with the order acknowledgment at the latest.

(2) Upon the expiry of the aforementioned term of payment the customer will be in default and we are entitled to charge interest on arrears in the amount of 9 percentage points above the base interest rate. In this respect, we may prove and charge a greater interest loss at any time. In the event of arrears in payment, we are also authorized to recall any agreed rebates, discounts and other benefits.

(3) Failure to comply with the terms of payment, default or conditions that are apt to decrease the customer's creditworthiness engender the immediate maturity of all of our claims.

(4) Set-off rights are due to the customer only if his counterclaims are legally established, ripe for adjudication, undisputed or acknowledged by us.

(5) The customer is authorized to exercise a right of lien if and when his counterclaim is based on the same contractual relationship or if the counterclaim is legally established, undisputed, ripe for adjudication or acknowledged by us.

(6) We are not obligated to accept bills of exchange and checks. Credit notes in this respect are always regarded as subject to being honored (on a cash basis, not in place of performance); they are credited

with the value of the day on which we have the equivalent value at our disposal. Bills are credited in consideration of the discount charged to us during the transfer, stamp duty and bank fees and, as may be the case, collection charges.

(7) If after the conclusion of the agreement it becomes clear (e.g. on account of a request for the opening of insolvency proceedings) that our claim to the purchase price is jeopardized due to the customer's poor performance capability, we are as a result entitled in accordance with the statutory provisions to refuse performance and – setting a deadline if necessary – to cancel the agreement (§ 321 Civil Code [BGB]). In the case of contracts for the manufacture of custom-made items (special orders), we can opt to cancel immediately; the legal regulations concerning the dispensability of setting a deadline remain unaffected.

(8) Further contractual or legal claims in the case of default are reserved.

§ 5 Period of delivery and obstacles to delivery

(1) The term of delivery begins with the forwarding of the order acknowledgment, but not before the customer supplies the documents, authorizations and releases to be provided and also not before the receipt of an agreed prepayment and the clarification of all technical issues.

(2) The term of delivery is complied with if the item to be delivered has left the works by the time that the deadline expires or the readiness for shipment has been communicated.

(3) In the event of unforeseen hindrances which are beyond our control and which we were unable to avert despite exercising reasonable care in the circumstances – regardless of whether they occur on our premises or on those of a subcontractor – such as force majeure (e.g. war, fire and natural disasters), delays in the delivery of essential raw materials, etc., we are entitled to extend the delivery period by the duration of the hindrance. We are entitled to the same rights in the event of a strike or lockouts at our premises or that of our suppliers. We shall notify the customer of such circumstances without delay and immediately reimburse any payments already made by him. If an obstacle results in a delay of more than a month, we also have the right to withdraw from the supply agreement in whole or in part.

(4) The right to correct and timely self-supply is reserved. If we cannot comply with binding terms of delivery for reasons that we are not accountable for (unavailability of the service), we shall inform the customer about this immediately and at the same time communicate the prospective new term of delivery. If the service is not available within the new delivery term either, we are entitled to withdraw from the agreement in whole or in part; we shall immediately reimburse a payment already made by the customer. The non-timely self-supply by our supplier is considered in particular as a case of the unavailability of the service in this sense when we have concluded a congruent hedging transaction, neither we nor our supplier is at fault or we are not obligated for the procurement in a given case. In this instance we may also declare a withdraw from the agreement in respect of the goods that have not been delivered should the time of performance be extended by the incorrect or non-timely self-supply by more than a month. If permissible under competition law, we shall assign to the customer our claims against the supplier in consequence of the non-contractual delivery. Further claims against us for damages and reimbursement of expenses by the customer are precluded.

(5) In the event of a default of delivery, the customer can withdraw from the agreement following the expiry of an appropriate grace period to no effect; in the event that our performance is impossible, he is entitled to this right even without setting a period of time.

Claims to a recovery of damages (including consequential losses) are precluded, notwithstanding paragraph 6 and § 10, which aim to avoid the reversal of the burden of proof; the same applies to reimbursement of expenses.

(6) If a time deal has been agreed, we accept liability in accordance with the legal provisions; the same applies if the customer, due to the default attributable to us, can prove that his interest in the contractual performance has ceased to apply.

(7) If the shipment is delayed at the customer's request, then the costs incurred for storage are billed to him beginning one week after the notice of the readiness for shipment.

(8) The delivery is effected ex warehouse which is also the place of fulfillment for the delivery and for any potential subsequent performance.

§ 6 Transfer of risk, acceptance of the goods and partial deliveries

(1) The risk of accidental loss and the accidental deterioration of the goods are transferred to the customer in the event of an obligation to collect involving singling out the product and supplying according to the agreement. The same applies in the case of debts to be discharged by remittance as of the transfer to the transport person. In the case of debts to be discharged at the creditor's domicile, the risk transfers when the delivery has left the factory premises. The same applies in the case of the creditor's default of acceptance. In the case of contracts for work, the risk is transferred on acceptance in accordance with the statutory provisions.

(2) Delivered items have to be received by the customer, notwithstanding his rights as per §§ 8 – 10, even if they exhibit insignificant defects.

Partial deliveries are permissible provided they are reasonable to the customer.

§ 7 Reservation of title

(1) We reserve the title to every delivered item until the customer has paid all present and future outstanding bills accruing from the business relationship. The reservation of title also includes spare or replacement parts, such as motors, control units, etc., even if they are inbuilt, since they are by implication non-substantial parts in the sense of § 93 BGB.

(2) If the customer breaches the terms of the agreement, particularly in the event of a payment default, we are entitled to take the item back following the expiry of a grace period to no effect. The mere taking back of the goods constitutes a withdrawal from the agreement only if a reasonable grace period afforded by us for performance has expired to no effect and the withdrawal has been expressly declared.

The costs incurred by us in taking the goods back (transport costs in particular)

are borne by the customer. Furthermore, we are entitled to prohibit the customer from any resale or processing, combination or mixing of the items delivered under reservation of title and to revoke the direct debiting authorization (§ 7 V). The customer can demand the delivery of items taken back without an express statement of withdrawal only after full payment of the purchase price and all other costs.

(3) The customer is obligated to treat the items with care (incl. requisite inspection and maintenance work).

(4) The customer may neither pledge or transfer for security nor assign the delivery item and the account receivable generated by it. If a request for the opening of insolvency proceedings is made, and also in the case of seizures or other encroachments by third parties, the customer has to inform us immediately in writing so that we may take legal action in accordance with § 771 Code of Civil Procedure [ZPO]. Any legal costs incurred by us for bringing an action under § 771 ZPO must be borne by the customer.

(5) The customer is entitled to resell, to process or to mix the purchased item in the ordinary course of business; in so doing, however, he is assigning to us here and now all claims from the resale, processing, mixing or other
legal basis (especially from insurance policies or unlawful acts) in the amount of the final invoice agreed with us (incl. value-added tax) and also all ancillary rights. If the delivered goods are co-owned by us on the basis of the reservation of title, the assignment of claims is in proportion to the share of the co-ownership. If the delivered goods are sold together with third-party goods not owned by the customer, any resultant claims are assigned to us in the ratio corresponding to the final invoice amount of the item to the final invoice amount for the third-party goods. On accepting assigned claims in an open account, the customer is assigning to us here and now a corresponding part of the balance (including the final balance) from the current account; if interim balances are drawn and it is agreed that they will be carried forward, then the receivable from the interim balance to which we are entitled according to the above stipulation will be treated as assigned to us for the next balance. The customer remains authorized to collect these amounts even after assignment, and our authority to collect the claim itself remains unaffected. However, we undertake not to collect the claim as long as the customer meets its payment obligations from the collected proceeds, is not in default of payment, no request for the opening of insolvency proceedings has been filed and payments have not ceased. If this is the case, however, the customer will disclose to us, upon request, the assigned claims and the names of the debtors, provide all information required for collection, deliver the associated documents and inform the debtor (third party) of the assignment. Furthermore, we are entitled in this case to revoke the customer's authority to resell and process the items subject to reservation of title. This also applies if the customer resells, processes or mixes the purchased item contrary to the terms of the agreement.

(6) The reservation of title also extends to the products resulting from the processing or transformation of our items at their full value, such processes having been carried out on our behalf, with the result that we are deemed the manufacturer. If the processing or transformation is carried out together with other goods which do not belong to us, we shall acquire co-ownership in proportion to the objective values of these goods; it is agreed here and now that in this case the customer will store the goods for us with due care.
If our reserved goods are combined or inseparably mixed with other movable items into a single object and if the other object is seen as the main object, the customer will transfer co-ownership to us pro rata, provided the main object belongs to him; the customer will safeguard the resulting (co-)ownership for us.
For goods developed in this way, the same applies as to those delivered under the reservation of title.

(7) The customer also assigns to us the claims that support the protection of our claims against him, which arise against a third party due to connecting the delivery items to a piece of real estate. This assignment has priority over any others.

(8) The securities to which we are entitled will not be recognized if the estimated value of our securities exceeds the nominal value of the claims to be secured by 50%; we are responsible for the decision as to which securities have been released.

(9) Insofar as the validity of the reservation of title in the country of destination is linked to special prerequisites or special formal requirements, e.g. a notarized certification, the customer ensures that these are fulfilled

§ 8 Liability for material defects and defects of title

We are categorically not liable for defects that are known to the customer by the conclusion of agreement or are not recognize due to gross negligence (§ 442 BGB). Furthermore, the customer's claims for defects presuppose that he has discharged his legal duties of inspection and objection to give notice of defects (§§ 377, 381 Commercial Code [HGB]). In the case of construction materials and other items destined for installation or miscellaneous further processing, an inspection has to be conducted in any event immediately prior to the processing. If during the delivery, the inspection or at any later point in time a defect becomes apparent, then we are to be notified about this immediately in writing. In any case, obvious defects have to be reported immediately in writing as of delivery and during the inspection non-obvious defects within the same timeframe as of detection. If the customer neglects the proper investigation and/or notification of defects, our liability for the defect not reported or non-timely or improperly reported is precluded in accordance with the statutory provisions. Insofar as the parties have agreed on specifications, these take precedence over the normal properties and condition. In the event of a deviation, no liability is assumed for a suitability of the purchased item for ordinary usage and also for its normal properties and condition.

(1) If there is a defect in the purchased item, we are entitled, as we deem fit, to remedy the defect or to deliver a defect-free item (subsequent performance). The prerequisite for this is that a not immaterial defect is involved.
Should one of both or both types of this subsequent performance be impossible or disproportionate, we are entitled to refuse it.

We may refuse subsequent performance as long as the customer fails to meet his payment obligations to us to an extent corresponding to the defect-free part of the performance. In the event of a subsequent performance, we bear the expenses only up to the amount of the purchase price, insofar as there is no increase in them caused by transporting the purchased item to a place other than the place of fulfillment. The customer has the duty to give us the time and occasion required for the subsequent performance owed, especially to hand over the faulty goods for inspection purposes. In the case of a replacement delivery, the customer has to return the defective item to us in accordance with the statutory provisions. The subsequent performance involves neither the disassembly of the defective item nor its reassembly if we were not obligated to assembly it in the first place.

We bear or reimburse the expenses required for the purpose of the inspection and subsequent performance, especially transport, travel, labor and material costs, as well as disassembly and assembly costs if applicable, in accordance with the statutory provision if there is an actual defect. Otherwise, we can demand of the customer compensation for the costs incurred from the unjustified request for the rectification of a defect (inspection and transport costs in particular), unless the absence of a defect was not apparent to the customer. The claim to reimbursement of disassembly and assembly costs exists, however, only insofar as the purchased item's lack of conformity was only obvious after installation or assembly, would be recognizable to an average buyer. An allocation of costs is precluded, insofar as extra costs arise by transferring the purchased item to a place other than the place of fulfillment.

(2) If the subsequent performance mentioned in paragraph 1 is impossible or go wrong, the customer has the right to chose either the reduce the purchase price accordingly or to rescind the agreement according to the statutory provisions; this applies in particular to the culpable delay or refusal of subsequent performance, even when this is unsuccessful for a second time.

Other claims of the customer are precluded or restricted irrespective of whichever legal basis (especially claims from default at the conclusion of agreement, violation of principal or subsidiary contractual obligations, reimbursement of expenses excepting that in accordance with § 439 II BGB, unlawful act and other tort liability) pursuant to § 10.

(3) No responsibility is accepted for damages for the following reasons: Unsuitable or improper use, faulty assembly by the customer or third parties, natural and normal wear and tear, improper or negligent handling, unsuitable operating materials, substandard construction work, unsuitable foundation soil, substitute materials, chemical, electrochemical or electrical influences (unless attributable to us), improper modifications or repair work carried out by the customer or third parties without prior consent.

(4) Claims arising from defects will lapse one year after delivery of the purchased item, provided that claims are involved for which there is a limited liability in accordance with §§ 8, 9 or 10. If an item has been used for a building in accordance with its customary use and caused a defect in the process, claims become statute-barred after 5 years.

The claims for reduction and the exercise of a right of withdrawal will be precluded, insofar as the claim for subsequent performance is time-barred. However, the customer can in the case of paragraph 3 refuse the payment of the purchase price if and when he would be entitled to do so on the basis of the withdrawal from the agreement or the price reduction; in the event of the withdrawal preclusion and a subsequent payment refusal, we are entitled to withdraw from the agreement. The statutory limitation periods for the withdrawal of the contractor as per §§ 478 f. BGB remain unaffected. A reversal of the burden of proof intended.

(5) Assurances and warranties are binding only if we give them expressly and in writing.

§ 9 Special-order contracts and contracts for work and materials, service contracts

(1) For defects of contractual services we provide a guarantee pursuant to § 8 I – III, V.

The statutory right to self-help is due to the customer according to § 637 BGB; the claim is precluded if we have the right to refuse the subsequent performance.

(2) Claims arising for subsequent performance, recovery of damages and reimbursement of expenses will lapse one year from the acceptance, provided that claims are involved for which there is a limited liability in accordance with §§ 9 or 10. This does not apply to building structures and works whose outcome consists in performing planning and supervisory work in this connection; in this case, the statutory limitation period is 5 years.

The claims to self-help, reduction and the exercise of a right of withdrawal are precluded, insofar as the claim for subsequent performance is time-barred and we invoke it. However, the customer can in the case of paragraph 3 refuse the payment of the purchase price if and when he would be entitled to do so on the basis of the withdrawal from the agreement or the price reduction; in the event of the withdrawal exclusion and a subsequent payment refusal, we are entitled to withdraw from the agreement.

(3) Cost estimates have to be reimbursed.

(4) In the case of contracts for movable objects to be manufactured or created, § 8 applies.

(5) In the event of defects in contractual services rendered, § 10 applies accordingly.

§ 10 Withdrawal from the agreement and other liability on our part

(1) The customer's statutory right of withdrawal should – except for the cases of §§ 8, 9 and § 10 – neither be precluded nor restricted. In like manner, statutory and contractual rights and claims that we are entitled to should neither be precluded nor restricted.

(2) We are liable for recovery of damages – irrespective of whichever legal basis – within the scope of fault liability in the case of malice and gross negligence. In the case of ordinary negligence, we are liable, subject to statutory liability limitations (e.g. care in the administration of our own affairs; insignificant breach of duty), only for damages from loss of life, bodily injury or damage to health, for damages from breach of a material contractual obligation (obligation whose fulfillment enables the proper implementation of the agreement

and in whose compliance the contractual partner trusts and may trust on a regular basis); in this case, however, our liability is limited to the reimbursement of the foreseeable, typically occurring damage. A potential liability according to the principles of recourse of the contractor in accordance with §§ 478 f. BGB remains unaffected.

(3) The liability limitations resulting from paragraph 2 also apply against third parties and in the event of breaches of duty by persons (also to their advantage) whose culpabilities we have to represent in accordance with the statutory provisions. They do not apply, insofar as a defect has been fraudulently concealed or a guarantee for the condition of the goods has been accepted and for the customer's claims according to the Product Liability Act.

(4) As for the rest, the liability is precluded – irrespective of whichever legal basis (especially claims from the violation of principal or subsidiary contractual obligations, unlawful act and other tort liability).

(5) The same (exclusions, limitation and exceptions thereto) applies to claims arising from default at the conclusion of agreement.

(6) In the case of the reimbursement of expenses (excepting that in accordance with §§ 439 II, 635 II BGB) § 10 applies accordingly.

(7) Any exclusion or limitation of our liability also applies to our legal representatives and vicarious agents.

(8) A reversal of the burden of proof intended. Cardinal duties are basically contractual obligations, that is, such duties that give the contract its character and which the contractual partners may rely on; it is a matter of essential rights and obligations that create the prerequisites for the contractual performance and are indispensable for the achievement of the contract's purpose.

§ 11 Acceptance

The customer is obliged to accept the assembly as soon as its completion is announced to him. The equipment is deemed as accepted after a successful trial startup, even if the customer has not participated in it despite and invitation.

§ 12 Place of performance, place of jurisdiction, applicable law and allocation of the burden of proof

(1) The place of performance is the place of dispatch (place of work or storage).

(2) The place of jurisdiction is our place of business, provided that the customer is also a merchant within the meaning of the Commercial Code, a legal entity under public law or a special fund under public law. The same applies if the customer does not have a general place of jurisdiction on German territory or transfers his place of business abroad after the conclusion of agreement or his domicile is unknown at the time of a filing of action. The same applies if the customer is a business organization in the sense of § 14 BGB; we are also entitled to institute proceedings against the customer at any other admissible place of jurisdiction.

(3) With regard to all claims and rights under this agreement, the non-standardized law of the Federal Republic of Germany (BGB, HGB) applies. The authority of the UN Convention on Contracts for the International Sale of Goods (CISG), as well as the conflict-related standards of the Introductory Law to the Civil Code, is expressly precluded. The contractual language is German.

(4) The legal or judicial allocation of the burden of proof shall not be changed by any of the agreed clauses included in these terms and conditions.

§ 13 Other provisions

(1) Changes to the agreement can only become operative with our consent and must be made in writing.

(2) Should individual provisions of these terms and conditions be invalid or void in whole or in part, the remaining provisions will not be affected. The contracting parties undertake to agree to a provision by which the meaning and purpose pursued by the invalid or void provision is largely achieved in the economic sphere.

(3) All terms and provisions are gender neutral and in all other respects non-discriminatory within the meaning of the General Act on Equal Treatment (AGG).

(4) We handle all of the customer's data solely for the purposes of conducting business and according to the requirements of the respectively applicable data protection regulations. On written request, the customer also has a right to information about his personal data collected, processed and used.