

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

valid from 01.01.2020

Section 1 Scope of application:

- 1.) The following General Terms and Conditions of Business apply to all offers, deliveries and services of ait-deutschland GmbH for its business divisions and brands ait-deutschland GmbH, alpha innotec, NOVELAN and KKT chillers exclusively.
- 2.) Any confirmations to the contrary from the contracting partner with reference to its conditions of business are hereby expressly contradicted unless ait-deutschland GmbH has expressly consented to their validity in writing. The General Terms and Conditions of Business of ait-deutschland GmbH therefore also apply if it unconditionally executes the delivery to the contracting partner in the knowledge that there are conflicting conditions or conditions deviating from the General Terms and Conditions of Business of ait-deutschland GmbH.

Section 2 Offers and contract conclusion

- 1.) ait-deutschland GmbH shall be bound to offers for 4 weeks from the date of the offer unless otherwise agreed in writing.
- 2.) All agreements made between ait-deutschland GmbH and the contracting partner for the purpose of carrying out this contract are to be laid down in this contract in writing. The contract is only legally binding for ait-deutschland GmbH when the order has been confirmed in writing.
- 3.) The documents belonging to the offers or orders, such as illustrations, drawings, weights and measures information etc., are non-binding unless they are expressly confirmed as binding in writing by ait-deutschland GmbH. ait-deutschland GmbH reserves the right to make technical changes. Changes that a manufacturer makes in the design or features of a product delivered by ait-deutschland GmbH do not entitle the customer to make complaints or withdraw from the order. Cost estimates from ait-deutschland GmbH are non-binding.
- 4.) Information in offers and/or order confirmations or invoices of ait-deutschland GmbH that are based on an obvious error, namely a spelling mistake or calculation error, are not binding for ait-deutschland GmbH. Instead, the obviously intended declaration applies.
- 5.) ait-deutschland GmbH expressly reserves all rights regarding ownership and copyright to illustrations, drawings, hydraulic diagrams, calculations and other documents etc. The offer documents and cost estimates of ait-deutschland GmbH may not be passed on, published, copied or made available in any other way to third parties without the express written consent of ait-deutschland GmbH. If a contract fails to materialise, all the documents handed over are to be returned to ait-deutschland GmbH. Abuse and any violations of this provision shall make the perpetrator liable for damages.
- 6.) ait-deutschland GmbH reserves the right to request appropriate down payments.
- 7.) Business mail printed by computers (e.g. order confirmations, invoices, credit notes, account statements, payment reminders etc.) is also legally effective without a signature.

Section 3 Prices, price changes:

- 1.) The prices quoted are before the addition of the legally applicable VAT applicable at the time of issuing the invoice, which is shown separately on the invoice.
- 2.) Otherwise, prices are quoted "ex works" or "ex stock" including original packaging. Any returns shall be made at the expense and risk of the contracting partner.
- 3.) If there are any changes to the pricing basis before the delivery day, ait-deutschland GmbH is entitled to make a corresponding price adjustment. This only applies to delivery periods of more than four months, however, and for price adjustments of up to 12% of the agreed price. For any adjustments beyond this, a new price agreement is required. If such a price agreement is not reached, ait-deutschland GmbH is entitled to withdraw from the contract within 14 days of the failure to conclude a new price agreement.
- 4.) For orders for which no prices are agreed, the valid prices of ait-deutschland GmbH applying on the day of delivery are deemed to be agreed.
- 5.) Prices confirmed by ait-deutschland GmbH only apply on full acceptance of the confirmed purchase quantities.
- 6.) Partial deliveries shall be invoiced separately unless there are express agreements to the contrary.

Section 4 Delivery, delay, impossibility:

- 1.) All delivery dates only indicate an approximate delivery period unless the delivery has been expressly guaranteed in writing for a definite date. Delivery periods begin with the date the order is confirmed by ait-deutschland GmbH, however not before the binding clarification of all execution details and all other conditions that must be satisfied by the contracting partner to enable the proper processing of the contract. The same shall apply to delivery dates. Early deliveries and partial deliveries are permitted. The delivery day is deemed to be the day the goods are made available for dispatch "ex works" or "ex stock".
- 2.) To be able to comply with its delivery obligations, ait-deutschland GmbH additionally requires the contracting partner to fulfil its contractual duties on time and in full, in particular its payment obligation. The defence of non-performance of the contract remains reserved. Otherwise the agreed delivery period shall be extended by the length of the delay.
- 3.) If the contracting partner delays acceptance of the goods or violates other obligations to cooperate, then ait-deutschland GmbH is entitled to demand compensation for the losses incurred, including any additional expenses. In this case, the risk of accidental loss or an accidental deterioration of the delivery item is also transferred to the contracting partner at the moment in which its delay in acceptance commences.
- 4.) ait-deutschland GmbH is only liable for delays and/or the impossibility of its deliveries and services if it has caused the barrier to performance intentionally or with gross negligence. Such a delay and/or impossibility entitles ait-deutschland GmbH to demand reasonable delivery periods and delivery options and also to withdraw either in whole or in part from the contract. This principle is particularly applicable in cases of force majeure, strikes, lockouts, malfunctions, transport obstructions, official orders, delays in raw material supply etc., even if the obstacles occur at the suppliers to ait-deutschland GmbH or their sub-contractors.
- 5.) The liability of ait-deutschland GmbH is limited in cases of gross negligence, however, to foreseeable damage typical of the contract concerned.
- 6.) If a delivery deadline is not met for reasons for which ait-deutschland GmbH is responsible, the contracting partner shall set an extension period in writing to ait-deutschland GmbH after the delivery deadline has expired. This shall be set for at least two weeks. It shall begin to run on receipt of notification of the extension period at ait-deutschland GmbH.

- 7.) If the extension period expires without results, the contracting partner is only entitled to a right of withdrawal. Further claims, irrespective of their legal grounds, are excluded unless the delivery delay was brought about intentionally or with gross negligence by ait-deutschland GmbH.
- 8.) Services ordered on call must be accepted by the contracting partner within six months of order confirmation. If acceptance fails to take place, or fails to take place on time or in full, ait-deutschland is entitled to store and/or forward the ordered delivery item at the expense and risk of the contracting partner. In all these cases, the ordered delivery item is regarded as accepted after a period of six months following order confirmation.
- 9.) If assembly services have been agreed, the following also applies:
 - a.) If the assembly costs are included in the offer price of ait-deutschland GmbH, the end customer must carry out, in any case, the laying and connection of power lines to the equipment, switches and light sources, as well as water supply lines and water drainage systems at his own expense. The same applies for necessary installation, painting and carpentry work, bricklaying and breakthrough work as well as for the provision of machine foundations, platforms and consoles. The end customer shall bear accommodation and catering costs for fitters of ait-deutschland GmbH. The offer prices apply only to orders for the entire system offered as well as for unimpeded installation and the commissioning connected with it.
 - b.) If the delivery and/or assembly is delayed for reasons outside the control of ait-deutschland GmbH, then the additional costs incurred by ait-deutschland GmbH as a result, the waiting time of the fitters and expense allowances of the fitters of ait-deutschland GmbH are to be paid for by the end customer separately at the valid rates in each case. The end customer shall issue a separate order for any work that is not included in the scope of the offer and a separate invoice will also be issued to it in accordance with the actual costs of wages and materials incurred.
 - c.) The end customer shall also, at its own expense, make the necessary agreements with the building inspectors, the factory inspectorate, the German technical inspectorate (TÜV), the power plants and waterworks and water treatment plants as well as installing any necessary radio and television protection devices. The end customer shall also ensure, at its own expense, that there are proper access roads and provisions for bringing the various parts of the system to the construction site up to and including the place of installation. The customer is responsible for providing water quality in accordance with Austrian standard H-5195 (or VDI guideline 2035) as well as guaranteeing the state-of-the-art technology of the hydraulic system to be connected (e.g. magnetic dirt separator etc.).
 - d.) The taking back of material from deliveries is fundamentally excluded.

Section 5 Dispatch and transfer of risk:

- 1.) The risk is transferred to the contracting partner on handover to the carrier, freight forwarder or other person charged with the transport. This also applies in the case of partial deliveries and also when freight-free delivery is agreed. If the handover is delayed for reasons for which the contracting partner is responsible, the risk is already transferred on the day the goods are ready for dispatch.
- 2.) The contracting partner shall bear the shipping costs.
- 3.) Upon the request of the contracting partner, the delivery shall be covered by transport insurance. The contracting partner shall bear the costs incurred in arranging the insurance.

Section 6 Warranty:

- 1.) The warranty rights of the contracting partner are conditional on the latter duly complying with its investigation and complaint obligations in accordance with section 377 ff. of the German Commercial Code (HGB). The defective items are to be made ready for inspection by ait-deutschland GmbH in the condition in which they were found on establishing the defect.
- 2.) If there is a defect in the delivery item for which ait-deutschland GmbH is responsible, ait-deutschland GmbH is entitled to supplementary performance at its own discretion by either carrying out remedial action or delivering a new defect-free item. In the case of remedial action, the expenses required for this by ait-deutschland GmbH shall only be borne up to the limit of the purchase price.
- 3.) If ait-deutschland GmbH is not prepared to take remedial action or if the rectification fails, then the contracting partner is entitled at its discretion to demand cancellation of the agreement or a reasonable reduction in the price, whereby the exercising of this right in the case of failure to rectify is only made after the second failed attempt at rectification. The legal cases of dispensability of setting a deadline otherwise remain unaffected.
- 4.) Further claims of the contracting partner due to defective delivery against ait-deutschland GmbH are excluded, in particular for compensation concerning damages not sustained by the delivery item itself. This does not apply in cases of mandatory liability for malicious intent or gross negligence, or due to an issued guarantee.
- 5.) The place of fulfillment for supplementary performance is the place of fulfillment of the principal obligation.
- 6.) Insignificant, reasonable deviations in the dimensions and designs, in particular for repeat orders, do not entitle the customer to make complaints unless absolute compliance has been expressly agreed. Technical improvements and necessary technical changes are also considered as per the agreement as long as they do not lead to any deterioration in fitness for use.
- 7.) Liability for normal wear and tear is excluded.
- 8.) Damage arising from non-compliance with rules or non-compliance with conditions for installation, assembly, commissioning, operation, treatment and maintenance specified by ait-deutschland GmbH or through the use of control devices, fuels, firing types, types of current or voltages which are unsuitable or do not comply with specification do not justify any warranty claims. The same applies in the case of non-compliance with Austrian standard H-5195 (or VDI guideline 2035) for the avoidance of damage in hot water heating systems, overload, corrosion and in the case of damage to water/water-heat pump systems arising from ochre formation and the use of unsuitable water.
- 9.) The software delivered by ait-deutschland GmbH has been developed with the greatest possible care and in compliance with recognised programming rules. It fulfils the function contained in the product description that applied on contract conclusion or was separately agreed. The condition for the warranty for defects in the software is the reproducibility of the defect. The contracting partner must adequately describe the defect. If the delivered

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software is defective, ait-deutschland GmbH shall arrange supplementary performance at its own discretion in the form of remedial work or the delivery of defect-free software. Further claims of the contracting partner due to defects in the delivered software are completely excluded.

- 10.) If ait-deutschland GmbH has adopted planning aids at the express wish of the customer/contracting partner beyond the delivery obligations, ait-deutschland GmbH shall exclude a warranty for poorly delivered planning aids as well as liability for any further claims.
- 11.) The warranty period is based on the existing relevant statutory provisions.

Section 7 Joint liability:

- 1.) ait-deutschland GmbH shall only assume liability – regardless of the legal nature of the asserted claim – if such a liability is expressly regulated in Sections 4 to 6 of these conditions.
- 2.) Excluded in particular are claims arising from culpa in contrahendo, claims due to other breaches of obligations, compensation for consequential damages or due to tortious claims for compensation of property damage. Excluded is also any claim to compensation for wasted expenses and for lost profit.
- 3.) Insofar as the liability for compensation from ait-deutschland GmbH is excluded or limited, this also applies with respect to the personal liability for compensation of the employees, workers, personnel, representatives and vicarious agents of ait-deutschland GmbH.
- 4.) Claims for damages according to the law concerning liability for defective products (product liability law) remain unaffected. Liability on grounds of injury to life, body or health or for the breach of essential duties under a contract also remains unaffected. The right to claim damages for the breach of essential duties under a contract is, however, limited to the foreseeable damage typical for this type of contract, unless another listed exception exists. Also in cases of gross negligence, the liability of ait-deutschland GmbH is limited to the foreseeable damage typical for this type of contract, unless another listed exception exists.
- 5.) The contracting partner shall indemnify ait-deutschland GmbH from all claims that go beyond the scope of liability according to these conditions.
- 6.) A change in the burden of proof to the detriment of the contracting partner is not associated with the foregoing provisions.
- 7.) The limitation of claims between ait-deutschland GmbH and the contracting partner is governed by statutory provisions.
- 8.) Any basis for claims under data protection law is not covered by this liability provision.

Section 8 Retention of title:

- 1.) The delivery item shall remain the property of ait-deutschland GmbH until payment has been received in full and until all payments from the business relationship have been received.
- 2.) In the case of conduct by the contracting partner which is in breach of the contract, in particular default of payment, ait-deutschland GmbH is entitled to take back the delivery item. Such a reclamation of the delivery item does not constitute withdrawal from the contract for ait-deutschland GmbH unless this has been expressly stated by ait-deutschland GmbH in writing. The seizure of the delivery item by ait-deutschland GmbH always entails a withdrawal from the contract. After taking back the delivery item, ait-deutschland GmbH is authorised to sell the delivery item. The proceeds of sale shall be set off against the accounts payable of the contracting partner – less reasonable disposal costs.
- 3.) The contracting partner is obliged to handle the delivery item with care; in particular, it is obliged to insure it adequately and at its own expense against fire, water damage and theft to cover the reinstatement value.
- 4.) In the event of seizures or other interventions by third parties, the contracting partner must inform ait-deutschland GmbH immediately so that ait-deutschland GmbH can file a suit in accordance with section 771 Code of Civil Procedure (ZPO). If the third party is not in a position to reimburse ait-deutschland GmbH for the court and out-of-court costs of a lawsuit in accordance with section 771 ZPO, the contracting partner shall be liable for any damage incurred by ait-deutschland GmbH.
- 5.) The contracting partner is authorised to use and sell the delivery item in the ordinary course of business.
- 6.) The processing or transformation of the delivery item by the contracting partner shall always be undertaken for ait-deutschland GmbH. If the delivery item is processed together with other items not belonging to ait-deutschland GmbH, then ait-deutschland GmbH obtains co-ownership of the new item in the proportion of the value of the delivery item (final invoice amount, including VAT) to the other processed items at the time of processing. Otherwise, the same shall apply to the item resulting from the processing as to the item delivered with reservations.
- 7.) If the delivery item is inseparably mixed with other items not belonging to ait-deutschland GmbH, then ait-deutschland GmbH shall acquire co-ownership of the new item in the proportion of the value of the delivery item (final invoice amount, including VAT) to the other mixed items at the time of mixing. If the mixing occurs in such a way that the contracting partner's item is to be regarded as the main item, then it is agreed that the contracting partner shall transfer co-ownership on a pro-rata basis to ait-deutschland GmbH. The contracting partner shall safeguard the resultant sole or co-ownership for ait-deutschland GmbH.
- 8.) The contracting partner shall assign all receivables to the amount of the proportionate co-ownership share as security to ait-deutschland GmbH up to the amount of the final invoice (including VAT) that result for the contracting partner from resale to its customers or third parties, and this regardless of whether the delivery item was sold without being processed or after processing. The contracting partner shall pass on the payments made on the assigned receivables up to the amount of the secured claim immediately to ait-deutschland GmbH.
- 9.) The contracting partner is entitled to collect the receivables from the third party in its own name. ait-deutschland GmbH reserves the right to disclose the assignment of the claim to the third party at any time and to enforce the claim itself. However, ait-deutschland GmbH undertakes not to collect the claim as long as the contracting partner meets its payment

obligations from the collected proceeds, does not enter payment default and, in particular, has not submitted an application for the opening of insolvency proceedings and payments have not been suspended. If this is the case, however, ait-deutschland GmbH can demand that the contracting partner discloses the assigned claims and their debtors, provides all the necessary information for collection of the receivables, hands over the documents belonging to the case and informs the debtors or third parties of the assignment.

- 10.) During the existence of the retention of title, the contracting partner is not permitted to pledge the retained goods or use them as security.
- 11.) The contracting partner shall also assign to ait-deutschland GmbH the claims to secure the claims of ait-deutschland GmbH against it which arise against a third party from the connection of the delivery item with a piece of real estate.
- 12.) ait-deutschland GmbH undertakes to release the securities to which it is entitled at the request of the contracting partner when the realisable value of its securities exceeds the claims to be secured by more than 10%; ait-deutschland GmbH shall determine the securities to be released.

Section 9 Payment conditions:

- 1.) Payment is due in full on delivery or acceptance.
- 2.) The punctuality of the payment does not depend on when the money is sent but when it arrives in or is credited to the account.
- 3.) If it does not pay, the contracting partner is in default without any further declaration from ait-deutschland GmbH 30 days after receipt of the invoice.
- 4.) If the contracting partner is in default, the legal rules concerning the consequences of default shall apply.
- 5.) ait-deutschland GmbH expressly reserves the right to reject cheques or bills of exchange. Acceptance only occurs on account of performance. Discount and bill of exchange charges shall be borne by the contracting partner and are due for payment immediately.
- 6.) If ait-deutschland GmbH becomes aware of circumstances that cast doubt on the credit-worthiness of the contracting partner, in particular if a cheque from it is not honoured or if it ceases payments, then ait-deutschland GmbH is entitled to declare the whole of the outstanding debt due for payment even if the latter has accepted cheques. ait-deutschland GmbH is also entitled in this case to demand down payments or the provision of security.
- 7.) If the contracting partner permanently stops making payments or if insolvency proceedings are initiated concerning its assets, then ait-deutschland GmbH is also entitled to withdraw from the not yet fulfilled part of the contract.
- 8.) ait-deutschland GmbH is entitled, despite any provisions of the contracting partner to the contrary, to first offset payments against its older debts. ait-deutschland GmbH shall inform the contracting partner of this type of offsetting. If costs and interest have already been incurred, ait-deutschland GmbH is entitled to first offset the payments against the costs, then the interest and finally the principal debt.
- 9.) Offsetting against the claims of ait-deutschland GmbH can only be made with such counterclaims that have been established as final and absolute or are recognised by ait-deutschland GmbH. The contracting partner has no right to refuse performance or right of retention due to disputed claims.
- 10.) The legal right of ait-deutschland GmbH to withdraw or enforce claims for damages due to non-performance remains unaffected.

Section 10 Place of jurisdiction, place of performance, partial invalidity:

- 1.) These General Terms and Conditions of Business and the entire legal relationship between ait-deutschland GmbH and the contracting partner are governed exclusively by the laws of the Federal Republic of Germany.
- 2.) The registered office of ait-deutschland GmbH is the place of performance. This also applies in the event of subsequent performance.
- 3.) If the contracting partner is a fully qualified merchant within the meaning of the German Commercial Code, a legal person under public law or a special fund under public law, the place of business of ait-deutschland GmbH shall be the exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship.
- 4.) Should a provision of these terms and conditions of business be invalid, the remaining provisions shall not be affected. The invalid provision shall be replaced by a valid provision which comes as close as possible to the economic intention.

Section 11 Data protection notice:

ait-deutschland GmbH points out to its contracting partners and customers that ait-deutschland GmbH only processes the personal data of contracting partners and customers for the purposes of the performance of the contract or to carry out pre-contractual measures at the request of customers.