

General Terms and Conditions

Article 1 – Scope of application

1.1 All offers from and all orders placed with Atami for the sale and delivery of products by Atami, including any related services (hereinafter referred to as “goods”), and any contract with Atami in that regard are subject exclusively to these conditions.

1.2 The applicability of the conditions of the other party (hereinafter referred to as “the purchaser”) is hereby expressly rejected.

1.3 In case of any conflicts between the provisions of the contract and these General Conditions of Sale, the contract will prevail.

1.4 Any modification of or addition to these General Conditions of Sale shall be valid only if expressly agreed in writing.

ARTICLE 2 – OFFERS, ORDERS, FORMATION OF THE CONTRACT

2.1 All offers of Atami are non-binding and subject to modification or cancellation.

2.2 Orders placed by the purchaser are deemed to be irrevocable. Orders of the purchaser are not binding upon Atami.

2.3 A contract between the purchaser and Atami will only be formed after Atami has confirmed it in writing.

2.4 Atami does not sell its products to natural persons not acting in the course of a profession or business (consumers) and only to retailers and wholesalers registered with the Chamber of Commerce.

ARTICLE 3 – CONFORMITY, PERMITTED USE AND INDEMNIFICATION

3.1 All statements of Atami concerning quantities, measurements, weights and/or other indications related to goods are made with the greatest possible care. Atami cannot, however, guarantee that there will be no non-conformities in that regard. Non-conformities that are customary in the sector shall in all cases be permitted.

3.2 The purchaser is obliged to carefully follow the instructions and all statutory provisions on the storage and use of the goods as stated, for example, in the documentation (including the documentation that can be found on the website of Atami www.atami.com) and on the packaging.

3.3 The purchaser guarantees and undertakes to ensure that when using the goods delivered to it, it will comply with all relevant statutory provisions and regulations and refrain from any improper or illegal use of these goods.

3.4 If the purchaser acts contrary to the second and third paragraphs of this article, the purchaser will indemnify Atami against any and all damage, loss, fines and other claims from third parties resulting from the purchaser acting contrary to these paragraphs.

ARTICLE 4 – PRICE

4.1 Prices indicated by Atami or agreed with Atami are Ex Works (in conformity with the relevant provisions of the latest version of the Incoterms as drafted by the International Chamber of Commerce). Prices are therefore exclusive of VAT, exclusive of import and export duties, excise duties and other taxes or levies imposed or charged in relation to the goods and exclusive of transportation costs.

4.2 If and insofar as the prices are based on price lists of Atami, the current price list at the time of delivery shall apply. Atami reserves the right to adjust the prices, or change the price list. In case of an adjustment to the price or change to the price list, Atami shall notify the purchaser in writing as soon as possible but ultimately before the effective date of such adjustment or change. In the event the purchaser does not agree to the proposed price adjustment or change to the

price list, Atami shall have the right to terminate the contract with immediate effect and without being liable to pay any type of compensation to the purchaser.

ARTICLE 5 – DELIVERY, DELIVERY TERM, PURCHASE, STORAGE

5.1 The delivery term will commence upon the formation of the contract. The delivery term will be extended by the amount of time by which the execution of the contract is delayed due to force majeure (as specified in Article 10 of these conditions). Delivery is subject to availability and sufficient capacity, unless otherwise agreed upon. If a contract has been confirmed, but there is no availability or sufficient capacity, Atami and the purchaser shall discuss in good faith to reach agreement on a solution.

5.2 Atami has the right to engage third parties (hereinafter referred to as “auxiliary persons”) for the execution of the contract or parts thereof.

5.3 Unless the parties have expressly agreed upon a different method of delivery, deliveries are Ex Works, in accordance with the relevant provisions as set forth in the Incoterms’ latest version. Atami reserves the right to deliver in batches. For the purpose of these conditions, each batch delivery is deemed to be a separate delivery.

5.4 The purchaser shall have a purchase obligation. The goods must be accepted in full by or on behalf of the purchaser at the agreed place and at the agreed time of delivery. The purchaser is responsible for the provision of sufficient loading and unloading facilities for fast unloading.

5.5 If the purchaser fails to accept the goods or to accept them on time, it will be held in default without notice of default being required. In case of non-acceptance of the goods by the purchaser, the risk of the goods will pass to the purchaser at the time when Atami offers the goods for delivery in accordance with the contract or these General Conditions of Sale. Any costs associated with such non-acceptance will be for the account of the purchaser.

ARTICLE 6 – PACKAGING MATERIALS

6.1 The packaging materials, if not intended for once-only use, including but not limited to pallets, crates, containers and other transport resources, remain the property of Atami, even if the purchaser has paid a deposit for them.

6.2 The purchaser is obliged to return the packagings, sorted and cleaned, as soon as possible but by the next delivery of Atami to the purchaser at the latest.

ARTICLE 7 – TRANSFER OF RISK AND OWNERSHIP

7.1 The risk of the purchased goods transfers to the purchaser at the time when Atami offers the goods for delivery in accordance with the contract or these General Conditions of Sale.

7.2 All goods delivered by Atami remain the property of Atami or third parties entitled thereto until the time of full payment of all that which the purchaser owes to Atami in connection with the underlying contract and/or previous or later contracts of the same nature, including damages, costs and interest. The purchaser waives any rights of retention in respect of the goods in advance and shall not attach those goods.

7.3 The purchaser is obliged to keep and/or render the goods subject to retention of title in Atami’s favour identifiable and to keep them separate from each other and from other goods held by the purchaser.

7.4 For as long as the ownership of the delivered goods is reserved by Atami, the purchaser does not have the right to dispose of them other than in the course of its business, or to establish any liens on them.

ARTICLE 8 – INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS

8.1 All intellectual and industrial property rights related to delivered goods and/or rendered services and/or any know-how related thereto are vested in Atami or third parties entitled thereto and are not transferred to the purchaser by virtue of the contract with Atami, even if the goods or related know-how have been designed, developed or compiled specifically for the purchaser.

8.2 The purchaser will immediately alert Atami if it becomes aware that a third party infringes or threatens to infringe the industrial or intellectual property rights or know-how of Atami or if third parties adopt the position that goods of Atami infringe their own industrial or intellectual property rights or know-how.

ARTICLE 9 – CONFIDENTIALITY

9.1 The purchaser is obliged to, and shall ensure that the purchaser and its officials, employees and any third parties engaged by it, shall protect the confidentiality of all information that comes to its notice about Atami, even if that information is not designated as being confidential, and shall refrain without the prior written permission of Atami from making direct or indirect use of its relationship with Atami for promotional activities or other purposes.

9.2 In the event the purchaser is obliged to disclose confidential information on the basis of a court or judicial order, the purchaser shall only be allowed to disclose such information after having obtained written approval from Atami. Atami shall not unreasonably withhold such approval.

ARTICLE 10 – FORCE MAJEURE

10.1 In the event of force majeure on the part of either party, the performance of the contract shall be fully or partly suspended for as long as the situation of force majeure continues, without either party being liable for payment of any compensation to the other party.

10.2 If the force majeure situation is reasonably expected to continue for more than two months or has already lasted for two months, the other party may terminate the contract with immediate effect and without recourse to the courts, without thereby creating any rights to compensation.

10.3 Force majeure on the part of Atami shall in any case include: (a) circumstances relating to persons and/or material of which Atami avails itself or customarily avails itself to perform the contract, of such nature as prevents performance of the contract or makes it so objectionable and/or unreasonably costly for Atami that Atami can no longer be required to perform the contract or to perform it immediately; (b) the circumstance that any performance that is relevant for Atami's own performance is not rendered or is not rendered properly or on time; (c) strikes and (d) war, riots and similar.

ARTICLE 11 – SALE, DELIVERY TO THIRD PARTIES

11.1 The purchaser's sale, delivery or other form of provision of the goods delivered by Atami to the purchaser to third parties shall take place in the original and undamaged composition and packaging of the goods per unit originating from Atami.

ARTICLE 12 – COMPLAINTS

12.1 Immediately upon receipt by the purchaser, the purchaser is obliged to inspect the goods itself or have them inspected by a third party acting on the instructions of the purchaser. Any complaints regarding visible defects must be reported to Atami within no more than ten days from delivery, failing which the purchaser's claims against Atami become null and void. Any complaints shall contain an accurate description of the defect. The complaints shall not relieve the purchaser from its payment obligations.

12.2 Complaints of the purchaser about "hidden" defects shall be made within ten days after they have or should reasonably have been discovered, but within six months at the latest following delivery, unless the goods have an expiry date and the defect results in a shorter shelf life of the goods than the indicated shelf life, in which case a complaint can be filed until the expiry date has elapsed.

12.3 All rights to submit a claim for compensation shall be null and void if: (a) the goods have been transported, handled, used, processed or stored by or for the purchaser incorrectly or contrary to the instructions given by or on behalf of Atami; (b) the goods have been processed, mixed with other goods or changed by or on behalf of the purchaser; (c) the purchaser acts contrary to the provisions of Article 11 of these conditions.

12.4 In case of a justified and timely complaint, the exclusive remedy for the purchaser will be either redelivery of the goods free of charge or credit of the purchase price of the goods which are defective in full or in part, to be decided between the parties.

ARTICLE 13 – LIABILITY AND INDEMNIFICATION

13.1 Atami cannot under any circumstances be held liable for indirect or immaterial damage or loss, including but not limited to trading losses, consequential losses or demurrage and loss of income and profits, loss of clients, damage to reputation and/or goodwill, unless such damage or loss was caused by the intent or conscious negligence of any members of its management staff.

13.2 Atami will never be liable in the event that the purchaser has failed to use the goods purchased in accordance with the instructions as stated in the pertaining documentation and on the packaging, or if the purchaser has used the goods for improper or illegal purposes.

13.3 In all cases where Atami is obliged to pay compensation, this compensation shall never exceed the amount actually paid out by its insurer in that regard, or – should the insurance not cover the loss – shall not exceed the invoice amount of the relevant delivery excluding VAT.

13.4 The purchaser shall notify Atami in writing of any damage having occurred within 30 calendar days after the purchaser has become aware or could have reasonably become aware of such damage. Failure to notify Atami within the above-mentioned term shall release Atami from any liability in connection with such damage.

13.5 If Atami is held liable by a third party to compensate damage or loss for which it is not liable under the contract, the purchaser will indemnify Atami.

ARTICLE 14 – PRODUCT RECALL

14.1 Atami may oblige the purchaser to remove goods that it has brought onto the market and which are defective, or in which a defect threatens to manifest itself, from the market within a reasonable period of time to be stipulated by Atami. The purchaser shall comply with this obligation and these instructions.

ARTICLE 15 – PAYMENT AND SECURITY

15.1 Payment shall be made, without any discount, at the agreed time or, if no time has been agreed, within 14 days of the invoice date, in the currency stated in the invoice and exclusively in the manner stipulated in the invoice. Atami reserves the right at all times to demand full or partial advance payment and/or otherwise require security for payment in the form of a bank or group guarantee.

15.2 As soon as the purchaser fails to remit any due payment, all claims of Atami against the purchaser shall become immediately due and payable and the purchaser shall be placed in default with regard to these claims with immediate effect and without notice of default being required.

15.3 The purchaser waives all rights to set off mutually owed amounts. Any complaints submitted will not suspend the purchaser's payment obligations.

ARTICLE 16 – TERMINATION

16.1 Atami reserves the right to suspend the execution of the contract or, at its own discretion, to terminate the contract whilst retaining all its rights to compensation for costs and damages by means of a written notification to that effect and without prior notice of default, announcement or judicial intervention being required, in full or in part and with immediate effect, to be decided at its own discretion, if: (a) either Party fails to meet one or more of its obligations under the contract or to meet them on time or in full, or in case it is established that full compliance will be impossible; (b) the purchaser is declared bankrupt or its bankruptcy or (provisional) suspension of payment is obliged for or granted, if its business is liquidated or discontinued or it otherwise proves to be insolvent; (c) in the opinion of Atami, major changes are made to direct or indirect ownership or control ratios at the business of the purchaser.

16.2 Atami is also entitled to terminate the contract in full or in part at its own discretion if any advantage is offered or granted by or on behalf of the purchaser in connection with the formation or execution of the contract to a person forming part of Atami.

16.3 Both parties are furthermore entitled to terminate the contract in accordance with Article 10.2 (force majeure) of these conditions.

ARTICLE 17 – OTHER PROVISIONS, GOVERNING LAW AND COMPETENT COURT

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17.2 All contracts between Atami and the purchaser and these General Conditions of Sale are exclusively governed by Dutch law. The applicability of the 1980 United Nations Convention on Contracts for the International Sale of Goods (CISG) is, however, excluded.

17.3 Any disputes between the parties that result from or are otherwise connected with any contract and/or these General Conditions of Sale shall be brought exclusively before the District Court of Oost-Brabant or judge in preliminary relief proceedings of this district court, unless Atami prefers another competent court.