



ATARA-design.com

General Terms and Conditions

of the company ATARA design e.U.
(herein after referred to as ATARA),
owner Heike Stuckstedde, M.A.

1) Scope of application

These general terms and conditions apply to all contracts, deliveries and other services, whether present or future, as long as they have not been amended or excluded by the explicit written consent of ATARA. The general terms and conditions of the client are explicitly repudiated; furthermore, they shall not be recognised in cases where ATARA has not made an explicit repudiation after having received such terms and conditions of the client. These general terms and conditions will be deemed accepted upon acceptance of the delivery/service at the latest.

Amendments to these general terms and conditions will only be valid if they have been agreed upon in writing. These general terms shall only be applicable to clients who are consumers within the meaning of the Austrian Consumer Protection Act ("*KSchG*") as far as they do not conflict with mandatory provisions of statutory law.

2) Offers and conclusion of contracts

Offers and cost estimates will be formulated on the basis of the information, plans, technical documentation etc. supplied by the client, are non-binding and will be construed as an invitation to the client to submit an offer (= order/commission). As far as nothing to the contrary has been determined in writing, offers and cost estimates as well as the conditions and prices contained therein will cease to be valid 30 days after being sent to the client.

A contract between ATARA and the client shall be concluded after the receipt of the order/commission when ATARA sends the written order confirmation or hands over the goods or performs the service. Any oral agreements are invalid, all amendments and supplements to orders require the written form.

Binding declarations of intent for ATARA may only be made by Heike Stuckstedde. ATARA may refuse orders/commissions of the client without giving reasons. In such cases, ATARA has no obligation to pay compensation to the client for any expenses or damage which arise/have arisen thereby.

Changes due to production factors which arise after order confirmation and which regard construction, colour etc. only entitle the client to amend or terminate the contract if these changes are fundamental and unacceptable to the client. Changes which are due to deficiencies in, or incompleteness of, information provided by the client, do not entitle the client to the amendment or termination of the contract.

3) Services/statements/prices

All services performed by ATARA (in particular drafts, planning services, modifications etc.) are – as far as nothing to the contrary has been explicitly agreed upon in writing – performed in return for payment and will be remunerated by the client at the respective applicable hourly rate, according to the time and effort actually expended. Subsequent and additional orders – if these are submitted within three months of the

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main order being accepted – will be remunerated at the rate agreed upon for the main order; exceptions to this rule require a separate agreement.

Statements of any kind – in particular regarding prices, quantities, descriptions, diagrams, data etc. – are non-binding and may be subject to error, in particular printing and rates errors.

All stated prices are based on current costs for materials, energy and wages and are stated as net prices. If the prices change by more than 10% in the time between order acceptance and execution of the order, in particular due to an increase in taxes, wages, duties, tolls, raw material prices, wages subject to collective bargaining or energy costs, ATARA will be entitled to increase prices accordingly upon delivery.

Any additional costs which arise due the inaccuracy or incompleteness of the information, plans, technical documentation etc. supplied by the client to ATARA must be borne by the client.

4) Deadlines for delivery or performance/delivery

Any deadlines for delivery or performance which have been stated are non-binding. However, ATARA will comply with these deadlines as precisely as possible, subject to the following provisions.

Deadlines for delivery or performance which have been stated begin on the date of the confirmation of the order, as long as all technical questions have been clarified at this point. If this is not the case or if the client makes changes to his order, the time limit for delivery or performance will begin to run when all of the aforementioned conditions are fulfilled. Each change which is made to the order will cause the stated deadline for delivery or performance to be extended by a reasonable amount.

Compliance with the deadline for delivery or performance is also subject to the condition of correct and punctual delivery by ATARA's own suppliers. Any deadlines for delivery or performance which have been stated will therefore be extended by such periods of time during which ATARA is prevented from making the delivery due to no fault of its own, e.g. due to force majeure, machine failures or strikes. In the event that a delay appears likely to occur, ATARA will inform the client of this as soon as possible.

If delivery/performance by ATARA is not possible due to force majeure, ATARA will be released from the obligation to deliver/perform; however, the client will receive a refund of any down payment which has been made. Any further claims of the client, in particular expenses and claims for damages, are excluded.

5) Shipping, transfer of risk and acceptance

The fulfilment of contracts concluded with ATARA shall occur by handing over the goods to the freight carrier (in case of instalment by third parties), or, in case of instalment by ATARA at the place desired by the client, upon completion of the instalment works and handing over the work to the client.

In the absence of any deviating agreement, ATARA will determine the route and means of transportation and will not be responsible for selecting either the cheapest or the fastest route. The costs of transport as well as the costs of any transport insurance must be borne by the client.

The risk of damage to, or loss of, the goods is transferred to the client upon handing the goods over to the client or the freight carrier.

The goods delivered must be inspected for transport damage immediately upon their acceptance; any existing transport damage must be documented. ATARA is obliged to provide reasonable support to the client in the enforcement of any claims against the transporter.

If ATARA is ready to perform and shipping, construction or acceptance is delayed for reasons which are not due to at least the gross negligence of ATARA, risk is transferred to the client upon the delivery of the notice of readiness to perform.

If the client defaults on acceptance or fails to provide assistance necessary for execution, the client must compensate ATARA for all damages and expenses which have arisen due to this default. In such cases, the risk of accidental deterioration or loss of the goods is transferred to the client when the client enters into default on acceptance.

6) Payment conditions

If nothing to the contrary has been explicitly agreed in writing, the agreed remuneration must be paid within 7 days of the date on the invoice without any deduction; ATARA is also entitled to issue partial invoices. If the deadline for payment is exceeded, the client must pay default interest in the amount of 8 % p.a. above the base rate, unless ATARA has suffered greater damage, for example by taking out a loan – in this case, the client must compensate ATARA for this damage.

ATARA reserves the right to make deliveries/performance subject to making a down payment or advance payment in full or payment on delivery or provision of an abstract guarantee for the total cost of the order. In the case of goods which ATARA purchases, ATARA is in any case entitled to demand a down payment in the amount of the total cost of such purchased goods. In the event of a default on payment of partial invoices lasting more than three days, ATARA is also entitled to suspend works without delay until payment has been made.

If circumstances arise which significantly reduce the creditworthiness of the client, and if the client is not willing to make sufficient collateral available or to make payment in advance in full or refuses to provide/renew a bank guarantee, ATARA is also entitled to withdraw from the contract. In such cases, the client will have no claims whatsoever against ATARA; on the other hand, ATARA will only have a claim to compensation for any services performed until this point as well as for any damage and expenses which it has incurred.

The deduction of a discount is only permitted if such a discount has been agreed upon in writing. Promissory notes and cheques will only be accepted by ATARA after its explicit written confirmation of acceptance and will only then be accepted as payments on account.

If ATARA exceptionally allows payment in instalments, the entire outstanding debt will fall due for payment immediately upon a default in payment of a single instalment; the entire outstanding debt existing at the time of such default, including interest and costs, must be paid without delay.

If ATARA rightfully withdraws from the contract or the client withdraws from the contract without the right to do so, ATARA has a claim to the total agreed remuneration, less any savings which it itself has made thereby.

7) Setting-off/retention

The client only has the right to set off the claims of ATARA against the purported counterclaims of the client if the counterclaim of the client has been determined by a court with legal effect, has been recognised by ATARA or are legally connected to the claim of ATARA.

In general, the client has no right of retention unless such a right is stipulated by the provisions of mandatory law.

8) Retention of title

Goods which have been delivered/installed remain the sole property of ATARA until the total agreed gross remuneration has been paid in full together with all default interest, additional charges and any legal fees. Without the prior explicit written consent of ATARA, the client may not pledge, process or pass on any goods to third parties which have not yet been fully paid for – regardless of whether this is against payment or not. In the event that the goods are subject to attachment by a creditor of the client or if an insolvency proceeding is opened over the assets of the client, the client is obliged to inform ATARA of this without delay in writing (by registered post), providing all relevant data.

In case of violation of the obligations set out in Point 8), the client must indemnify ATARA for all damage and expenses which arise by reason of the violation.

9) Right of use, rights in plans/planning services

All rights in drafts, plans, sketches produced by ATARA as well as to manufactured goods/products, together with any adaptations, including all intellectual property and other commercial protection rights, shall remain exclusively with ATARA or the manufacturer of the products. These rights will not be transferred – wholly or in part – to either the client or a third party.

Subject to timely payment of the total remuneration agreed, the client will be granted a non-exclusive and non-transferable right of use for internal purposes.

Without the prior written consent of ATARA, the client may not use any drafts, plans, sketches or manufactured goods/products which have been made available to him – either wholly or partially – for commercial purposes, duplicate, process, reconstruct them or pass them on. The client must ensure that the drafts, plans, sketches which have been given to him, together with any adaptations, do not reach third parties without the prior written consent of ATARA. Copies may only be made for archiving purposes or for the securing of data. In the event that an item is passed on with authorisation, the client must ensure that the obligations set out in this point are passed on to the acquirer; failure to do this will result in an obligation to pay damages.

10) Product design/industrial design

If ATARA is commissioned to undertake the optical and functional design of products and goods for the client (product design /industrial design), the intellectual property rights in any works produced by ATARA (prototypes / designs) shall remain the property of ATARA and ATARA has the right to be named as their author. However, ATARA grants the client a right to use the work in the extent defined in the relevant commission for the term of the contractual relationship (if the fees for using the works are based on the volume of units of the work reproduced) or for an unlimited period of time (in case of a one-off fee for using the works). If rights to use the works are granted to the client, and the respective commission does not contain any agreements to the contrary, they will comprise the exclusive, non-transferable right to reproduce the prototypes (works) itself (or by a third party engaged by the client) at its own expense and without

geographical restriction until they cease to be manufactured, as well as the right to industrially manufacture the works and use them commercially.

ATARA may revoke the rights to use the work for a material reason with immediate effect, whereby material reasons in this sense include, but are not limited to, breaches of fundamental provisions of these General Terms and Conditions, or the provisions contained in the respective commissions, a delay in payment of more than 14 days despite a warning being issued and an extension period of 14 days being set, and the opening of insolvency proceedings over the client's assets or the rejection of such a request because of insufficient assets for covering costs. In such cases, the client must compensate ATARA for all damage and expenses which arise; ATARA may use the work produced again itself without restriction.

The client may only modify the work produced by ATARA with ATARA's prior written consent. The rights to use the work granted to the client may only be transferred to third parties (whether wholly or in part) with the prior written consent of ATARA.

ATARA is entitled to a fixed fee, which is set out in the respective commission, plus reimbursements for expenses, for planning, drafting and designing a prototype (work), regardless of whether the client goes on to commercially exploit the product designed by ATARA. The client must pay an appropriate additional fee for subsequent modifications. In addition, ATARA is entitled to a fee for granting rights to use works produced - either in the form of a one-off lump sum fee or a production-based fee. In the latter case, the fee is calculated as a percentage of each product manufactured, based on the real or fictional dealer selling price (without taking price reductions, discounts etc. into account) and regardless of actual sales. The client will bear all costs of manufacturing and distribution (including transport, insurance, customs etc.) of the products manufactured within the scope of the rights granted to use the work.

The variable fees to which ATARA is entitled will be billed on an annual basis in retrospect, based on the number of objects manufactured in the previous calendar year. The client will send ATARA the product numbers and the dealer selling price for the previous calendar year by 31.01 of the subsequent year and will, upon ATARA's request, allow a third party engaged by ATARA to inspect the books, invoices and all documents required to calculate product numbers and dealer selling prices, at any time. ATARA will bear the costs accruing for this, unless such examination results in additional claims of ATARA.

The client will inform ATARA without delay of any breaches of the law by third parties of which he becomes aware and enforce claims against third parties at its own expense.

The client must pay ATARA a contractual penalty of 50% of the value of the respective commission for each breach of ATARA's rights under this clause, whereby ATARA may enforce any actual damage beyond this which has arisen.

11) Guarantee

The client must check the goods handed over/delivered and the services rendered without delay upon their handover for completeness and for exterior defects; incompleteness and exterior defects must be notified to

the deliverer/assembler and recorded on the delivery certificate or handover certificate. Failure to do this will result in the loss of all claims (guarantee claims, damages claims etc.)

The client must inspect the goods handed over/delivered or services rendered without delay after delivery for other defects and notify ATARA (in writing only) of any defects within seven working days; failure to comply with this will result in the loss of all claims. If defects are notified in a timely manner, the client must give ATARA the possibility, upon being requested by the client, to view the item/work at any time and to check whether there is a defect; failure to comply with this will result in the loss of all claims. Any works conducted by the client on the delivered item as well as any attempts made by the client to remedy the defect will also result in the loss of all claims. If the event of a shipping to a third party on behalf of the client, the obligations stipulated above shall also apply to such third parties.

In the case of rightful notifications of defects, ATARA is entitled to choose whether it will remedy the defect by means of improvement or by substitution. If remedying the defect is impossible or unfeasible or if ATARA is not in a position to deliver/render a defect-free item/service of equal value, the client will be entitled to a reduction in price, or, if the defect is not slight, to rescission of the contract ("*Wandelung*"). The provisions of the Austrian Civil Code ("*ABGB*") and the Austrian Consumer Protection Act ("*KSchG*") shall apply to clients who are consumers within the meaning of the Austrian Consumer Protection Act.

12) Damages and liability

ATARA will only be liable for direct damage– excluding personal damage – including damage resulting from the fulfilment or non-fulfilment of the contract, civil wrongs or omissions or defects as far as employees or servants are culpable for such damage due to their gross negligence or intention. ATARA will not be liable for any indirect damage, collateral damage or any other kind of damage.

As far as provisions of mandatory law do not provide otherwise, any claims to damages by the client will be limited to the value of the order.

Claims arising from product liability are not affected.

The client must compensate ATARA for all damage and expenses which arise from a breach of the General Terms and Conditions and/or the completed commissions.

13) Collection/processing/use of personal data of the client

The client consents to the use of data he provides as part of his order/commission being saved and processed for the purposes of data processing, accounting and client records. The data will only be used for fulfilling legal provisions and the execution of orders and for payment transactions. Passing this data on to third parties is only permitted if this is unconditionally necessary for the execution of the contract, the client has given his consent or the mandatory provisions of statutory law require it.

The client agrees to being informed of current products and services of ATARA by email; the client may revoke this consent at any time in writing.

14) Place of performance, jurisdiction, governing law

The place of performance with regard to delivery and payment is the company seat of ATARA.

Any disputes between ATARA and the client will be subject to the jurisdiction of the relevant competent court for commercial matters in Vienna.

This contractual relationship shall be governed by the material provisions of Austrian law, under exclusion of the reference provisions and the UN Convention on the International Sale of Goods.

15) Consumer transactions

If these general terms and conditions form the basis of a consumer transaction within the meaning of the Austrian Consumer Protection Act (“*KSchG*”), they will apply under consideration of the provisions of the Austrian Consumer Protection Act (“*KSchG*”) and the Austrian Civil Code (“*ABGB*”). As far as provisions of these general terms and conditions contradict the mandatory provisions of the Austrian Consumer Protection Act (“*KSchG*”), the relevant provisions of consumer protection law shall apply – the remaining provisions of these general terms and conditions will not be affected.

16) Foreign clients

In the case of clients whose order in Austria is to be exported into another country, the provisions of these general terms and conditions shall apply, subject to the following:

- the client must provide his VAT ID number when making the order – if he fails to do this or if there is no tax treaty, ATARA will charge Austrian VAT and the client must pay the invoiced amount including VAT;
- the client must bear all costs, taxes, duties and expenses connected to the export out of Austria, the transport and the import in the destination country;
- the client is exclusively responsible for customs clearance in the case of deliveries upon which duties must be paid. The client must bear the costs for such customs clearance;
- if a certification is required for any products which the client has purchased, the client will be exclusively responsible for obtaining such certification and must bear the costs of this. Any product data and information which is required in order to obtain the certification will be provided to the client by ATARA; the client will bear the costs of this additional effort;
- if an export license is necessary for export, the client must obtain such a license at his own cost or else compensate ATARA for the costs and expenses it incurs in connection with obtaining such a license.
- the handing over to the client as well as the transfer of risk will occur pursuant to the Incoterms 2010 EXW (ex works);
- If ATARA installs/constructs the goods delivered at the request of the client, the client must pay compensation for all costs actually incurred (travel costs, accommodation costs etc.) – even if a lump sum has been agreed upon.

17) Severance clause

If individual provisions of the contract with the client, including these general terms and conditions, are or become ineffective – either wholly or in part – this will not affect the validity of the other provisions. The provision which is wholly or partially ineffective will be replaced with a provision which comes as close as possible to the economic purpose of the ineffective provision.

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 Date/place/signature of the client
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