

Atea's Terms for Sale and Delivery of IT goods



The following terms of sale and delivery shall apply unless otherwise agreed in writing between Atea A/S, CVR no. 25511484, 6 Lautrupvang, DK-2750 Ballerup (Atea), and the Purchaser, irrespective of where the Purchaser is registered and when the Purchaser is an entrepreneur. All acquisitions are deemed Purchases of Commerce. Supplemental terms and conditions may apply to other types of contracts. Such terms and conditions shall take precedence in the event that they deviate from Atea's terms of sale and delivery. In case of discrepancy between Atea's terms of sale and delivery and the Purchaser's general terms and conditions, Atea's terms of sale and delivery shall apply, unless agreed in writing between the parties. Atea is entitled to transfer its rights and obligations to affiliates.

1. BASIS OF CONTRACT AND DESCRIPTIONS

- 1.1. A submitted order shall not be binding on Atea until the Purchaser has received a written order confirmation, or until delivery has taken place. Any order is taken at the price applicable at the date of Atea's order confirmation. In the event that the order confirmation deviates from the Purchaser's order and provided that the Purchaser does not wish to accept these changes, the Purchaser shall notify Atea hereof within 8 days. Otherwise, Atea's order confirmation shall be effective.
- 1.2. Any offer made by Atea shall only be binding on Atea if it is accepted within 8 days after the offer has been submitted to the Purchaser.
- 1.3. Any offer or order confirmation from Atea concerning products that are not in Atea's own stock has been made subject to the possibility of acquiring the goods in question. If the goods cannot be acquired, Atea shall be entitled to revoke/cancel the submitted offer/the order confirmation without entitling the Purchaser to advance any claim against Atea whatsoever.

2. PRICES

- 2.1. Atea's prices are fixed inclusive of packaging and customs duty in Denmark, but exclusive of packaging, transport, VAT, and any other taxes. Atea shall have the right to charge separate fees for handling, shipping, installation, and delivery. Transport costs depends on the extent of the order and place of delivery. Transaction fees depends on the extent of the order and type of card. For purchases/delivery of pallets a specific environment fee will be charged.
- 2.2. For other services, including consulting services etc., provided to the Purchaser by Atea, Atea's hourly rates applicable from time to time will be charged. Transport costs and other disbursements shall be charged separately.
- 2.3. Services are provided on condition that the products have been properly installed and that no changes have been made in the products. In the event that a stand-by agreement has been made for cases of emergency, the Purchaser shall only be allowed to alter the products upon prior agreement with Atea. Otherwise, Atea will charge the services on altered products subject to separate fees applicable from time to time.
- 2.4. Atea is entitled to a billing fee of DKK 35.00 + VAT, if the Purchaser wants paper invoice.
- 2.5. Atea shall have the right to alter prices until and on the date of delivery in accordance with changes in exchange rates, purchase prices, customs duty, freight, and insurance rates or any other conditions beyond Atea's control and influence. If Atea's expenses are increased as a result of conditions attributable to the Purchaser, Atea shall be entitled to claim reimbursement in this respect.
- 2.6. Atea express reservations on items which are out of stock and pricing errors.

3. PAYMENT

- 3.1. The due date shall commence upon delivery, unless other agreed. due date has been accepted by Atea. If the Purchaser's means of payment can't be approved, the acquisitions will not be completed and the order shall not be deemed accepted by Atea.
- 3.2. If the Purchaser fails to pay by the due date, Atea shall charge interest from the due date of the invoice at a rate of 1.8% for each month commenced. Atea may additional claim a fixed reimbursement for delayed payment, DKK 310,00 and other debt recoveries.
- 3.3. In the event that the Purchaser fails to effect payment in due time and/or in the event that Atea does not receive satisfactory credit information about the Purchaser, Atea shall have the right to discontinue deliveries until advance payment has been made available or security has been provided. If the Purchaser fails to effect advance payment or provide security within the time limit fixed by Atea, Atea shall have the right to cancel the delivery agreement.
- 3.4. The Purchaser's obligation to pay in due time shall remain regardless complains about faults or defects. Alternately the Purchaser shall deposit the amount upon complaint. The Purchaser shall not be entitled to effect any set-off. If the parties agree on a payment is due in installments, and the Purchaser either whole or in part in mora with a rate, the full remaining debt is due when unpaid debt is paid.
- 3.5. If Atea cancels the delivery agreement as a result of the Purchaser's breach, Atea shall, as a minimum, be entitled to a consideration equivalent to 30% of the purchase price unless heavier damage has been suffered.

4. RETENTION OF RIGHT TO TITLE

- 4.1. Atea reserves the right to title to the delivered goods until full payment has been effected.
- 4.2. In case of repossession of the goods, the Purchaser shall reimburse any loss and all expenses that may be inflicted on Atea.

5. DELIVERY

- 5.1. The goods sold shall be delivered Ex Works
- 5.2. The goods shall be send from Atea's warehouse or through Atea's subcontractor to the Purchaser's stated address of delivery.
- 5.3. Delivery shall be effected as soon as possible with due regard to the delivery times with Atea's sub-suppliers. Thus, Atea is entitled to perform successive delivery and invoicing. The agreed delivery time shall be considered observed when Atea has dispatched the delivery before the expiration hereof or these are made available to the Purchaser. In the event that the Purchaser expresses a wish for changes in or supplements to the delivered goods, the delivery time shall be postponed with the time frame, which the change or supplement necessitates.
- 5.4. The Purchaser pays a fee corresponding to 3% of the item's agreed sales price per commenced month that Atea must have the goods in stock if the Custo
- 5.5. If Atea doesn't delivery in time cf. section 5.1, constitutes a delay. If the Purchaser wishes to claim remedies for breach of contract, the Purchaser shall inform Atea a new, reasonable period for delivery. If this reasonable period of time expires without delivery having been affected, the Purchaser shall be entitled to terminate the agreement. If the Purchaser does not provide Atea with any reasonable notice within (two) days following the occurrence of the delay, the Purchaser isn't entitled to terminate the agreement, and Atea shall affect delivery as soon as possible.

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6. DEFECTS AND COMPLAINTS

- 6.1. The Purchaser shall be obliged to inspect the delivered goods upon receipt. If the Purchaser ascertains, or ought to ascertain that the delivered goods suffer from defects, the Purchaser shall immediately submit a complaint in writing. With non-visible defects the Purchaser shall no later than 5 days submit a complaint. The complaint must be in writing. If the Purchaser fails to submit a complaint in due time, the Purchaser's right to assert the defect shall lapse. The deadline applies equivalently to complaints regarding delivered services etc.
- 6.2. Defects shall not be deemed to exist if the Purchaser has applied the delivered good improperly, including any disregard of guidelines provided by Atea or Atea's sub-suppliers, or in case the Purchaser or a third party has made arrangements for changes to be made in the delivered goods, or interference, without Atea's consent.
- 6.3. In case of reasonable complaints within the deadline, Atea shall have the right, at its own discretion and within a reasonable period of time, to arrange for a replacement delivery or remedial action. If Atea undertakes replacement delivery or remedial action in due time, the Purchaser shall not be entitled to terminate the agreement or claim damages as a result of the defect. Atea shall be entitled to make one or more remedial actions/replacement deliveries.
- 6.4. In the event that Atea establishes that a defect does not exist in a product for which the Purchaser has submitted a complaint, Atea is entitled to receive compensation for the expenses suffered by Atea in this regard. If replacement delivery or remedial action is not effected in due time, the Purchaser may solely terminate the agreement or claim a proportional reduction in price.
- 6.5. The Purchaser is solely entitled to terminate the agreement for the delayed part of the delivery, including force majeure, or products with defects.
- 6.6. Sold products shall only be returned upon prior written agreement with Atea's sales department. It must appear in the agreement for the return of goods, which products are returnable, their condition and at which price the products will be credited. The Purchaser shall undertake to enclose a copy of the agreement for the return of goods in each lot that is to be returned. Atea reserves the right to return products with which no agreement for the return of goods has been enclosed. Any return shall be at the Purchaser's expense and risk.

7. LIMITED LIABILITY

- 7.1. Atea is not liable for indirect losses, including lost profits, goodwill, financial advantages and objectives that were missing or not achieved, production losses, loss of data, losses due to insufficient ability to use Atea's deliveries as anticipated, or losses due to an agreement with a third party lapsing or being breached. Atea's liability is limited to circumstances that constitute gross negligence.
- 7.2. Atea's liability for any loss or damage is limited in amount to 25% of the amount the Purchaser has paid for the product or service on which the claim is based, and is capped at DKK 250,000.
- 7.3. Atea is not liable for damage to property, including damage to buildings, occurred as a result of a defect in the sold product. Atea is also not liable for damage to products manufactured by the Purchaser and where Atea's products are incorporated, or for products where such of Purchaser's products are incorporated. Thus, Atea disclaims to the widest extent possible and in accordance with mandatory Danish law, product liability and intermediary liability. In the event that a product liability towards a third party is attributed to Atea, the Purchaser shall indemnify Atea to the same extent as Atea's liability is limited.

8. INFORMATION OBLIGATIONS

- 8.1. Information from Atea or one of Atea's business partners concerning weight, dimensions, capacity and technical data in catalogues, brochures, prospects, advertisements or equivalent is only to be considered as an approximate and cannot be considered as guaranteed, and Atea shall not assume responsibility as to whether the delivery meets the Purchaser's needs or application purpose. Atea solely assumes responsibility hereof if the Purchaser has submitted such claim and this is accepted by Atea. Atea makes reservations on changes in construction and/or design prior to the commencement of the time of delivery and during the course of several deliveries.
- 8.2. For products which require special documentation with a view to mounting, connection, operation and/or maintenance Atea will provide the Purchaser with such documentation no later than upon delivery. Atea may instruct that such documentation shall be treated as confidential. Atea shall not be obliged to disclose any source codes.
- 8.3. Atea may offer the Purchaser installation of the delivery in accordance with the manufacturer's directions. For such installation, fees will be charged at Atea's hourly rates applicable from time to time. Atea's installation shall not postpone the date of the passing of the risk for the delivery or the due date of payment for the delivery

9. IPR, GUARANTEES AND TRANSFER

- 9.1. If the agreement comprises standard software or software development made by Atea specifically for the Purchaser, the Purchaser shall obtain a non-transferable and nonexclusive right of use in relation to the software referred to in the agreement. The right of use shall be limited to the number of simultaneous users who are covered by the agreement entered into and in case this is not shown, the right of use shall only apply to the equipment in which the software is installed at the date of delivery. The software may only be used in compliance with the instructions shown in user manuals and similar material. The Purchaser shall not be allowed to copy the software and pertaining documentation material, nor shall he be allowed to alter the software without Atea's prior consent. In the event that the Purchaser makes changes or arranges for changes to be made in the software, such changes and the consequences thereof shall be at the Purchaser's own responsibility.
- 9.2. The delivered goods are solely subject to the warranties, warranty periods and deadlines of complaints and the terms hereof provided by Atea's sub-suppliers or manufacturers. Atea does not provide any separate warranty or other rights to the delivered.
- 9.3. Atea reserves the right to replace parts of a delivery with parts of the same quality as the original parts for deliveries where it is not generally crucial to the Purchaser if the product comes from one manufacturer or another, provided that the Purchaser is notified of such replacements in writing. Atea shall have the right to make minor changes in the delivery which, in Atea's opinion, are technically required
- 9.4. Atea is entitled to transfer its rights and obligations to affiliates.

10. DISPUTES

- 10.1. Disputes in relation to current terms of sales and delivery shall be settled by Danish law, however with the exception of Danish international private law. Venue for lawsuits brought by the Purchaser against Atea is Atea's home court. Venue for lawsuits brought by Atea against the Purchaser is Atea's home court or the Purchaser's regular home court at Atea's decision.