

Guarantee and Quality Assurance Agreement

between

ATLAS GmbH
Atlasstrasse 6
D-27777 Ganderkesee

– hereinafter referred to as “ATLAS GMBH” –

and

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– hereinafter referred to as “Supplier” –

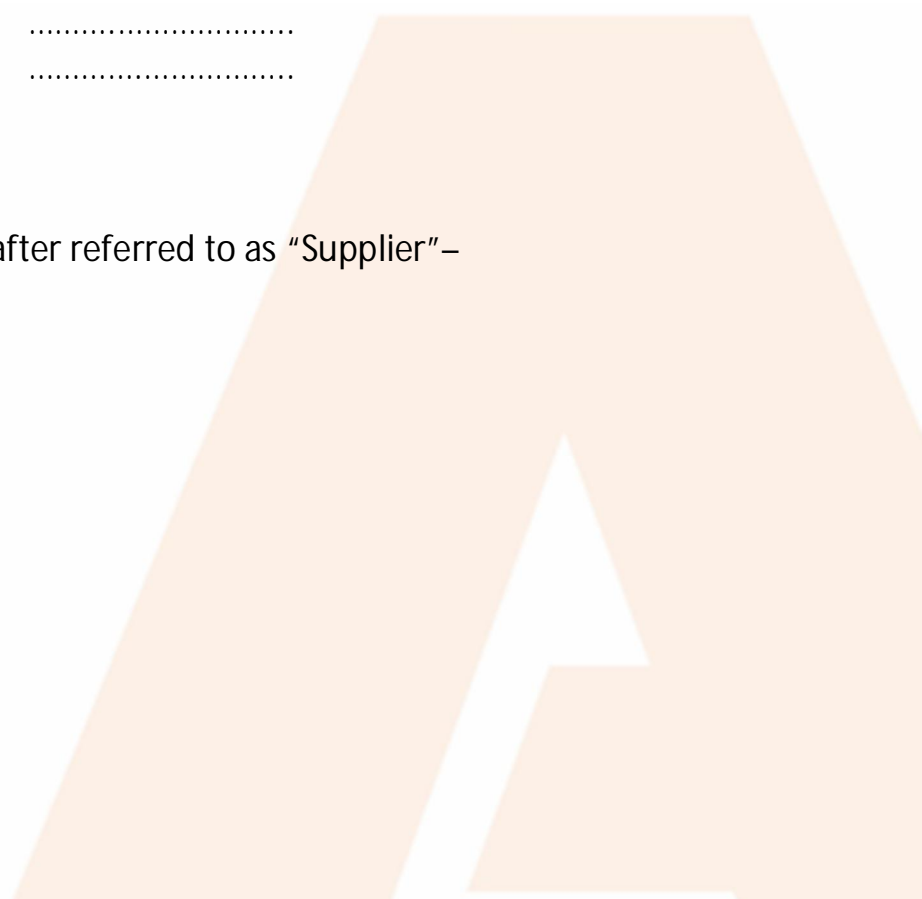


Table of Contents

1.	Definitions.....	3
2.	Term of Agreement	3
3.	Incoming Goods Inspection by ATLAS GMBH	3
4.	Guarantee Agreement.....	4
5.	Quality Assurance Agreement	5
5.1	Applicability.....	5
5.2	Quality Control and Assurance	5
5.3	Certification and Information Obligation on Part of Supplier	6
6.	Supplier's Liability.....	6
7.	Correspondence	7
8.	Confidentiality and Secrecy	7
9.	Miscellaneous	7
10.	Governing Law and Place of Jurisdiction.....	8

1. Definitions

1.1 Guarantee and Quality Assurance Agreement

“Guarantee and Quality Assurance Agreement” shall mean the present document containing provisions agreed upon between ATLAS GMBH and the Supplier on the terms regarding guarantee and quality assurance.

1.2 Parties

“Parties” shall mean the parties to this Guarantee and Quality Assurance Agreement. For reasons of convenience, the terms “Supplier” and/ or ATLAS GMBH shall be used if only one of the Parties is concerned.

1.3 The Parties mutually presume that a reliable and constant level of quality of the products to be delivered by the Supplier is essential for ATLAS GMBH's business success. The following agreement shall be deemed the foundation for a long-term business relationship between the Parties, which shall be based on demanding quality control and assurance procedures for achieving a constant level of quality of the products delivered by the Supplier.

The present Agreements shall serve cost reduction and the avoidance of liability claims by third parties.

2. Term of Agreement

2.1 The present Agreement shall take effect upon execution and shall be valid for an unlimited term.

2.2 The present Agreement can be terminated by either Party with three months' notice to the end of a calendar month each.

2.3 Individual orders placed by ATLAS GMBH during the term of this Agreement shall be executed in compliance with the provisions of this Agreement even upon termination of this Agreement. Claims incurred by ATLAS GMBH during the term of this Agreement shall not be affected by the termination of this Agreement.

3. Incoming Goods Inspection by ATLAS GMBH

3.1 The Supplier shall be obliged to perform extensive quality control and assurance including an outgoing goods inspection rendering an incoming goods inspection at ATLAS GMBH dispensable.

3.2 ATLAS GMBH shall only inspect incoming products for their identity and quantity, as well as for clearly visible external transport damage. Defects of the contractual products may be complained of at any time during the entire guarantee period, however must be complained of directly after their detection.

3.3 Other inspections or tests shall not be performed by ATLAS GMBH.

- 3.4 The Supplier herewith explicitly waives the Supplier's rights pursuant to § 377 HGB. The Supplier shall accept that any quality control and assurance tasks to be performed by the Supplier shall supersede any inspection obligation on the part of ATLAS GMBH.
4. Guarantee Agreement
- 4.1 The Supplier shall provide a full rights and property guarantee to ATLAS GMBH.
- 4.2 The Supplier shall guarantee the unobjectionable quality and suitability of the contractual products for their usual purpose as well as any purpose communicated to the Supplier, and any warranted qualities of the contractual products. The Supplier shall in particular guarantee that all supplies are in full compliance with products released by ATLAS GMBH as well as with the general technical standards and any applicable EU directives. The qualities stipulated in the relevant specification shall be deemed warranted. Apart from this, the Supplier shall guarantee that the contractual products comply with any material and stress requirements as well as with all applicable EU standards and/or other applicable safety, environmental and other regulations.
- 4.3 The guarantee period shall be 60 months and/or 8,000 operating hours (whichever occurs first) upon unreserved commissioning unless commissioning has been delayed due to the Supplier's default. Should an ATLAS GMBH contract with a Client exceed the above-mentioned term (or operating hours), an individual agreement shall be made on this.
- 4.4 The guarantee shall cover all deliveries, services and obligations required for guarantee fulfillment.
- 4.5.1 Transport and inspection cost incurred in context with guarantee claims shall be borne by the Supplier. ATLAS GMBH shall be entitled to claim a handling lump-sum amounting to 25 % (field products) and/or 15 % (0-km products) based on the original value. The Supplier shall provide ATLAS GMBH with an inspection report within 3 weeks at the latest upon receipt objected products. Upon receipt of the inspection report, ATLAS GMBH shall provide the Supplier with feedback within 3 weeks, if required. Additional to this expense the supplier has to carry the costs for replacement of the damaged parts. This is valid for 0-km- and field commodities.
- 4.5.2 The guarantee claim shall in general be met with a credit notice. Material replacement shall only be allowed upon consultation and written permission by ATLAS GMBH. The condition of replaced material shall comply with that of new products.
- 4.6 The place of performance for guarantee claims shall be the location of us of the Atlas machines concerned.
- 4.7 For defects reserved and complained of within the guarantee period, the guarantee period shall be suspended until their successful remedy and shall then recommence for all remedied products.
- 4.8 ATLAS GMBH shall be compensated for any damage caused by defects.

5. Quality Assurance Agreement

5.1 Applicability

5.1.1 This Quality Assurance Agreement shall apply to all products delivered by the Supplier to ATLAS GMBH on the basis of orders by ATLAS GMBH during the term of the present Agreement.

5.1.2 All products shall comply with the qualities (e.g. stipulated by specifications, data sheets, drawings) agreed upon in orders and/or with accepted samples or on-site assessments. Upon receipt of orders, the Supplier shall immediately review whether any qualities required by ATLAS GMBH are evidently incorrect, unclear, incomplete or deviating from samples or on-site assessments. Should the Supplier recognize that this is the case, the Supplier shall immediately inform ATLAS GMBH of this in writing and initiate clarification with ATLAS GMBH. The Supplier shall likewise immediately notify ATLAS GMBH in writing of possible changes or modifications of the products to be supplied.

5.2 Quality Control and Assurance

5.2.1 The Supplier shall maintain a QA management system in compliance with DIN ISO 9001:2008 and/or an equivalent QA management system and shall manufacture and inspect all products in accordance with the provisions of such QA management system. Requirements exceeding the above provision shall be stipulated in separate agreements or specifically for certain products (e.g. in drawings). In this case, the Supplier shall immediately verify that such requirements are in compliance with the Supplier's QA management system.

5.2.2 Should the Supplier purchase production or test material, software, services, material or other deliverables by sub-suppliers for the manufacture or the quality assurance of the products, the Supplier shall contractually take account of this in the Supplier's QA management system or ensure that the items delivered by sub-suppliers comply with the relevant requirements.

5.2.3 In the case of doubt regarding the Supplier's QA management system's suitability to indicate faults or defects of the products concerned, the Supplier shall be obliged to notify ATLAS GMBH immediately of this as well of remedial measures in the system suggested to be taken by the Supplier.

5.2.4 The Parties mutually presume that the Supplier bears the sole responsibility for the adequacy, suitability and efficiency of the Supplier's QA management system.

5.2.5 The Supplier shall record the performance of the afore-stipulated quality assurance measures, in particular all measuring values and test results, and shall keep such records as well as product samples, if any, in a traceable manner for a minimum period of 10 years. The Supplier shall grant ATLAS GMBH adequate and reasonable access to such records and – unless in conflict with the Supplier's interests – provide ATLAS GMBH with copies of such records as well as samples, if any, upon request.

5.2.6 Should any products delivered by the Supplier prove to be defective during the installation process, these may be re-worked without further consultation in the ATLAS GMBH workshop up to a value of € 1.000,00 This also applies to installation and dismounting cost in context with

any defects. Re-work cost shall be charged immediately. Should the value of damage exceed € 1.000,00, the Supplier shall have the right of first remedy. This shall be effected within 24 h upon notification by the QA department of ATLAS GMBH. Should re-work by the Supplier be inappropriate, all cost incurred shall be charged to the Supplier.

5.2.7 All foreign Suppliers shall make any effort to appoint a contact speaking German.

5.3 Certification and Information Obligation on Part of Supplier

5.3.1 The Supplier shall provide ATLAS GMBH with the possibility to satisfy themselves of the performance of the quality assurance measures stipulated in § 4. For this purpose and upon previous appointment, the Supplier shall grant ATLAS GMBH sufficient access to the Supplier's facilities and provide a qualified representative for support during such inspection. ATLAS GMBH shall be entitled to perform a Supplier assessment in the form of an audit in the Supplier's facilities. Information on manufacturing processes to be kept secret and other business secrets shall be mutually agreed upon between the Parties to this Agreement.

5.3.2 Prior to modifications of manufacturing processes, materials or purchased parts for products, prior to any relocation of production facilities, even prior to modifications of processes or installations for product inspections and/or tests or other quality assurance procedures, the Supplier shall inform ATLAS GMBH early enough so that ATLAS GMBH has time to review if such modifications have negative effects on the products.

5.3.3 If the Supplier increasingly detects deviations in the actual qualities of the products from the specified qualities (quality slump), the Supplier shall immediately inform ATLAS GMBH of this as well as of proposed remedial measures (8-D Report).

5.3.4. The Parties shall mutually inform each other on possible quality improvements (e.g. by new manufacturing processes); their implementation shall mutually be agreed upon.

5.3.5 A joint determination and implementation of quality improvements as well as of audits performed by ATLAS GMBH with the Supplier shall not represent any shared responsibility by ATLAS GMBH for the quality and absence of defects of the products to be delivered by the Supplier.

5.3.6 By labeling the products or – if such labeling is impossible or inappropriate – by taking other appropriate measures, the Supplier shall ensure that the Supplier would be able to determine all other products possibly concerned if defects were detected on certain products. The Supplier shall provide ATLAS GMBH with sufficient information on the Supplier's labeling system or other measures so that ATLAS GMBH may make their own determinations in the scope required.

6. Supplier's Liability

6.1 The Supplier shall be liable for the unlimited responsibility for all defects or liability claims with regard to the products delivered by the Supplier to ATLAS GMBH. The Supplier shall not be

liable if the Supplier provides proof that the Supplier is not responsible for the occurrence of defects on or damage to products.

- 6.2 The Supplier shall be liable for all claims for defects remedy or compensation for damage by third parties against ATLAS GMBH. The Supplier shall indemnify ATLAS GMBH for all third-party claims raised against ATLAS GMBH in relation to defective products delivered by the Supplier.
- 6.3 Should – due to a defective product delivered by the Supplier – a return of such product by a third party to which ATLAS GMBH has delivered such product become required, the Supplier shall bear all cost and risks with regard to the return of such product.
- 6.4 The Supplier shall be obliged to take out a liability insurance policy for an appropriate sum at the Supplier's own cost to cover the above-mentioned liability risks appropriately maximized twice per year. A copy of the insurance policy shall be submitted to ATLAS GBMH upon request.

7. Correspondence

Modifications and/or information obligations arising from the present Agreement shall be served in writing to the address stated below with reference to the present Agreement:

ATLAS GmbH • Atlasstrasse 6 • D-27777 Ganderkesee

8. Confidentiality and Secrecy

Each of the Parties shall use all documents and information received in context with the present Agreement solely for the purpose of this Agreement and keep them secret as if appropriate own documents and information if the other Party identifies them as confidential or if the observance of secrecy is an evident interest of the other party (e.g. as-built drawings). The Supplier shall reserve a property and copyright of all figures, drawings, calculations, samples and other documents. These shall not be disclosed to third parties without the express written consent of the Supplier. Reproduction of such documents or items is only permissible within the limits of business requirements and copyright regulations. Such obligations shall be applicable as of the first receipt of such documents or information and expire 48 months upon termination of this Agreement.

9. Miscellaneous

- 9.1 Should one or more provisions of this Agreement be or become invalid or unenforceable, the validity of all other provisions shall not be affected by this. In this case, the Parties shall be obliged to replace the invalid or unenforceable provision by one which complies with the purpose of the present Agreement to the largest possible extent.

- 9.2 Modifications of and amendments to the present Agreement and its Annexes require written form and signature by both Parties in order to take effect.
- 9.3 The assignment of rights and the assumption of obligations from the present Agreement requires the written consent of the relevant other Party. Upon written notice to the Supplier, ATLAS GMBH may, however, assign any rights and obligations to enterprises already or to be affiliated with ATLAS GMBH.
- 9.4 Both Parties waive the enforcement and appeal to General Terms and Conditions of Contract (*German: Allgemeine Geschäftsbedingungen, AGB*), even to the extent to which such AGB are contained in forms used for transactions subject to the present Guarantee Agreement, or to which reference to such AGB is made in any forms used.

10. Governing Law and Place of Jurisdiction

The present Agreement is subject to German material law. In the case of disputes arising from the present Agreement, the competent court shall be the court at the headquarters of ATLAS GMBH, Atlasstrasse 6, 27777 Ganderkesee.

Ganderkesee, this (Place)....., this.....

