

## **General Terms and Conditions of Sale and Delivery for Business Transactions involving Merchants**

### **I. General**

1. These General Terms and Conditions of Sale and Delivery shall apply to all our (future) contracts, offers, deliveries and other services. The validity of any other general terms and conditions of business and delivery emanating from the purchaser is hereby expressly objected to, even in the event that said general terms and conditions are communicated to us in a letter of confirmation or in any other way.
2. Verbal ancillary agreements, assurances or warranty-related declarations, as well as the exclusion of, amendments to or supplements regarding these General Terms and Conditions of Sale and Delivery shall require our express written confirmation, in order to be effective. This also applies to the waiver of this written form requirement.
3. The Incoterms in the version applicable at the time of contract conclusion shall apply, unless these General Terms and Conditions of Sale and Delivery contain deviating provisions.

### **II. Offer and conclusion of contract**

1. In the absence of any special agreement, a contract shall be concluded with the supplier's written order confirmation.
2. The supplier hereby reserves all pertinent property rights and copyrights to samples, cost estimates, drawings and similar information of a tangible (and intangible) nature – including in electronic form – and these may not be made accessible to third parties. The supplier shall undertake to render information and documents designated as confidential by the purchaser available to third parties only with the purchaser's consent.

### **III. Delivery, performance**

1. Our obligation to perform shall be subject to correct and timely self-delivery.
2. The purchaser shall be obligated to accept partial performance unless this is unreasonable for him in the individual case.
3. The supplier hereby reserves the right to make changes to the design and form of the delivery item, provided that the delivery item itself is not changed to a significant extent, and the changes are reasonable for the purchaser, taking into account the interests of the supplier.

### **IV. Prices**

In the absence of any special agreements, the prices shall apply ex delivery works – including loading at the works and excluding packaging. Value added tax at the respective statutory rate is added to the prices.

The prices of the supplier applicable on the day of dispatch shall be charged. Packaging shall be charged at cost price, and will not be taken back. All work associated with the installation of the turbine and turbine units is not included in the price.

### **V. Payments, set-off and retention**

1. In the absence of any special agreements, payment is to be made without deduction free supplier's payment office, namely:  
  
1/3 Deposit subsequent to receipt of order confirmation,  
  
1/3 as soon as the purchaser is informed that the primary parts – turbine, gearbox, generator, switch cabinets – are ready for dispatch, and the balance within an additional period of a month.
2. The purchaser shall only be entitled to any statutory right of set-off in respect of undisputed, legally established claims or claims which are ready for decision. Any statutory right of retention (or right to refuse performance), for example, due to defects in the item, shall only be available to the purchaser in respect of such undisputed or legally established claims, which arise from the same contractual relationship with us.
3. Should the purchaser be in default with payments – in the case of agreement of partial payments with one instalment – the outstanding partial payments shall become due immediately. The maturity of any residual debt shall also occur with regard to bills of exchange with a later maturity.

4. The purchaser hereby agrees to the offsetting of its claims and liabilities against the supplier. All requirements are to be assessed according to the time of accrual, not the time of maturity of said claims. If claims become due at different times, settlement shall be made on the value date. The set-off agreement shall extend to the balance in the case of current account relationships.
5. Payments shall be made within 30 days of the invoice date without deduction, unless otherwise agreed. The timeliness of payments shall be determined by the time of receipt of the money by us, or its unconditional crediting to our account.
6. We shall not be obligated to accept payment by cheque or bill of exchange; in any case, cheques and bills of exchange shall only be given on account of performance. Any abandonment shall not lead to a deferral of our claim. The costs associated with the realisation of a cheque or bill of exchange shall be borne by the purchaser. Should payment of the purchase price be made with a means of payment which the purchaser has procured by discounting an acceptor's bill of exchange, the claim to the purchase price shall not expire until the bill of exchange has been honoured by the purchaser.
7. Should there be several outstanding claims against the purchaser, and if a payment by the purchaser is not sufficient to settle all claims, settlement shall be made in accordance with the pertinent statutory provisions (Section 366 [2] German Civil Code [BGB]), even if the purchaser has expressly paid a specific claim.

#### **VI. Delivery time**

1. The delivery period shall commence with the order confirmation's dispatch, but not before the provision of the documents, approvals, releases to be procured by the purchaser and before receipt of an agreed down payment.
2. The delivery period shall be deemed to have been complied with if the delivery item has left the supplier's works or notification of readiness for dispatch has been issued by the time the delivery period expires.
3. The delivery period shall be extended appropriately in the event of measures that fall within the scope of industrial disputes, in particular, strikes, lockouts and force majeure, as well as in the event of the occurrence of unforeseen obstacles and other circumstances for which we are not deemed responsible, insofar as said obstacles demonstrably have a significant influence on the completion or delivery of the delivery item. This shall also apply if the circumstances occur at sub-suppliers. The aforementioned circumstances shall also not be the responsibility of the supplier if they arise during an already existing delay. In important cases, the supplier shall inform the purchaser of the beginning and end of such obstacles as soon as possible.
4. Should the supplier be in default of delivery and the purchaser suffers an instance of damage as a result, the purchaser shall be entitled to claim compensation for the delay. It shall amount to 0.5 % for each full week of delay, but in total not more than 5 % of the value of that part of the total delivery, which cannot be used on time or in accordance with the contract as a result of the delay. The supplier hereby reserves the right to prove to the purchaser that a lower damage has occurred as a result of the delay. The purchaser may assert further claims for damages due to delayed performance in accordance with the statutory provisions only if the purchaser proves the damage, and said damage is based either on a wilful or grossly negligent breach of duty by a legal representative, executive employee or other vicarious agent of the supplier, or if the damage in question pertains to personal injury; if the damage is due to a grossly negligent breach of duty by another person employed in performing an obligation for whom the supplier is deemed liable, and if the damage does not concern personal injury, any further claim for damages for delay in performance shall be limited to such damages as were foreseeable to the supplier in respect of their nature and extent at the time the contract was concluded. The above provisions of (4) shall not apply to a statutory claim for damages instead of performance due to failure of timely performance. Instead, the following liability regulation applies to this claim for damages: The supplier shall be liable for damage caused by gross negligence on the part of legal representatives or executive employees of the supplier or by intent, as well as for personal injury in accordance with the statutory provisions. In other cases, the supplier's liability shall be limited to such damages as were foreseeable to the supplier in terms of type and scope at the time of contract conclusion.
5. If dispatch is delayed at the purchaser's request, the costs incurred by storage shall be charged to the purchaser, starting one month after notification of readiness for dispatch, but in the case of storage at the supplier's works at least 0.5% of the invoice amount for each month.
6. Compliance with the delivery period shall be subject to the fulfilment of the purchaser's contractual obligations.

#### **VII. Transfer of risk and acceptance**

1. The risk shall pass to the purchaser at the latest upon dispatch of the delivery parts, even if partial deliveries are made or the supplier has assumed other services, e.g. the dispatch costs or delivery and installation.
2. At the purchaser's request, the consignment shall be insured by the supplier against theft, breakage, transport, fire and water damage and other insurable risks at the purchaser's expense.

3. If dispatch or acceptance are delayed (or do not take place), the risk shall pass to the purchaser on the day of notification of readiness for dispatch or acceptance, unless the delay or failure is due to circumstances for which the supplier is responsible.
4. Delivered items shall be accepted by the purchaser, even if they have insignificant defects, without prejudice to the rights under Section IX.
5. Partial deliveries shall be permissible insofar as this is reasonable for the purchaser.

#### **VIII. Retention of title**

1. The supplier shall retain its title to the delivery item until all claims of the supplier vis-a-vis the purchaser arising from the business relationship – including future claims also arising from contracts concluded at the same time or later – have been settled. This shall also apply if individual (or all) claims of the supplier have been included in a current invoice, and the balance has been determined and accepted. In the event of a breach of contract by the purchaser, in particular, in the event of default in payment, the supplier shall be entitled to take back the delivery item after issuing a reminder and the purchaser shall be obligated to surrender the delivery item. All costs of repossession shall be borne by the purchaser. The act of repossession, as well as the seizure of the item by the supplier, shall only constitute a withdrawal from the contract if the supplier expressly declares this in writing. In the event of seizure or other interventions by third parties, the purchaser shall immediately notify the supplier in writing and provide all necessary clarifications. The purchaser may not pledge the delivery item or assign it as security.
2. If, in connection with the payment of the purchase price by the purchaser, supplier liability is established under a bill of exchange, the retention of title – including its agreed special forms and other securities agreed for securing payment – shall not expire before the bill of exchange has been honoured by the purchaser as drawee.
3. The purchaser shall be entitled to resell the delivery item in the ordinary course of business. However, he hereby assigns to the supplier all claims – including all ancillary rights – accruing to him from the resale against the purchaser or against third parties, irrespective of whether the reserved goods are resold without or after processing. Should the purchaser sell the goods subject to retention of title together with other goods not supplied by us, said assignment of the claim shall only apply to the amount of the final invoice amount resulting from the resale of the goods subject to retention of title. In the event of the sale of goods that are subject to Clause VIII. 4. or those statutory provisions pertaining to the combination, mixing and blending of items co-owned by us, the assignment of the claim shall apply in the amount of our co-ownership share. The purchaser shall be authorised to collect these claims even after the assignment. The supplier's authority to collect the claims itself shall remain unaffected; however, the supplier undertakes not to collect the claims as long as the purchaser duly meets its payment obligations. The supplier may demand that the purchaser informs him of the assigned claims and their debtors, that he provides all information necessary for collection, that he hands over the relevant documents and informs the debtors of said assignment. Should the delivery item be resold together with other goods which do not belong to the supplier, the purchaser's claim against the customer shall be deemed assigned in the amount of the delivery price agreed between the supplier and the purchaser.
4. Processing or transformation of the goods subject to retention of title shall always be realised for us as the manufacturer within the meaning of Section 950 German Civil Code (BGB), without this giving rise to any liability on our part. In the event that the goods subject to retention of title are processed (or transformed) with other goods not supplied by us, we shall be entitled to co-ownership of the new item in the proportional ratio of the final invoice amount attributable to the goods subject to retention of title to the purchase price of the other processed or transformed goods at the time of processing or transformation. In the event that the goods subject to retention of title are combined, mixed or blended with the purchaser's movable items in such a way that the purchaser's item is to be regarded as the main item, the purchaser hereby assigns to us his ownership of the total item in the proportional ratio of the value of the goods subject to retention of title to the value of the other combined, mixed or blended items. Should the goods subject to retention of title be combined, mixed or blended with movable items of a third party in such a way that the third party item is to be regarded as the main item, the purchaser hereby assigns to us the claim to remuneration to which he is entitled against the third party in the amount corresponding to the final invoice amount attributable to the goods subject to retention of title. The item created by processing, remodelling, combining or mixing (hereinafter referred to as the "new item") or the (co-)ownership rights to the new item to which we are entitled or which are to be transferred in accordance with this Clause VIII. 4., as well as the remuneration claims assigned in accordance with this Clause VIII. 4. shall serve to secure our claims in the same way as the reserved goods themselves in accordance with Clause VIII.1.
5. Should the purchaser include claims from the resale of goods subject to retention of title in a current account relationship existing with his customers, he hereby assigns to us any recognised (or closing) balance in his favour in the amount corresponding to the total amount of the claims from the resale of the goods subject to retention of title included in the current account relationship. Clause VIII. 3. Sentences 3 and 4 shall apply accordingly.
6. Should goods subject to retention of title be connected to the real property of a third party in such a way that they become an integral part of said real property, the purchaser hereby assigns to the supplier the claim to remuneration to which it is entitled against the third party in the amount corresponding to the value of the goods subject to retention of title.

7. The purchaser shall be authorised to collect the claims assigned to us from the resale of the reserved goods or new item. The purchaser shall not be permitted to assign the claims arising from the resale to third parties – including within the framework of a genuine factoring agreement.
8. We may revoke the authorisation to resell the reserved goods or new item in accordance with Clause VIII. 3. and the authorisation to collect the claims assigned to us in accordance with Clause VIII. 6. in the event of default of payment or suspension of payment by the purchaser, as well as in the event of an application for the opening of insolvency proceedings, or in other cases of considerable creditworthiness and trustworthiness of the purchaser. In the event of a revocation of the authorisation to resell or collect the goods, the purchaser shall be obligated to inform its customers immediately of the assignment of the claim to us, and to provide us with all information and documents required for collection. In addition thereto, in this case, he shall be obligated to surrender or transfer to us any securities to which he is entitled for purchaser claims.
9. The purchaser shall be obligated to inform us immediately of any seizure or other legal (or actual) impairment or endangerment of the goods subject to retention of title or other instances of collateral existing in our favour.
10. The purchaser shall undertake to treat the goods subject to retention of title with care; if maintenance and inspection work is required, the purchaser must carry this out in good time at its own expense. The purchaser shall undertake to insure the reserved goods adequately against damage by fire, water and theft at replacement value. He hereby assigns his claims from the insurance contracts to us.
11. In the event of default in payment or any other instance of behaviour by the customer deemed to be in breach of contract which is by its nature significant, as well as in the event of cancellation of the contract, the customer hereby declares his consent that we may take away or have taken away the goods subject to retention of title located at the customer's premises or – insofar as we are its sole owner – the new item within the meaning of Clause VIII. 4 . Said removal shall only constitute a withdrawal from the contract if we expressly declare this. The purchaser shall grant our representatives access at any time for the purpose of carrying out these measures, as well as for a general inspection of the reserved goods or new item.
12. The supplier shall undertake to release the collateral to which he is entitled insofar as their value exceeds the claims to be secured, insofar as these have not yet been settled, by more than 20%.

#### **IX. Delivery and installation**

1. Insofar as installation falls under the supplier's obligations, he need not commence installation until the foundations are completely dry and set, and all other construction work has been completely finished so that installation and commissioning can take place. Should this work not be completed on time, the periods agreed for installation and commissioning shall be extended accordingly.
2. Unless otherwise expressly agreed, the transfer of the delivery item from the supplier's workshop to the place of use shall be at the expense and risk of the purchaser.
3. Should the supplier undertake the installation or commissioning, he shall provide the necessary skilled personnel with the appropriate tools at the purchaser's expense, and in accordance with the conditions for the General Terms and Conditions for Installation and Services. Tools, lifting gear, scaffolding, equipment, building materials, welding sets, bottled gas for pipeline work, etc. shall be supplied by the purchaser at his own expense and risk, and he shall also provide a suitable (and lockable) storage room for said tools; he shall be liable for the unskilled workers provided by him.
4. If, through no fault of the supplier, there is a delay or interruption in the transfer, installation or commissioning of the machine, or if the work by skilled personnel is hindered, the purchaser shall bear all additional costs incurred as a result of the delay, interruption or hindrance. The obligation to comply with the agreed payment deadlines shall not be affected by this.
5. Work and services that extend beyond the scope of delivery according to the order confirmation and delivery contract may only be carried out by the qualified personnel if a special order has been given by the purchaser and only at a special charge.
6. Should the supplier have also taken over the trial operation, the normal working hours shall apply for this. If, in view of special circumstances, the specialist staff are employed beyond this scope, the additional hours shall be charged separately as overtime.
7. Overtime may only be worked by the skilled personnel if the purchaser expressly requests this, and confirms this in writing vis-a-vis the supplier and the skilled personnel.

#### **X. Notification of defects and rights of the purchaser in the event of defects**

1. The supplier shall be notified in writing of any material defects which are identifiable upon inspection of the goods immediately after delivery, and at the latest within two weeks subsequent to the delivery of the goods, and of any other material defects immediately, at the latest within two weeks after their discovery. The timeliness of said notification

shall be determined by the time of its receipt by the supplier. Should a notice of defect not be issued in due time, any rights of the purchaser based on the defect in question shall expire.

2. The supplier's statutory liability in the event of the existence of third party rights based on industrial or other intellectual property ("property rights") shall be limited to such property rights which effectively exist in the Federal Republic of Germany. If, according to the agreements of the parties, the goods are to be resold in another country ("third country") or used in another way in a third country, the supplier shall also guarantee – in accordance with the statutory provisions – that no proprietary rights exist in the third country which can be asserted against the purchaser. If the parties have not concluded an agreement on resale or use in a third country, but the purchaser has its registered office in a third country, the supplier shall be liable in accordance with the statutory provisions for ensuring that no property rights exist in the Federal Republic of Germany, and in the country of the purchaser's registered office.
3. No warranty shall be assumed, in particular, if the gas turbine system supplied does not work properly because it is used improperly, if it has been incorrectly installed or commissioned by third parties, in the event of natural wear and tear, incorrect or negligent handling, improper maintenance, or if unsuitable operating materials or repair work carried out incorrectly by third parties are deemed to be the cause of the operating difficulties.
4. Any purchaser claims due to a defect shall be limited to the right to subsequent performance. Subsequent performance shall be effected, at the supplier's discretion, by remedying the defect or by delivery of a defect-free item. In the event of failure of said subsequent performance, the purchaser may, at its option, withdraw from the purchase contract or reduce the purchase price.
5. Insofar as the supplier is obligated to pay damages on account of a defect in accordance with the statutory provisions – irrespective of the legal grounds (including any claims for damages arising from a positive breach of contract), culpa in contrahendo and tort – this obligation to pay damages shall be limited in accordance with Clause XI.
6. Any rights of recourse of the purchaser pursuant to Section 478 German Civil Code (BGB) shall remain unaffected. Insofar as the supplier is obligated to pay damages within the scope of said recourse in accordance with the statutory provisions, this obligation to pay damages shall be limited in accordance with Clause XI.
7. Claims of the purchaser due to defects shall become statute-barred after one year beginning with the delivery of the item. This shall not apply (1) in the case of intent or fraudulent concealment of the defect (2) for deviations from a quality guarantee assumed by the supplier and (3) in the case of an item which has been used for a building structure in accordance with its customary manner of use, and which has caused the defectiveness of said building. The aforementioned one-year limitation period shall also not apply to claims for damages due to defects if the damage is due to gross negligence on the part of our legal representatives or executive employees, or if personal injury is involved or we are liable in tort. Said one-year limitation period for rights in respect of defects shall also not apply to defects which exist in a right in rem of a third party on the basis of which surrender of the item can be demanded, or in another legal right which is registered in the land register; in these cases the limitation period shall rather be three years. The statutory provisions governing the limitation of any recourse claims pursuant to Section 479 German Civil Code (BGB) and on the limitation and exclusion periods pursuant to the German Product Liability Act (ProdHG) shall remain unaffected.

#### **XI. Liability of the supplier**

Unless otherwise provided for in these General Terms and Conditions of Sale and Delivery, the supplier's liability shall be limited as follows:

1. The supplier shall be liable for damages caused by intent or gross negligence of its legal representatives or executive employees, as well as for personal injuries in accordance with the statutory provisions. In the case of intent or gross negligence of simple vicarious agents, as well as in the case of a slightly negligent breach of essential contractual obligations which are deemed indispensable for achieving the underlying purpose of the contract (and on whose strict compliance the purchaser must, therefore, be able to rely), the supplier's liability shall be limited in accordance with the statutory provisions to such damages as were foreseeable to the supplier in terms of type and scope at the time the contract was concluded. This shall be an amount of EUR 50,000.00 in view of the transactions to be carried out between the parties. In all other respects, claims by the purchaser for compensation for direct or indirect damage – irrespective of the legal grounds, including any claims for compensation for breach of pre-contractual obligations and for tort – shall be excluded.
2. Any statutory liability due to the absence of a particular quality guaranteed by the supplier or according to the Product Liability Act (ProdHG) shall remain unaffected.
3. The limitations of liability set forth in this Clause XI shall also apply to any liability of the supplier's legal representatives, executive employees and other vicarious agents vis-a-vis the purchaser.

#### **XII. Software usage**

Insofar as software is included in the scope of delivery, the purchaser shall be granted a non-exclusive right to use the delivered software including its documentation. It shall be provided for use on the delivery item intended for this purpose. Use of the software on more than one system is prohibited.



The purchaser may only reproduce, revise, translate or convert the software from the item code into the source code to the extent permitted by law (Sections 69 a et seq. German Copyright Act [UrhG]). The purchaser shall undertake not to remove manufacturer's details – in particular, copyright notices – or not to change them without the supplier's prior express consent. All other rights to the software and the documentation – including copies thereof – shall remain with the supplier or the software supplier. The granting of sub-licences shall not be permitted.

### **XIII. Partial ineffectiveness**

A contract concluded on the basis of these General Terms and Conditions of Sale and Delivery shall remain effective in its remaining parts, even if individual terms and conditions are ineffective.

### **XIV. Place of performance, place of jurisdiction and applicable law**

The place of performance shall be the manufacturer's premises. The exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be Bad Homburg. Instead of the court of the place of jurisdiction agreed above, the supplier shall be entitled to bring legal action before any other court having jurisdiction by law. The law of the Federal Republic of Germany shall apply to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.

### **NOTE**

**Purchaser data shall be stored and processed by us by means of EDP, insofar as this is necessary for the proper processing of contractual relationships.**