

General Terms and Conditions for the Sale and Delivery of Energy Equipment, Maintenance Parts and Services

I. Scope, data and information

1 The following terms and conditions apply to all offers, deliveries and services of ETW Energietechnik GmbH - hereinafter referred to as "Supplier" - concerning components, equipment, spare parts and services - hereinafter referred to as "Delivery Item".

(2) Deviating terms and conditions of the Purchaser shall not become part of the contract even if the Supplier accepts the order.

3. the supplier reserves the property rights and copyrights to samples, cost estimates, drawings and other information of a tangible and intangible nature - also in electronic form; they may not be made accessible to third parties and may only be used by the purchaser for the intended use of the delivery item.

II. scope of delivery

(1) The written order confirmation of the Supplier shall be decisive for the scope of delivery and performance concerning the delivery item, in case of an offer of the Supplier with a time commitment and acceptance within the time limit, the offer shall be decisive, if no timely order confirmation has been received.

The Supplier shall be bound by its offer for sixty (60) calendar days, unless otherwise stipulated in the text of the offer.

3. additional agreements and changes require the written confirmation of the supplier.

4. the supplier reserves the right to make changes to the design and form of the delivery item, provided that the delivery item itself is not significantly changed and the changes are reasonable for the purchaser and taking into account the interests of the purchaser.

5. Other services, such as installation, assembly or commissioning of the delivery item are not included in the scope of delivery. At the request of the Purchaser, such services shall be offered and invoiced separately by the Supplier.

6. the supplier's obligation to deliver shall be subject to the condition precedent that the

Delivery and/or use of the delivery item, neither the export control laws Germany, the European Union nor that of the United States violated. In the case of the

violation of the export control laws according to sentence 1, the Supplier shall be released from all obligations. Claims of the Purchaser are excluded.

III. prices

(1) Unless the Supplier has agreed otherwise in writing, all prices shall be ex works of the Supplier (EXW according to Incoterms 2010), including loading at the works, but exclusive of VAT and packaging.

2. if there is a long-term contract, as for the delivery of the delivery item according to a time schedule, the supplier has the right to adjust the prices of the delivery item within a reasonable commercial margin, if the basic costs (raw materials, wages) should change.

IV. Payments and securities

1. payment is to be made without any deduction à account of the supplier, in the following amount: 1/3 down payment after receipt of the order confirmation, 1/3 as soon as the customer is informed that the main parts of the delivery item are ready for shipment and the remaining amount within one month after the transfer of risk.

2. the customer shall only be entitled to withhold payments or offset them against counterclaims if these counterclaims are undisputed or have been legally established.

If the customer is in arrears with payments - in the case of agreements on partial payments with one installment - the outstanding partial payments shall become due immediately. The maturity of the remaining debt shall also occur insofar as bills of exchange with a later maturity date are running. The Supplier may - without prejudice to its rights under the retention of title - withdraw from the contract or claim damages for non-performance. Interest on arrears shall be charged at 8% p.a. above the prime rate, but at least 12% p.a.; it shall be set higher or lower, but not below the statutory interest rate, if the Supplier proves a charge with a higher interest rate or the Purchaser proves a lower charge.

(4) The Purchaser undertakes to provide possible securities for open claims of the Supplier at the Supplier's request, in particular insofar as the Supplier has made or must make advance payments.

V. Delivery time

(1) The delivery period shall commence when the order becomes legally effective. If the Purchaser fails to fulfill all obligations incumbent upon it by this time, in particular the timely provision of necessary official certificates or permits as well as the payment of the contractually agreed down payment, the delivery period shall

be extended accordingly. This shall not apply if the Supplier is responsible for the delay.

2. compliance with the delivery period is subject to correct and timely delivery to the supplier.

The delivery period shall be deemed to have been complied with if the delivery item has left the works or notification of readiness for dispatch has been given by the time of its expiry. If the dispatch of the delivery item is delayed for reasons for which the Purchaser is responsible, the costs of the delay shall be charged to the Purchaser, starting one month after notification of readiness for dispatch. This includes in particular storage costs.

(4) If non-compliance with the delivery period is due to force majeure, labor disputes or other events beyond the Supplier's control (force majeure), the delivery period shall be extended accordingly. The Supplier shall not be responsible for the aforementioned circumstances even if they occur during an already existing delay. An already existing delay shall be interrupted by the occurrence of the aforementioned events. The Supplier shall notify the Purchaser of the beginning and end of such circumstances as soon as possible. In the event of an embargo, the contractual obligations shall be interrupted and the parties shall renegotiate their contractual relationship as far as possible.

(5) The Purchaser may rescind the contract without notice if the entire performance becomes finally impossible for the Supplier prior to the passing of risk. In addition, the Purchaser may withdraw from the contract if, in the case of an order, the performance of part of the delivery becomes impossible and the Purchaser has a justified interest in rejecting the partial delivery. If this is not the case, the Purchaser shall pay the contract price attributable to the partial delivery. The same shall apply in the event of the Supplier's inability to perform. Section XI.2 of these Terms and Conditions shall apply in all other respects. If the impossibility or inability occurs during the delay in acceptance or if the Purchaser is solely or predominantly responsible for the circumstances of the impossibility or inability, the Purchaser shall remain obliged to counter-performance.

(6) The Purchaser shall be in default of payment if it fails to make payment in response to a reminder issued by the Supplier after the due date. Irrespective of this, the Purchaser shall be in default if it fails to make payment by a date specified in the calendar in the order. The statutory provision according to which the Purchaser is automatically in default even thirty days after receipt of an invoice shall remain unaffected. If the Purchaser is in arrears with the taking over of the subject matter of the contract or the fulfillment of its payment obligation for more than 6 weeks after notification of the provision, the Supplier shall be entitled, after setting a grace period of 14 days, to withdraw from the contract or to claim damages for non-performance. If the Supplier claims damages for non-performance, he may claim 15% of the sales price as compensation. The damage shall be assessed higher or lower if the Supplier proves a higher damage or the Purchaser proves a lower damage. If the Supplier does not exercise this right, he shall be entitled - without prejudice to his other rights - to dispose freely of the subject-matter of the contract and to deliver in its place within a reasonable period of time a similar subject-matter under the terms of the contract.

VI Transfer of risk and acceptance

(1) The risk shall pass to the Purchaser when the delivery item has left the Supplier's works, even if partial deliveries are made or the Supplier has assumed other services, e.g. shipping costs or delivery and installation. At the request of the Purchaser, the shipment shall be insured by the Supplier against theft, breakage, transport, fire and water damage as well as other insurable risks at the Purchaser's expense.

If the shipment is delayed or does not take place due to circumstances which are not attributable to the Supplier, the risk shall pass to the Purchaser on the date of notification of readiness for shipment. The Supplier undertakes to take out, at the Purchaser's expense, such insurance as the Purchaser may require.

3. delivered items shall be accepted by the customer, even if they have minor defects, without prejudice to the rights under section IX.

Partial deliveries are permissible, provided that they are not unreasonable for the customer.

VII Retention of title

(1) The Supplier shall retain title to the delivery item until receipt of all claims of the Supplier against the Purchaser arising from the business relationship, including claims arising in the future, also from contracts concluded at the same time or later. This shall also apply if individual or all claims of the Supplier have been included in a current account and the balance has been struck and accepted. If the Purchaser acts in breach of contract, in particular in the event of default in payment, the Supplier shall be entitled to repossess the delivery item after issuing a reminder and the Purchaser shall be obliged to surrender the delivery item. All costs of

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repossession shall be borne by the Purchaser. The repossession as well as the seizure of the object by the Supplier shall only be deemed to be a withdrawal from the contract if expressly declared so by the Supplier. 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 as long as the Supplier's ownership rights to the delivery item still exist.

(2) If, in connection with the payment of the purchase price by the Purchaser, a liability of the Supplier under a bill of exchange is established, 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 honored by the Purchaser as drawee.

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. The Purchaser shall be entitled to collect these claims even after assignment. This shall not affect the Supplier's right to collect the claims itself; 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, provides all information necessary for collection, hands over the relevant documents and informs the debtors of the assignment. If the delivery item is 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. the supplier undertakes not to make use of the securities to which he is entitled or to release them subsequently to the extent that their value exceeds the claims to be secured, insofar as these have not yet been settled, by more than 20 %.

VIII. Delivery and installation

(1) If installation is part of the Supplier's obligations, the Supplier need not commence installation until the foundations are completely dry and set and all other construction and installation work has been completed so that installation and commissioning can take place. If this work is not completed in 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. if the supplier undertakes the erection or commissioning, he shall provide the necessary fitters with the fitter's tools at the purchaser's expense and in accordance with the supplier's special terms and conditions for such services. Tools, lifting gear, scaffolds, equipment, building materials, welding sets, bottled gas for pipeline work, etc. shall be supplied by the Purchaser at its own expense and risk, and the Purchaser shall also provide a suitable lockable storage room for the fitters' tools; the Purchaser shall be liable for the unskilled workers provided by it.

4. if a delay or interruption in the transfer, installation or commissioning of the delivery item occurs through no fault of the supplier, or if the work of the fitter is hindered, the customer shall bear all additional costs incurred as a result of the delay, interruption or hindrance. This shall not affect the obligation to comply with the agreed payment deadlines.

(5) Work and services which exceed the scope of delivery according to the order confirmation and the delivery contract may only be carried out by the fitter if the customer has given a special order for this and only at a special charge.

6. if the supplier has also taken over the trial operation or the trial run, the normal working hours shall apply for this. If the fitter is employed beyond the normal working hours due to special circumstances, the additional hours shall be charged separately as overtime.

7. overtime may only be worked by the fitter if this is expressly requested by the customer and confirmed in writing to the supplier and the fitter. They shall be charged to the Purchaser

IX. Liability for defects of the delivery

The Supplier shall be liable for defects of the delivery item, which shall include deviation from specified performance values such as electrical power, thermal power, fuel and lubricating oil consumption, as follows: The supplier warrants in the below

specified warranty period, that the delivery item is free of defects that are based on faulty work of the Supplier or faults in the material used by the Supplier in the course of manufacture ("warranty for the delivery item"): All such delivery items shall be repaired or replaced free of charge at the discretion of the Supplier. The warranty for defects shall only apply to defects that become

apparent within months¹² of commissioning or months¹⁵ of the date of delivery, whichever comes first, as a result of a circumstance that occurred prior to the transfer of risk to the Purchaser. Resale of the delivery item by the Purchaser shall not lead to an extension of the warranty. The Supplier shall be notified immediately in writing of the discovery of any obvious defects. The removed replaced parts shall become the property of the Supplier.

(2) The right of the Purchaser to assert claims based on Defects shall in all cases become time-barred after 12 months from the date of the timely notification of the Defect, but at the latest upon expiry of the warranty period pursuant to IX.1. The rights of the Supplier under Sec. 377 HGB [German Commercial Code] shall remain unaffected.

3. no warranty is given for damages caused by the following reasons, unless the supplier is responsible for such reasons:

(a) Damage due to negligent handling, improper or non-intended use or operation, maintenance, repair or other use, storage, faulty installation, assembly or commissioning by the Purchaser or third parties, which is not in accordance with good technical expertise and / or a written or oral operating or maintenance guideline or other technical specification applicable to the delivery item, in particular the fuel / gas specification as well as the operating resources to be used;

(b) Damage due to additional attachments, fittings, housings, accessory items and spare parts not sold or approved by the Supplier, in particular installation of spare parts other than original parts of the Supplier;

(c) Damage due to normal wear and tear, corrosion or erosion, or due to operation under less than optimal operating conditions by a failure to follow the prescribed service and maintenance work;

(d) Damage due to Purchaser's delay in providing the defective part after Purchaser has discovered a possible defect in accordance with this

Delivery item warranty is discovered or after the Supplier has informed the Purchaser of a possible product problem;

(e) damage due to repairs, conversions, modifications, adjustments or Changes in the fuel / gas composition by the Purchaser or third parties which have been made without the prior written consent of the Supplier pursuant to Clause IX.1 (c);

(f) damage due to defective construction work by third parties or the Purchaser, not suitable building floor; excessive vibration or movement of vehicles or equipment in which the delivery item is installed; chemical, electrochemical or electrical influences; and

(g) damage to parts, fittings, housings, additional attachments and accessory items that are not part of the delivery item.

(4) The Purchaser shall, after consultation with the Supplier, grant the Supplier the necessary time and opportunity to carry out all repairs and replacement deliveries deemed necessary by the Supplier in its due discretion, otherwise the Supplier shall be released from its liability for defects. Only in urgent cases of danger to operational safety and to prevent disproportionately great damage, in which case the Supplier must be notified immediately, or if the Supplier is in default with the rectification of the defect, shall the Purchaser have the right to rectify the defect itself or have it rectified by third parties and to demand reimbursement of the necessary costs from the Supplier.

(5) Of the direct costs arising from the repair or replacement delivery, the Supplier shall bear - insofar as the complaint proves to be justified - the costs of the replacement part, including dispatch, as well as the reasonable costs of removal and installation, furthermore, if this can be reasonably demanded in the individual case, the costs of any necessary provision of the Supplier's fitters and assistants. In all other respects the Purchaser shall bear the costs. In particular, in the event of an unlawful complaint/notification of defects, the Purchaser shall reimburse/reimburse the Supplier for all costs arising therefrom in accordance with the Supplier's current price list.

6. the delivery of a replacement part and/or the repair shall not extend the original warranty period for the delivery item.

7. any improper modifications or repair work carried out by the Purchaser or third parties without the prior consent of the Supplier shall void any liability for the resulting consequences.

8. further claims of the purchaser arising from defects of the delivery item, in particular a claim for compensation for damages which have not occurred to the delivery item itself, are excluded subject to the provisions of section XI.4 and section XII.

X. Liability for collateral duties

If, through the fault of the Supplier, the delivered item cannot be used by the Purchaser in accordance with the contract as a result of omitted or defective execution of proposals and consultations prior to or after conclusion of the contract as well as other contractual collateral obligations - in particular operating

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instructions and maintenance of the delivery item - the provisions of Sections IX, XI and XII shall apply mutatis mutandis to the exclusion of further claims of the Purchaser.

XI. Right of the Purchaser to Withdraw and Other Liability of the Supplier

(1) The Purchaser may withdraw from the contract if the entire performance becomes finally impossible for the Supplier prior to the passing of risk. The same shall apply in the event of the Supplier's inability to perform. The Purchaser may also withdraw from the contract if, in the case of an order for similar items, the performance of part of the delivery becomes impossible in terms of quantity and the Purchaser has a justified interest in refusing a partial delivery; if this is not the case, the Purchaser may reduce the consideration accordingly.

If there is a delay in performance within the meaning of Section V. of the Terms and Conditions and if the Purchaser grants the Supplier in default a reasonable period of grace with the express declaration that it will refuse to accept performance after expiry of this period, and if the period of grace is not complied with, the Purchaser shall be entitled to rescind the contract.

3. if the impossibility occurs during the delay in acceptance or through the fault of the purchaser, the latter shall remain obligated to counter-performance.

(4) The Purchaser shall also have the right to rescind the contract if the Supplier allows a reasonable period of grace granted to it for the repair or replacement of a defect for which it is responsible within the meaning of the Terms and Conditions of Business to expire fruitlessly through its own fault. The Purchaser's right to withdraw from the contract shall also apply in the event of impossibility or inability of the Supplier to repair or replace the defective goods. If the Supplier fails to repair or replace the delivery item, the Purchaser shall be entitled to rescind the contract or reduce the purchase price.

(5) The Supplier shall be liable for infringement of third party industrial property rights in connection with the delivery or service of the Supplier to the exclusion of any further claims as follows. The liability is limited to property rights granted in Germany. The Purchaser shall be indemnified against claims for damages and costs imposed by a final and absolute judgment and the legal costs incurred shall be reimbursed to the Purchaser. The right of the purchaser to withdraw from the contract due to impossibility remains unaffected.

(6) Subject to other provisions in these General Terms and Conditions, in particular the provisions of Sections XI. and XII., all other further claims of the Purchaser, in particular for termination or reduction as well as for compensation for damage of any kind, including such damage that has not occurred to the delivery item itself, shall be excluded.

XII Limitation of the liability limitations

The exclusions of liability and limitations of the Purchaser's claims in these Terms and Conditions shall not apply in case of intent, gross negligence of legal representatives or vicarious agents of the Supplier, as well as in case of culpable violation of essential contractual obligations. In case of culpable violation of essential contractual obligations, the Supplier shall be liable - except in cases of intent and gross negligence of the legal representatives or vicarious agents of the Supplier - only for the reasonably foreseeable damage typical for the contract. Furthermore, the exclusions of liability and limitations of the Purchaser's claims in these Terms and Conditions shall not apply in cases where liability is assumed under the Product Liability Act for personal injury or property damage to privately used objects in the event of defects in the delivery item. The exclusions and limitations of liability shall also not apply if defects were fraudulently concealed or their absence was guaranteed or if life, body and health were culpably injured. Contrary to section IX.1, the statutory limitation period shall apply to all these cases, insofar as this leads to an extension for the Purchaser in comparison to the periods from IX.1.

XIII Prohibition of assignment

Claims of the Purchaser against the Supplier may only be asserted with the prior consent of the Supplier. Claims of the Supplier against the Purchaser may only be assigned with the written consent of the supplier. § 354a HGB (German Commercial Code) remains untouched.

XIII Partial Ineffectiveness

A contract concluded on the basis of these terms and conditions shall remain binding in its remaining parts even if individual terms and conditions are invalid. This shall not apply if adherence to the contract would mean unreasonable hardship for one of the contracting parties.

XIV. 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 copy, revise, translate or convert the software from the object code into the source code to the extent permitted by law (§§ 69 a ff. UrhG). The Purchaser undertakes not to remove manufacturer's information - in particular copyright notices - or to change them without the Supplier's prior express consent. All other rights to the software and the documentation, including copies, shall remain with the Supplier or the software supplier. The granting of sublicenses is not permitted.

XV. Place of Performance, Law and Jurisdiction

In the event of any disputes arising from the contractual relationship - also for actions in proceedings concerning documents and bills of exchange - the court in Moers shall have exclusive jurisdiction over the Supplier's principal place of business. German law shall apply; these terms and conditions as well as the other provisions according to the contract between the contracting parties shall have priority. The application of sales law rules arising from international agreements (UN sales law) is excluded.