

## M+M Turbinen-Technik GmbH

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## General Terms and Conditions of Purchase

The General Terms and Conditions of Purchase shall apply to all orders placed by M+M Turbinen Technik (hereafter referred as “Buyer”).

Our terms and conditions of purchase shall apply exclusively. We do not acknowledge any contrary or differing terms and conditions of the contracting partner (hereafter referred as “supplier”) unless we expressly consented to the validity of such terms in writing. Our terms and conditions of purchase shall apply even if we accept the supplier’s delivery without reservation, despite being aware of the supplier’s contrary or divergent terms and conditions.

The Supplier acknowledges the sole validity of our Purchasing Conditions with the acceptance, at the latest with the execution of the order, even if it refers to its own conditions. The acceptance of the delivery and the performance of the supplier by us or their payment does not mean any agreement to the conditions of the supplier.

If as general agreements have been concluded between ourselves and our supplier, such agreements shall have priority. They shall be supplemented by the present terms and conditions of purchase unless more specific stipulations are concluded.

All agreements reached between ourselves and the supplier with regard to the execution of the contract which go beyond or amend these terms and conditions shall be recorded in the contract in writing. Any amendments or additions to these terms and conditions of purchase or any verbal collateral agreements shall only apply if confirmed by us in writing. Verbal collateral agreements are not valid.

Our terms and conditions of purchase shall apply exclusively to companies within the meaning of § 14 BGB [German Civil Code].

### **1.) Conclusion of the contract**

(1) Only our written orders with signature or with validity mark or electronic mark of origin shall be valid. The content of our order shall apply exclusively.

(2) The supplier must confirm our order in writing within 7 working days of receiving the order. We shall be entitled to revoke our order upon expiry of this time-limit. Claims by the supplier based on a valid revocation shall be excluded.

(3) If a petition in insolvency is filed against the supplier's assets and the supplier has not yet executed the contract or has not yet executed it completely, we shall in all cases be entitled to rescind the contract or - in the case of continuous obligations - to terminate the contractual relationship with immediate effect.

(4) Even after conclusion of the contract, we shall be entitled to request changes in the delivery item at our reasonably exercised discretion (§ 315 BGB) if such changes can be reasonably expected of the supplier.

(5) The supplier may only conclude sub-contracts with our written consent. Where the services of subcontractors are enlisted, the supplier shall be liable for their services as if they were its own.

(6) All correspondence concerning the implementation of the contract (prices/terms) must be conducted with our purchasing department at the following address:

M+M Turbinen Technik GmbH

Röntgenstr. 30

32107 Bad Salzuflen

The supplier must state the purchase order and order number, contact partner and date on which the goods/services were ordered in all correspondence.

## **2.) Delivery, performance, default, contractual penalty**

(1) The agreed dates and time limits for delivery and performance shall be binding. Compliance with these time-limits shall be determined by receipt of the goods in the case of sales contracts, by the rendering of services in the case of service contracts and, in the case of contracts for work, by execution of the work at our premises resp. at the agreed place of delivery or performance.

(2) The supplier shall be obliged to notify us in writing without delay - with prior verbal notice - if any circumstances arise or if the supplier becomes aware of any circumstances indicating that agreed time limits for delivery or performance cannot be met. This shall also apply if the supplier is not responsible for the delay in delivery or performance. We shall be entitled to compensation from the supplier for the damage resulting therefrom if this duty is violated. If delivery or performance is delayed, the supplier shall provide us with detailed written information on the reasons causing the delay and the action already taken or planned by the supplier to remedy the situation.

(3) If goods are delivered earlier than agreed, we reserve the right to return them at the supplier's expense. If goods which have been delivered prematurely are not

returned, the goods shall be stored at the supplier's expense and risk until the agreed delivery date.

(4) We shall only accept partial deliveries or partial performance if expressly agreed in writing. If partial delivery has been agreed, the quantity remaining after delivery shall be specified. Invoices for partial deliveries or services shall not be admissible in the absence of a diverging written agreement.

(5) We shall be entitled to assert our statutory rights in cases of default in delivery or performance. Upon the unsuccessful expiry of a reasonable extension of time, we shall in particular be entitled to claim damages in lieu of performance and to withdraw from the contract, even if only for the outstanding part. If we claim damages, the supplier shall be entitled to prove that it is not responsible for the breach of duty. The above-mentioned extension of time shall not apply if a fixed date has been agreed with the supplier.

(6) In cases of default in delivery or performance, we shall be entitled to charge a contractual penalty of 0.5 % of the net delivery value for deliveries of goods or 0.5 % of the agreed net remuneration per day of default, but not more than 5 % of the net delivery value / net remuneration in total. We reserve the right to assert further statutory rights, in particular to claim

damages, taking into account the contractual penalty, as well as the rights specified below. The contractual penalty shall only be deemed not to apply if the supplier can prove that no damage was incurred or that the actual damage was considerably lower. In the event of the latter, we may request compensation for the damage actually incurred.

(7) During the period of default, we may at our option purchase goods or services from other sources and reduce the quantities ordered from the supplier commensurately in accordance with the amount of goods or services purchased elsewhere, without liability towards the supplier, or we may instruct the supplier to purchase the missing goods or services from third parties on our behalf at the price agreed with the supplier.

(8) Acceptance of a delayed delivery or service shall not constitute any waiver of entitlement to damages and the contractual penalty. The reservation of a contractual penalty incurred on account of a delayed delivery or service shall be deemed to be timely if we deduct the sum incurred from the next-but-one invoice due.

(9) Unless proven otherwise, the quantities, weights, dimensions and delivery quantities established during our incoming goods inspection shall be binding.

(10) We shall be entitled to request that the supplier delay delivery or performance by up to 6 weeks free of charge. The supplier shall not be entitled to assert any claims against us on account of a delayed delivery or service. During the above-mentioned period, the goods shall be stored at the supplier's risk. Furthermore, we shall be entitled to request that delivery be delayed for a further period of up to 6 months, during which the goods shall also be stored at the supplier's risk. In this case, we shall be obliged to reimburse the proven, reasonable cost of storage to the supplier.

### **3.) Shipping requirements, delivery dates**

(1) Delivery items shall be packed appropriately and in an environmentally beneficial manner and delivered using suitable containers and conveyances, as well as in accordance with our respective delivery regulations. The regulations of the Ordinance on Hazardous Substances shall apply additionally in the case of hazardous substances and must be observed.

(2) A delivery note shall be enclosed with each consignment. The delivery note and all shipping documents shall specify the date of dispatch, the inquiry and purchase order number and the precise designation of the delivery item. In the event of non-compliance by the supplier, we shall not be responsible for any delays in processing. Any costs incurred by us due to non-compliance with the above stipulations shall be reimbursed by the supplier.

(3) The delivery period or delivery date specified in our order shall be binding for the supplier.

(4) Unless agreed otherwise, the ordered goods shall generally be delivered "free domicile" and at the supplier's risk up to the time of complete delivery at the contractually agreed place of receipt or use. If freight costs are incurred in exceptional cases and have been confirmed by us in writing, our routing order shall be binding for the supplier unless prevented by an objectively important reason.

Additional costs incurred due to noncompliance with the routing order shall be borne by the supplier, except in cases pursuant to the second half of the first sentence; such costs shall not be accepted by us. Surcharges for short quantities and other surcharges which have not been confirmed in writing shall generally not be accepted or borne by us.

(5) The relevant tariff, transport and packaging regulations of the post office and railway, for transport by road, sea or air, etc. shall be observed when shipping goods. Customs regulations and regulations governing hazardous substances shall be observed in particular. If we have not explicitly specified certain transport regulations, the most advantageous means of transport for us shall be selected in each case.

(6) If the services of sub-contractors are enlisted, they shall specify the supplier as their customer in all correspondence and shipping documents, together with the order data specified above.

#### **4.) Prices, payment, intercompany reservation**

(1) Unless agreed otherwise, stipulated prices shall be deemed fixed prices free domicile and shall include all costs for packaging, transport to the specified place of receipt or shipment, customs formalities and customs duties.

(2) The applicable value-added tax is not included in the price. Value-added tax valid on the date of invoicing shall be shown separately on the invoices. Price increases shall be subject to our written consent. Order data must be specified on the invoice. Invoices shall be sent under separate cover after delivery to the invoice address specified in our order/order for services.

(3) Payment shall be effected at our option, also as regards the mode of payment, as follows:

- Unless agreed otherwise, invoices shall be paid by us net within 30 days. The time limit for payment shall begin to run with delivery of the goods to the place of receipt (shipping address), or with acceptance of the service or work, and receipt of the invoice at the invoice address specified in the order/order of services.

- If we make payment within 8 days of receiving the invoice and goods, we shall be entitled to deduct a discount of 3 %, and if we make payment within 14 days of receiving the invoice and goods, we shall be entitled to deduct a discount of 2 % unless agreed otherwise in writing in the individual contracts.

(4) The payment term shall not begin to run before we have received complete delivery or complete execution of performance, and an invoice, in duplicate, specifying the contractual VAT and order number as well as the supplier's tax account number.

(5) We reserve the right to select the mode of payment. If payment is remitted by bank transfer, our payment obligation shall be deemed to have been discharged in due time when the bank transfer order is presented to our bank.

(6) We shall set off any credits already issued or still expected against our payments.

(7) If delivery or performance is accepted prematurely, the due date shall be determined by the originally agreed delivery or performance date. Payments shall not constitute a waiver of the right to give notice of defects, nor do they constitute any form of acknowledgement of execution in accordance with the contract.

(8) In the event of incomplete or faulty delivery or performance, we shall be entitled to withhold payment in full or in part until delivery or performance has been duly effected. The supplier shall only be entitled to withhold or set off against our claims if we have acknowledged its claims or they have been established by declaratory judgment unless the counterclaim is based on a violation of material contractual duties by us. "Material contractual obligations" are obligations that protect the legal positions of the customer which are material to the contract and which have to be granted to the customer under the contract in terms of subject matter and purpose; material contractual obligations are also obligations whose fulfilment makes the due performance of the contract possible in the first place, where the customer regularly relies on and may rely on compliance with such obligations.

(9) Where advance payments exceed € 25,000,00, the supplier must at first request provide an appropriate performance bond e.g. in the form of a guarantee from a major German bank - or comparable institution - linked to a deposit insurance fund.

## **5.) Inspection for defects, liability for defects**

(1) Unless agreed otherwise, we shall be obliged to inspect the goods for quantitative and qualitative nonconformance within a reasonable period of time as specified by § 377 HGB [German Commercial Code]. Our notice of defects shall have been given in good time if it is received by the supplier within ten working days of receipt of the complete goods in the case of visible defects, or as of discovery, in the case of hidden defects.

(2) If we have concluded a special quality assurance agreement with the supplier providing for inspection of the outgoing goods at the supplier's premises, our duty to inspect the goods on receipt shall be limited to inspection for damage in transit, identity and quantity. The same shall apply if the supplier is certified in accordance with ISO 9000 et seq. and has used such certification for promotional purposes, and has not given us a written statement within one week of concluding the contract that this meaning is not to be attached to the certification.

(3) We shall be entitled to assert all statutory claims based on defects. In all cases, we shall be entitled to request that the supplier remedy the defect or deliver new goods, at our option, if defects are found in connection with contracts for purchase or work. The right to claim damages, especially to claim damages in lieu of performance, is explicitly reserved.

(4) If we incur costs due to a breach of duty by the supplier based on delivery of defective goods, especially costs for transport, travel, labour and/or material, or costs for incoming goods inspection exceeding the normal scope, such costs shall be reimbursed by the supplier.

(5) If defective goods are returned, the supplier shall bear the risk of loss and deterioration of the goods.

(6) The limitation period for breach of duty due to defective performance is 36 months as of passing of risk, and 30 years for defects in title.

(7) In addition to cases in which the period of limitation is stayed by law, the limitation period for claims and rights based on breach of duty due to defective performance shall also be stayed during the time between giving notice of defects and completion of the remedial action.

## **6.) Supplier's liability, procedure following violation of duty due to defective performance**

(1) The supplier warrants that all deliveries/services are state of the art, comply with the relevant national and European legal provisions, as well as the regulations and guidelines issued by public authorities, employers' liability insurance associations and professional associations in the Federal Republic of Germany. In addition, the supplier shall be responsible for the environmental compatibility of the delivered products and packaging materials. Insofar as it is necessary to diverge from these regulations in individual instances, the supplier shall be obliged to obtain our written consent thereto. Other obligations under purchase contracts or contracts for work, including warranties for the nature of the goods or work, shall remain unaffected by such consent. If the supplier has any reservations concerning our preferred manner of execution of the purchase order or the composition or properties of the products to be supplied, such reservations must be notified to us in writing without delay.

(2) If the delivered products or the work to be performed or the service rendered do not conform to a given warranty or warranted property, the supplier shall be liable for all resulting damage, including consequential damage.

(3) We shall be entitled to request that the supplier present certificates of inspection for the delivery items free of charge.

(4) If material defects arise in the delivery items during the warranty period, the supplier may first repeat performance within a reasonable period of time, insofar as we can be expected to accept this; we shall be entitled to determine the manner in which performance is repeated. The supplier shall be entitled to refuse our chosen manner of repeat performance under the conditions pursuant to § 439 (2) BGB.

(5) We shall charge a flat rate fee for transport, storage and administrative costs of EUR 250,00 plus valueadded tax at the statutory rate for each delivery which we objectively find to be defective at a

time after the goods have been handed over to us, insofar as the order value of the delivery concerned exceeds at least EUR 2,500,00 (net). We reserve the right to prove higher damage. The supplier shall be entitled to prove that no damage or a smaller damage was incurred.

(6) Our claims for damages and/or compensation for frustrated expenses shall remain unaffected. All costs incurred for repeat performance, delivery of a replacement or repair (labour/material/transport/any call-backs required etc.) shall be borne by the supplier.

(7) We shall be entitled - without relieving the supplier from its duty - to remedy a defect ourselves at the supplier's expense if danger is imminent or the case is particularly urgent or if the defects are of a minor nature and the cost of remedying them does not exceed 5 % of the net delivery price for the defective goods or if a disproportionately high damage in relation to the delivery price is imminent.

(8) In the case of defects in title, the supplier shall additionally indemnify us against any third-party claims.

(9) If we take back goods which have been produced and/or sold by us on account of defects in the goods delivered by the supplier or if our selling price has been reduced for this reason or if claims have been asserted against us in any other way for the same reason, we reserve the right to seek recourse against the supplier, without having to set the otherwise customary time-limits in order to exercise our rights based on defects.

(10) If a material defect becomes obvious within six months of the passing of risk, it is to be assumed that the defect was already present at the passing of risk unless the assumption is inconsistent with the nature of the material or defect.

(11) Notwithstanding the above-mentioned provision, the limitation period for breach of duty due to defective performance in the form of material defects shall begin to run not less than two months after the time at which we have satisfied our customer's claims against us on account of the defect, but not more than five years after delivery by the supplier.

## **7.) Product liability, exemption from liability, third-party liability insurance**

(1) Unless agreed otherwise in writing, insofar as the supplier is responsible as well as ourselves to a third party for product damage, also in external relations, the supplier shall be obliged to indemnify us against all third party claims for damages at first request if the origin lies within the supplier's organization and sphere of control. In addition to damages to third parties, the supplier's duty to indemnify shall also include the costs of reasonable legal defence, call-back costs, costs for testing and inspection, costs for replacement and our reasonable administrative costs and other expenses incurred for processing the damage.

(2) In connection with its liability for damage pursuant to 7. (1), the supplier shall also be obliged to refund any expenses as defined by §§ 683, 670, 830, 840 and 426 BGB resulting from or in connection with a call-back campaign by us. This shall apply in particular to callback campaigns

within the scope of the law on product safety. Where possible and reasonable, we shall inform the supplier of the content and scope of the call-back measures to be taken and shall give the supplier the opportunity to comment. Other statutory rights shall remain unaffected.

(3) The supplier shall be obliged to maintain third-party liability insurance with terms customary in the industry, with a minimum cover of EUR 2 million per occurrence of damage, for the duration of the contractual relationship including warranty period and limitation period. The supplier shall prove the existence of such insurance to us on request; lower cover shall be agreed with us in individual cases.

## **8.) Retention of title**

If the supplier's general terms and conditions stipulate that delivery shall only be effected with retention of title, such retention of title shall be deemed to be simple. In such a case, the supplier shall authorize us to process and resell the goods in the due course of business. In return, we shall herewith assign to the supplier our claims against the customer or third party in the amount of the purchase price including value-added tax. Even after such assignment, we shall be authorized to collect the claims in the due course of business until such authority is revoked in writing. The supplier undertakes not to collect the claims as long as we discharge our payment obligations to the supplier. The supplier shall only be entitled to disclose the assignment for good cause. We shall not accept any extended retention of title.

## **9.) Safety regulations**

(1) For its deliveries and services, the supplier shall comply with applicable safety regulations and the parameters or limit values corresponding to the state of the art or as agreed beyond the state of the art.

(2) The supplier undertakes to exclusively use materials in conformity with applicable statutory safety requirements and regulations. This shall also apply with regard to regulations designed to protect the environment. This obligation shall encompass all regulations in force for Europe, including the country of manufacture, as well as the regulations of the importing countries reported to the supplier with our order, if they diverge from the former.

(3) If we intend to deliver the subject of the contract to a new foreign market, we shall inform the supplier accordingly without delay. The parties shall inform themselves with regard to more stringent quality and/or manufacturing standards in force there. If the supplier does not declare within one month that it is familiar with and can comply with the new quality and/or manufacturing standards, it shall be deemed agreed that the supplier is familiar with and can comply with the quality and/or manufacturing standards in force there.

(4) If the supplier's products do not meet the requirements imposed in 9. (1) to (3) above, we shall be entitled to rescind the contract. Further claims for damages shall remain unaffected.

(5) Planned modifications in the delivery item or performance must be notified to us in writing. They shall require our prior written consent.

## **10.) Quality and documentation**

(1) Costs for declarations of conformity shall be borne by the supplier. The declarations of conformity shall be submitted to us in German, and on request also in English, immediately with each delivery.

(2) Regardless thereof, the supplier shall constantly verify the quality of the delivery items. The supplier shall notify us immediately in writing of evident errors in specifications and foreseeable complications.

(3) If minimum and/or maximum values are specified for parameters in an order, the specified maximum values shall not be exceeded in any part of the delivery items. There shall be no shortfall in the specified minimum values in any case and at any point.

## **11.) Legal venue, applicable law, final provisions**

(1) Legal venue is the location of our company's registered office unless another legal venue is prescribed by law.

(2) The Law of the Federal Republic of Germany shall exclusively apply to all legal relations between the supplier and ourselves, expressly excluding the UN Sales Convention. The above stipulations shall also apply if the supplier is a foreigner or its registered office is located abroad. Clauses customary in the trade shall be construed according to applicable valid Incoterms.

(3) Assignments by the supplier outside the scope of application of § 354 a HGB shall be excluded. Exceptions shall only be valid with our written consent.

(4) If the supplier suspends payment or a petition in insolvency is filed against its assets, or a petition for the institution of composition proceedings is filed judicially or extrajudicially, we shall be entitled to withdraw from that part of the contract that is not yet fulfilled.

(5) If any current or future provision hereof is or shall become invalid/void or unenforceable for reasons other than under §§ 305-310 BGB, this shall not affect the validity of the remaining provisions hereof. This shall also apply if a gap arises after the conclusion of the contract that requires filling. The parties shall replace the invalid/void/unenforceable provision or gap that requires filling by a valid provision which in its legal and economic content corresponds to the invalid/void/unenforceable provision and the overall intent of the contract. § 139 BGB (partial invalidity) is expressly excluded.

(6) The contractual language is German.

(7) Place of performance is the place of delivery specified by us; if not specified, place of delivery shall be the registered office of our company. Place of performance for payments to us is the registered office of our company.

Note: According to the provisions of the Federal Data Protection Act, we draw attention to the fact that our accounting is maintained on EDP equipment, and that we also in this respect store data received as a result of the business relationship with the supplier.

32107 Bad Salzflun