


		82000 TH75/STD 0000/0001
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General Terms and Conditions of Purchase

TGE MARINE GAS ENGINEERING GMBH

5	06-11-2018	IFU – Issued for Use	KS5	LE	KS5
4	02-10-2018	IFU – Issued for Use	KS5	LE	KS5
3	08-04-2011	IFU – Issued for Use	KS5	LE	SCH
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Rev.	Date	Subject of revision	Author	Checked	Validated

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Our order is subject to the exclusive application of our below General Terms and Conditions of Purchase.

The goods to be delivered hereunder and services connected thereto, as the case may be, are intended to be a part of and used in a complete system (hereinafter called "TGE System") for TGE's customer (hereinafter called "End-User").

§ 1 Integral Parts of the Agreement and Application

(1) The following provisions as well as all documents attached to TGE's purchase order or specified therein, form altogether integral parts of the order for goods and/or services (hereinafter referred to as "Supply" or "Supplies" as the context requires) between TGE and the Contractor. In case of contradicting provisions in these documents, the provisions shall apply in the following order of precedence:

- (a) Written purchase order
- (b) Technical Specifications
- (c) Delivery and packaging instructions
- (d) TGE's General Terms and Conditions of Purchase

(2) These General Terms and Conditions of Purchase shall apply exclusively. Differing or contrary terms of the Contractor shall not apply except if expressly agreed upon in writing.

§ 2 Order Acceptance

The Contractor shall accept the TGE order within a reasonable time not exceeding the date of acceptance stated in the order.

§ 3 Scope of Agreement


(1) The order supersedes any previous agreements between the Parties, unless they have explicitly agreed otherwise.

(2) The Contractor is aware that onsite supervisors and other personnel of TGE at the construction site are not authorized to enter into agreements or agree to amendments of agreements with the Contractor.

(3) The Contractor shall be solely responsible for ensuring that all planning parameters and other preconditions necessary for the complete, correct and timely fulfilment of its obligations regarding the Supplies and/or services, including given guarantees, are specified in the order. The Contractor shall inform TGE promptly of any missing planning parameters or other relevant documents.

(4) The planning, construction, manufacture and inspection of the Supplies as well as services rendered and drafting of technical documentation shall, unless otherwise determined in the order, be carried out in accordance with the standards and regulations at the place of use of the TGE System in their respective newest version and in accordance with the applicable building and security regulations as well as under adherence to the applicable accident prevention and safety regulations. The Supplies and services shall in any case fulfil the requirements of the applicable German and respective local regulations for technical work equipment, dangerous substances and protection of the environment.

(5) The Contractor shall supply the technical documentation and shall immediately revise such technical documentation as far as this is required due to any changes, findings or variations during the execution of the order.

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§ 4 Quality Assurance and Quality Control Requirements


- (1) The Contractor shall have available a valid and well-documented system for quality assurance and quality control in compliance with the requirements stated in the order.
- (2) TGE shall have the right to carry out quality audits and verifications of the Contractor’s quality assurance and control system at the Contractor’s workshop to assure itself that the requirements resulting from the nature of the Supplies or services, the Technical Specifications or these General Purchase Conditions are fulfilled. The Contractor shall assist TGE with regard to such audits at no additional costs to TGE.
- (3) As far as the Contractor has commissioned a subcontractor, it shall bind the respective subcontractor accordingly and shall ensure that the Contractor and TGE are granted an inspection right pursuant to § 4 (2).

§ 5 Order Modifications

- (1) During the execution of the order, TGE is entitled to request order modifications within a reasonable extent as far as such request is necessary to realize the purpose of the order.
- (2) As far as TGE notifies the Contractor of a possible order modification, the Contractor shall promptly provide TGE in writing with a preliminary estimate report of any effects of such modification, in particular on the consistency, quality, delivery date or possible additional costs. This report shall contain a description of the work to be performed under such modification as well as a detailed time schedule for the execution of the modification. TGE shall examine such report promptly and shall inform the Contractor in writing within a reasonable period of time whether the Contractor shall carry out the variation.
- (3) As far as TGE, in its own discretion, decides to have the modification carried out, and as soon as the Parties reach an agreement on the terms of the modification, TGE lodges a respective order amendment with the Contractor.
- (4) A potential order modification shall be issued by means of an order amendment containing a full description of the work to be performed, the schedule of its execution as well as the effects on the total price, the delivery date and any consequences on warranties.
- (5) A modification caused by reasons for which the Contractor is legally responsible shall not entitle the Contractor to request changes of the original price, the original delivery date, or consequences on warranties.

§ 6 Intellectual Property / Technical Documentation of the Parties

- (1) TGE retains any legal title and copyright in pictures, sketches, calculations and other documentation, which TGE makes available to the Contractor. Such documentation shall not be made available to third parties without the prior written consent of TGE. It shall only be used for the purpose of production set out in the order of TGE. Any such documentation shall be held confidential towards third parties.
- (2) Ownership of the intellectual property rights associated with the Supplies or services and any documentation provided by Contractor under the order is vested and shall vest in the Contractor. The Contractor grants TGE and the End-User a royalty free, non-exclusive, perpetual license to use all its intellectual property rights associated with the Supplies or services and any documentation provided pursuant to the order for the installation, use, support, repair, maintenance or alteration of the Supplies or any addition to the Supplies by or on behalf of TGE or the End-User. This license shall survive any termination of the order.
- (3) As far as the Contractor has to deliver sketches and/or calculations to TGE pursuant to the Agreement, TGE reserves the right to inspect the sketches and calculations prior to the start of the production of the Supplies. The Contractor shall promptly notify TGE in writing of any changes it made to its technical documentation and shall clearly mark such changes.

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(4) After having TGE’s subsequent inspection, it shall return such sketches and/or calculations to the Contractor, request further changes where applicable, and shall release the manufacture of the Supplies.

(5) The Contractor shall remove at its own expense any errors or deficiencies contained in its technical documentation. All further rights, in particular any rights for performance or liability for defects, shall remain unaffected.

§ 7 Delivery Dates and Packaging

(1) All delivery dates for Supplies or time periods for the execution of services stated in the order or otherwise agreed upon are binding. A schedule evidencing the actual manufacturing and delivery or service execution status shall be available at all times and shall be submitted to TGE in accordance with the order, however, at least at each month’s end.

(2) The Contractor shall immediately inform TGE of any threatening or existing delay, the reasons for such delay and the anticipated duration of such delay. As far as the execution date is predictably delayed by circumstances the Contractor is responsible for, the Contractor shall take all necessary and reasonable measures in order to accelerate the delivery of the Supplies or the performance of the services on its own costs.

(3) Any delivery shall be made free of charge to the agreed place of delivery (herein referred to as “Place of Delivery”).

(4) The Contractor shall carry out the delivery and packaging of the Supplies in accordance with TGE’s delivery and packaging instructions.

(5) Prior to delivery of the Supplies, the Contractor shall submit to TGE all relevant shipping documents. TGE may reject deliveries without proper shipping documents or certificates of test, inspection, acceptance, or any other documentation.

(6) The Contractor shall only be entitled to carry out partial shipments upon the explicit prior written consent of TGE.

(7) The Contractor shall be liable for any culpable excess of the dates agreed pursuant to § 7 para. (1) and shall pay liquidated damages per calendar day of delay amounting to 0.25 % of the total order value, however not exceeding in the maximum 5 % of the total order value.

(8) In case the liquidated damages are exceeding the maximum amount as stipulated hereinabove, TGE shall be entitled to terminate the order.

§ 8 Spare Parts


The Contractor shall, upon TGE’s request, provide spare parts to TGE at reasonable prices and delivery time as well as subject to the conditions of the order.

§ 9 Passing of Risk, Shipment

Irrespective of the costs of shipment, the risk of accidental damage, deterioration or perishing of the Supplies shall pass with the correct and complete delivery at the Place of Delivery as stipulated in the order.

§ 10 TGE’s Supply of Parts or Materials

(1) As far as TGE supplies parts or materials to the Contractor for the purpose of manufacturing the Supplies, the Contractor shall use these parts or materials exclusively for the Supplies. The Contractor shall inspect such parts and materials upon receipt. These parts or materials shall remain the property of TGE and must be stored and labelled as TGE’s property and shall be recorded separately as well as safeguarded and insured as third party property by the Contractor at its own expense. The Contractor by now and herewith assigns any future insurance claims to TGE.

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(2) As far as necessary, the Contractor shall keep a separate account of the parts and materials supplied and shall disclose the contents of such accounts to TGE upon request.

§ 11 Prices, Payment


- (1) Prices shall include any costs for packaging.
- (2) The purchase price is due and payable without deduction within thirty (30) days after delivery of the Supplies and receipt of the proper invoice.
- (3) In case of reimbursable services and man-hours, the Contractor shall proof the accrued amounts by means of appropriate documentation.
- (4) Payments made by TGE shall not constitute a waiver of any claim or right TGE may have at that time or thereafter, such as but not limited to, claims regarding unsettled liens, warranty rights or indemnification obligations of the Contractor.
- (5) TGE reserves all rights to offset or retain payment provided by applicable law.

§ 12 Inspections and Tests

- (1) Irrespective of any acceptance procedures to be performed, TGE and the End-User shall be entitled to request specific inspections and tests with regard to the manufacture and quality of the Supplies and shall be entitled to attend such inspections and tests.
- (2) TGE shall bear its own costs for such inspections. The Contractor shall, however, provide the facilities for such inspections in its own workshop and shall bear the costs associated thereto. If repeated inspections are necessary due to defects and/or delays in the manufacture or delivery which are caused by the Contractor's fault, the Contractor shall bear TGE's and the costs of the End-User attending such repeated inspection. An inspection record shall be prepared detailing the inspection results and shall be signed by the Contractor and, if present, by TGE and/or the End-User.
- (3) The Contractor shall provide to TGE and the End-User access to its premises, so that they can realize their rights pursuant to section § 12 para. (1). As far as the Contractor has engaged a subcontractor, the Contractor shall provide access to the premises of the subcontractor and shall bind such subcontractor accordingly.
- (4) The Contractor shall notify TGE in writing at least thirty (30) days prior to the date of any inspection, which has to be confirmed in writing at least ten (10) days prior to the date of inspection. If TGE fails to attend at the place and date stated in the Contractor's notice, the Contractor may proceed with the inspection or test.
- (5) TGE and its agents including the End-User shall be entitled to carry out, if applicable, at their own costs, non-destructive testing (e. g. X-ray and ultra-sound tests) on a random basis. If defects are found, the Contractor shall be liable for the costs of such testing.

§ 13 Acceptance

- (1) As far as the acceptance of the Supplies or services is necessary pursuant to statutory provisions or is agreed between the Parties, such acceptance procedures for the Supplies/services shall be carried out formally by drafting a respective protocol to be signed by both Parties.
- (2) The Contractor shall provide at no cost for TGE all test appliances and other equipment required for the acceptance of the Supplies/services the tests related thereto, and shall bear the costs of material incurred for such tests. The Contractor and TGE shall each bear their own personnel costs.
- (3) TGE shall only grant acceptance if the Supply has been fully and duly assembled, or the service has been fully completed, the respective function tests, in particular mechanical trial runs, pressure tests, tests of gaskets, the calibration and testing of control cycles were fully successful and the Supplies could be put into operation fully

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and properly, the technical documentation was delivered and the service has been made to TGE’s full satisfaction.

(4) As far as the order provides for certain operation data with regard to the Supplies, for example the consumption and volume streams, TGE will only grant acceptance of the Supplies/services of the Contractor after the successful trial run of the TGE System.

(5) The exact date of acceptance shall be scheduled by TGE upon coordination with the Contractor and the End-User.

§ 14 Defects and Liability

(1) Apparent defects are to be notified within a reasonable course of time. As far as the Supplies or parts thereof are delivered packed (preserved), it shall be sufficient for TGE’s obligation to examine such goods and notify any defects if TGE or its agents inspect the respective Supplies upon first use and shall then promptly notify the Contractor.

(2) TGE is particularly entitled, upon its election, to claim remedy of defects or replacement. Further claims, particularly the right to withdraw from the Agreement as well as the right to claim damages instead of delivery, remain expressly reserved.

(3) TGE’s right to cure shall already exist prior to the completion of the Supplies/services.

(4) As far as the Contractor does not comply with its obligation to cure defects within a reasonable period of time set by TGE, or in case of imminent danger, TGE is entitled, after giving notice to the Contractor, to remedy the defects by itself or a third party on the Contractor’s cost. This right shall already exist if the Contractor refuses to remedy defects, which have been detected during Contractor’s execution of the order within a reasonable period of time set by TGE.

(5) The Contractor shall give TGE any information necessary to remedy the defects and to be able to evaluate the cause of the defect and all measures to be taken.

(6) Warranty claims of whatever nature shall be time-barred after 36 months of the transfer of risk.

§ 15 Warranty of Title

The Contractor warrants that the Supplies as well as its operation by the End-User is free of any rights of third parties. The Contractor shall indemnify TGE, upon first demand, from any claims of third parties in this regard.

§ 16 Product Liability, Insurance

(1) The Contractor shall, upon first demand, indemnify TGE and hold it harmless from and against any and all liability or claims of third parties based on the manufacture, delivery, storage, or use of the Supplies.


(2) The Contractor shall maintain all required insurance policies in full force and effect during the term of the Agreement. All insurance policies of the Contractor must be taken out with internationally recognized insurance companies.

(3) TGE reserves the right to demand from the Contractor certified or uncertified copies of insurance certificates evidencing the insurance coverage required by the Purchase Order.

(4) All premiums shall be for the Contractor’s sole account and responsibility.

§ 17 Confidential Information

(1) Any information which the Contractor receives from TGE regarding the execution of the order shall remain the sole property of TGE and shall be treated as confidential. These documents must not be copied, published

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or made available to third parties or used otherwise than for the execution of the order without the prior written consent of TGE.

(2) The Contractor shall adhere to and cause all its sub-contractors to adhere to the terms of this § 17. The Contractor shall be responsible for any breach of these terms by its subcontractors.

(3) The obligations imposed by the aforementioned section shall not apply, or shall cease to apply, to any confidential information, but only to the extent that the confidential information

- (a) was known to the Contractor prior to the receipt of the confidential information, as evidenced by its written records; or
- (b) was, or becomes known to the public through no breach of the Contractor’s obligations hereunder; or
- (c) becomes known to the Contractor from sources other than TGE under circumstances not involving any breach of any confidentiality obligation; or
- (d) is independently developed by the Contractor, as evidenced by the written records thereof; or
- (e) has been authorized in writing by TGE to be disclosed.

(4) In the event that parts of the confidential information fall within one or more of the above exceptions, such exception or exceptions shall apply solely to that item or items of confidential information.

§ 18 Termination / Force Majeure

(1) TGE shall be entitled to terminate the Agreement at any time for TGE’s convenience by giving notice of such termination to the Contractor. Upon such termination TGE shall pay to the Contractor against satisfactory documented evidence submitted by Contractor to TGE the following:

- the amounts payable for any delivery/work already carried out for which a price is stated in the order
- the costs of materials ordered by the Contractor for the execution of the order which have been delivered to the Contractor or of which the Contractor is liable to accept delivery
- any other costs or liability which in the circumstances was reasonably incurred by the Contractor in the expectation of completing the order.


(2) The Contractor agrees to promptly adhere to any of TGE’s requests to discontinue the manufacturing of Deliveries or execution of services.

(3) The right of TGE to terminate the order for good cause shall remain unaffected. A good cause shall particularly exist if one of the following events is fulfilled:

- (a) Adjudication of an insolvency proceedings or the order not to adjudicate an insolvency proceedings due to a lack of assets;
- (b) Severe breach of one of the contractual obligations by the Contractor, which deteriorates the trusting relationship between the Parties.

(4) If any party is prevented from performing any of its obligations under the order by Force Majeure, then it shall give notice to the other party of the event, specifying the obligations being prevented from its performance. The party shall, having given notice, be excused from its performance so long as the event of Force Majeure exists. Force Majeure hereunder shall mean an exceptional event or circumstance (a) which is beyond a party’s reasonable control, and (b) which such party could not have reasonably foreseen, avoided or overcome.

In case the Force Majeure event lasts for more than 6 months the parties shall meet to find a reasonable solution to suspend or terminate the order.

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(5) In case of a termination or of a withdrawal from the order the Contractor shall return promptly to TGE any documentation which it has obtained in connection with the order.

§ 19 Transfer of Rights

The Contractor shall not be entitled to transfer to third parties any rights, claims or obligations, in part or in whole, out of or in connection with the order without the prior express written consent of TGE.

§ 20 Applicable Law / Jurisdiction

(1) The parties shall do their utmost to settle any dispute, controversy or claim out of or in connection with the order amicably including disputes regarding its validity, invalidity or breach. As far as such settlement cannot be made within a reasonable period of time, the dispute, controversy or claim shall be finally resolved and settled by Arbitration in accordance with the Arbitration Rules of the International Chamber of Commerce (ICC), Paris.

(2) Unless the amount in dispute exceeds EUR 100.000,- (onehundredthousand) the Parties expressly agree that the Expedited Procedure Provisions of these Rules shall apply and one sole arbitrator shall be appointed.

(3) The Arbitration shall be held in Basel/Switzerland in English language. Swiss substantive law including the United Nations Convention on the International Sale of Goods (CISG) shall apply.

§ 21 Final Provisions

(1) The language in any correspondence and documentation shall be English.

(2) As far as reference is made in the order to INCOTERMS these shall apply in their respective latest version.