

## **General Terms and Conditions of Delivery**

AGB 2.0 Last revised: 06-2006 General Terms and Conditions of Delivery of Mittes Engineering GmbH

### **1. General**

1) The present conditions are applicable for delivery of goods and correspondingly for performance of services.

2) Deviations from and any changes of the conditions given in 1) require written acknowledgement of the vendor to be valid.

3) General and special conditions of the buyer do not constitute any obligation for the vendor, even if the present conditions do not explicitly contradict them and even if the validity of the buyer's conditions is named as an express condition unless they have been recognized by the vendor in writing.

4) Provisions prohibiting the cession of claims as expressed in the buyer's "General Terms and Conditions of Business" and all other contractual conditions concerning the cession of claims are considered unwritten.

5) Definitions in the present terms and conditions of delivery: MITTES engineering GmbH, the buyer is the respective contractual partner.

### **2. Quote**

1) Offers by the vendor are non-binding.

2) All available drawings, calculations, processing instructions, in short all project documents, models and tools remain the property of the vendor and must be returned upon arrival of the shipment. They may not be reproduced or made accessible to third parties without the vendor's consent. They may be reclaimed at any time and must be returned immediately to the vendor if the order is awarded to another party.

### **3. Contract**

1) The specifications given in catalogues, brochures and similar are only decisive, if referred to in the order confirmation.

2) Subsequent changes and amendment to the contract must be made in writing to be valid.

### **4. Prices**

1) The prices are applicable ex works, exclusive packaging, loading and value added tax. If taxes or other fees are charged in connection with the delivery, these shall be borne by the buyer. If a delivery term other than the delivery condition specified above is provided, the specially agreed conditions come into force and must be calculated separately.

2) Provided that no other legal provision exists, packaging shall only be taken back upon explicit agreement.

3) In case of an order deviating from the full quote, the vendor reserves the right to change the prices accordingly.

4) Prices are based on the costs at the time of the first price quote. Should the costs rise accordingly by the time of delivery, then the vendor is entitled to adapt the prices correspondingly.

5) In the case of repair orders, the services recognized by the vendor to be necessary and useful shall be performed and charged on the basis of the incurred effort, provided that there is no maintenance contract. This also applies to services and additional services that only become necessary and useful during performance of the contract; no special notification to the buyer is required.

6) Incurred costs for preparing repair quotes or for appraisal at the vendor must be reimbursed to it, even if no order is awarded.

## **5. Delivery**

1) The delivery term begins on the date of fulfilment of all technical, commercial or other requirements incumbent on the buyer or on the date on which the vendor receives a payment or bond due before delivery of the goods.

2) Official approvals and any approvals from third parties required for export of equipment must be obtained by the buyer.

Should such approvals not be obtained in good time, then the delivery period shall be extended accordingly.

3) The vendor is entitled to make and invoice partial and preliminary deliveries.

4) Adherence to the agreed delivery period applies unless unforeseeable circumstances or circumstances independent of the parties' intent, such as all force majeure, hinder this adherence; such circumstances also include armed hostilities, official action and prohibitions, transport and customs clearance delays, transport damage, lack of power or raw materials, furthermore a major, important work piece becoming defective, industrial actions or failure of an essential, difficult-to-replace supplier. The abovementioned circumstances also entitle to prolong the delivery term if they occur at the supplier.

5) If shipping goods ready for shipment is not possible without any fault of the vendor or is not desired by the buyer, then the vendor may store the goods at the buyer's cost whereby the delivery is deemed fulfilled. This does not change the agreed terms of payment.

## **6. Service performance and transfer of risk**

1) Use and risks pass to the buyer at the latest upon shipment ex works, irrespective of the pricing terms agreed on for the delivery. This applies even if the delivery takes place in the scope of installation or if transport is performed or organized as directed by the vendor.

2) In the case of services that do not constitute a delivery or part thereof, the place of performance is where the service is performed.

The risk for a service or an agreed partial service is transferred to the buyer at its performance.

3) In case of delayed dispatch from the plant due to circumstances on the buyer's part. the risk is transferred to the buyer upon the day of readiness for dispatch. If delivery on call has been agreed, then the goods are deemed called one year after ordering the latest. All terms depending on the vendor's performance begin to run as of the aforementioned points in time.

4) Separately agreed quality inspections or trial operation do not affect the terms regarding place of performance and transfer of risk.

## **7. Payment**

1) Provided no separate terms of payment have been agreed upon, 55% of the price is due upon receipt of the order confirmation, 35% upon readiness for dispatch and the remainder upon delivery. Irrespective of this, the value-added tax included in the invoice must in any case be paid 30 days after invoicing the latest.

2) In case of partial invoicing, the corresponding partial payments are due upon receipt of the respective invoices. This also applies to offset amounts that are accrued due to additional delivery or other agreements beyond the original final sum, irrespective of the terms of payment agreed upon for main delivery.

3) Payments must be made without any deduction, ex paying agent of vendor, in the agreed currency.

4) The buyer is not entitled to returns or offset of payments due to warranty claims or other counter claims.

5) A payment is deemed made from the day on which the vendor is able to dispose of them.

6) If the buyer is in default of an agreed payment or other service, then the vendor may

a) postpone the performance of its own obligations until the default payments or other services have been effected,

b) claim a suitable extension of the delivery term,

c) accelerate maturity for the entire outstanding purchase price (default) and

d) invoice default interest of 1.25% a month plus VAT as of maturity unless the vendor provides proof of costs exceeding it, or

e) withdraw from the contract upon non-observance of an appropriate additional respite,

f) charge costs prior to legal action, in particular dunning fees and legal fees.

7) Discounts or premiums granted are conditional upon receipt of full payment.

8) The vendor retains title to all goods it supplies until full payment of the invoice amounts plus interest and expenses. Until this point in time, the buyer is only entitled to resell, work with, work on or incorporate the goods with the vendor's written consent, except in cases in which the goods are intended for reselling, working with, working on, or incorporating. The buyer is obliged to cede to the vendor its claims from the resale to grant its purchase price claim and to make a corresponding note in its accounts or on its invoices. In case of distraint or other claims, the buyer is obliged to refer to the vendor's title and to inform the vendor immediately.

## **8. Warranty, responsibility for defects**

1) Upon receipt of the agreed terms of payment, the vendor is obliged to rectify every function-impairing defect that exists at the time of handover and which is due to an error in construction, material or design according to the following provisions.

2) The warranty term shall be agreed upon in the contract between the buyer and vendor separately. The warranty term begins at the time of transfer of risk.

3) The warranty claim requires that the buyer immediately announced the occurred defects in writing. The vendor thus instructed must, at its discretion, replace the defect parts or repair it on site or to have it sent back to repair it, if a defect covered by warranty according to 8.1) is present.

4) For work covered by warranty at the buyer's plant, the vendor shall provide the necessary assistance, lifting gear, scaffolds and small parts etc. at no charge. Any replaced parts become the property of the vendor.

5) Excluded from the warranty are such defects that arise from placement and installation not made by the vendor, insufficient set-up, failure to observe the installation requirements and conditions of use, overloading of parts beyond the power specified by the vendor, negligent or improper handling and use of unsuitable operating materials. This also applies in the case of defects that are the result of material provided by the buyer. The vendor is also not liable for damages resulting from the actions of third parties, atmospheric discharge, overvoltages or chemical influences. The warranty does not apply to replacing parts subject to natural wear.

6) In the event of damages that occur during the warranty period, the vendor shall only bear the costs of the defective equipment, but no consequential damages to the supplied system due, for example, to: fire, overheating or damage from liquids. Furthermore, the vendor is not obliged to compensation for damages on facilities, equipment, buildings, etc., of the buyer or third parties.

7) If goods are produced by the vendor on the basis of the buyer's design data, drawings, models or other specifications, then the vendor's liability shall extend only to proper set-up. The vendor shall assume no liability in the case of purchase of used goods, or upon acceptance of repair jobs or upon modifications or rebuilding.

8) The warranty is void immediately, if the buyer or a third party not explicitly authorized performs any modifications or repairs to the supplied objects. Invoices for such work shall not be recognized. The originally agreed warranty period shall not be extended by elimination of defects in the scope of the warranty.

9) The collective terms under this provision apply correspondingly for any responsibility for defects based on other legal reasons.

10) The contractual partner of Mittes engineering GmbH shall be responsible for ensuring that the supplied parts, systems and other services comply with the local standards and regulations, and these are advised to Mittes engineering GmbH in writing.

11) Should the maintenance not be performed by Mittes engineering GmbH, the complete maintenance plan must be posted or faxed to Mittes engineering GmbH as proof no later than 3 days after the maintenance date.

12) Claims made by the customer regarding defective goods require that the latter has properly fulfilled its obligation to examine and locate faults in accordance with Section 377 of the commercial code (Handelsgesetzbuch, HGB) and has duly fulfilled its payment obligations. The customer must give notice in writing.

13) The limitation period for defect claims is 2000 operating hours, no longer than 12 months in the case of commercial customers, no longer than 24 months in the case of private customers, commencing as of the transfer of risk.

## **9. Withdrawal from the contract**

1) Prerequisite for the buyer to withdraw from the contract is a delay in delivery due to gross negligence on the part of the vendor, as well as unsuccessful expiration of a fixed appropriate respite. The withdrawal must be claimed by registered letter.

2) Prerequisites for the vendor to withdraw from the contract:

a) If the performance of delivery or commencement or continuation of services becomes impossible for reasons for which the buyer is responsible and is delayed despite fixing an appropriate respite,

b) If the buyer's financial circumstances are so bad that the vendor's claims are at risk, or if circumstances become known that are able to reduce the buyer's financial standing, then the vendor is entitled to refuse its services until the reimbursement has been made or guarantee

has been given for it. Equally, the vendor may prohibit resale of goods delivered with reservation of title or demand its surrender or transfer of indirect title at the customer's expense. Ultimately, the vendor may withdraw from the contract and claim damages for non-performance.

c) If bankruptcy proceedings are opened regarding the assets of the buyer, or an application for introduction of insolvency proceedings is refused due to insufficient funds, then the vendor is entitled to withdraw from the contract and to claim damages for non-performance without setting a respite.

3) In case of a withdrawal regardless of the vendor's claims for damages, services or partial services already performed are to be invoiced and paid as agreed in the contract. This also applies if the delivery or service has not yet been accepted by the buyer, as well as for preparatory measures taken by the vendor. The vendor shall also have the right to demand the return of objects already delivered instead.

## **10. Liability**

1) The vendor is only liable for damages outside the application of the product liability law, if it can be proven that it has acted with intent or with gross negligence. Liability for slight negligence, the replacement of corollary damages and damages to property, unrealised savings, losses of interest and damages from the claims of a third party against the buyer are excluded.

2) The vendor is not liable for property damage inflicted on a contractor. In the event of further sale or other passing on of goods that are objects of the contract to a contractor (including free of charge), the customer must apply the above clause on exclusion of liability and this clause for transfer of the clause on exclusion of liability on any further recipients. In case of breach of this obligation it shall indemnify and hold the vendor harmless in case of it being held responsible for property damages of a company within the scope of product liability and shall reimburse it for any costs incurred by it.

4) In the event of failure to adhere to any conditions for assembly, commissioning or use (e.g. those in operating instructions) or the official conditions for approval, any compensation for damages is excluded.

5) The limitations of liability according to 1) and 2) shall be transferred in full to possible recipients, including the obligation to continue the transfer.

6) Liability for slight negligence is excluded.

## **11. Joint liability**

1) Further liability to pay damages is excluded – without consideration of the legal nature of the claim lodged. This shall apply in particular for compensation claims for damages based on fault when entering into the contract, on account of other breaches of duty or on account of tortious compensation claims for property damage in accordance with Section 823 of the Civil Code (Bürgerliches Gesetzbuch, BGB).

2) The limitation according to 1) also applies, if the customer demands reimbursement of useless expenditure instead of a claim to compensation for damages in place of the performance.

3) Insofar as the liability for damages towards us is excluded or limited, this also applies in regard to the personal liability for damages of our employees, appointees, co-workers, representatives and vicarious agents.

4) If despite the liability disclaimer a liability for default in delivery is possible, we are at most liable for every full week of delay in the scope of a flat rate compensation of 0.5% of the delivery value for delay, however, it may not exceed 5% of the delivery value.

## **12. Reservation of retention of title**

1) We retain the title of the purchased object until we have received all payments under the supply contract. Should the buyer's conduct be in breach of contract, we shall be entitled to take back the purchased object. Taking back the object constitutes a withdrawal from contract. Once we have taken the purchased object back, we are authorised to sell it and the proceeds from the sale are to be offset against the buyer's liabilities – minus a reasonable sum to cover the costs of sale.

2) The customer is obliged to handle the purchased object with care; in particular it is obliged to insure the object at its own expense against damages due to fire, water and theft for the value of the purchased object when new. If maintenance and inspection work become necessary, the customer must carry them out in good time and at its own expense.

3) In the event of attachments or other third party interference, the buyer must notify us immediately in writing so that we can take legal action in accordance with Section 771 of the Code of Civil Procedure (Zivilprozeßordnung, ZPO). If the third party is not in a position to reimburse us for the costs of taking legal action both in and out of court, in accordance with Section 771 of ZPO, the buyer shall be liable for the shortfall we have incurred.

4) The customer is entitled to resell the purchased object in a proper commercial transaction; however, it shall assign to us here and now all claims up to the value of the final invoiced amount (including VAT) of our claim accrued by it from the resale to its buyers or to third parties, irrespective of whether the purchased object has been resold without or after being worked on. The customer shall remain authorised to collect these claims after assignment. Our authority to collect the claims ourselves remains unaffected by this. We shall, however, undertake not to collect the claims as long as the customer fulfils his payment obligations from the proceeds he receives, does not fall into arrears and, in particular, no application is made for composition or insolvency proceedings to be instigated or it does not stop making payments. If this is the case, however, we may consequently demand that the buyer informs us of the assigned claims and who owes them, passes over to us all the information required for collection and hands over the documents associated with this, and notifies the debtors (third parties) of the assignment.

5) Processing or transformation of the purchased object by the buyer shall always be carried out on our behalf. If the purchased object is processed together with other items not belonging to us, we shall consequently acquire co-ownership of the new object in proportion to the value of the purchased object (final invoiced amount including VAT) to the other processed items at the time when the processing takes place. Moreover, the same shall apply for the object created by processing as for the purchased object supplied subject to reservation of ownership.

6) If the purchased object is combined inseparably with other items not belonging to us, we shall consequently acquire co-ownership of the new object in proportion to the value of the purchased object (final invoiced amount including VAT) to the other combined items at the time when the combination takes place. If the combination takes place in such a way that the buyer's object can be regarded as the main item, it shall be deemed agreed that the buyer shall assign proportional co-ownership to us. The buyer shall retain for us the sole ownership or co-ownership thus created.

7) To secure our claims against the customer, the customer shall also assign to us claims accruing to it from combination of the delivery item with real property or against a third party. Furthermore the customer shall cede to us all claims it is entitled to towards the buyer of the produced energy after start-up of the plant to secure our claims.

8) We shall release our securities upon request by the customer if the value exceeds the outstanding claims to be secured by more than 10%; it is at our discretion to choose which securities to release.

**13. Industrial property rights and copyright**

1) If goods are produced by the vendor on the basis of the buyer’s design data, drawings, models or other specifications, then the buyer shall indemnify the vendor and hold him harmless in the case of any infringement of property rights.

2) Final planning documents such as plans, drawings or other technical documents as well as samples, catalogues, brochures, illustrations and the like shall always remain the intellectual property of the vendor and are subject to the relevant legal regulations regarding reproduction, plagiarism, competition, etc. 2.2 also applies to final planning documents.

**14. Place of jurisdiction, applicable law, place of performance**

1) The competent court at the location of the vendor’s main office is responsible for making decisions upon all disputes arising from the contract – including those regarding its existence or non-existence.

2) The contract is subject to Austrian law.

3) The place of performance for delivery and payment is the location of the vendor’s main office, even if handover shall take place in a different contractually agreed location.

**15) Severability clause**

1) Should any of the provisions of these General Terms and Conditions be invalid in part or in full, or become invalid due to legal requirements, the other provisions of these General Terms and Conditions remain valid. The parties undertake to replace the invalid provisions with a valid provision that comes as close to the intended commercial purpose of the invalid provision as possible.

Vendor’s signature

\_\_\_\_\_ (place, date, signature)  
\_\_\_\_\_

(Name in block letters)