

## General Terms and Conditions of Purchase

### TGE MARINE GAS ENGINEERING GMBH

3	08-04-2011	IFU – Issued for Use	<i>KS5</i>	<i>LE</i>	<i>SCH</i>
2	28-07-2009	IFU – Issued for Use	KS5	LE	SCH
1	15-09-2008	IFU – Issued for Use	SCH	LE	SCH
Rev.	Date	Subject of revision	Author	Checked	Validated

**GENERAL TERMS AND CONDITIONS OF PURCHASE**

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

**§ 1 Integral Parts of the Agreement and Application**

(1) The following provisions (hereinafter referred to as "General Terms and Conditions of Purchase"), as well as all documents attached to TGE's purchase order or specified therein, form altogether integral parts of the purchase agreement between TGE and the Contractor ("Agreement"). In case of contradicting provisions, the provisions shall apply in the following order of precedence:

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

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

(3) These General Terms and Conditions of Purchase shall also govern all future transactions between the Parties and shall also apply if TGE accepts delivery without reservation despite its knowledge of differing or contrary terms.

(4) These General Terms and Conditions of Purchase shall only apply vis à vis entrepreneurs, governmental entities, or special governmental estates in the meaning of sec. 310 para. 1 BGB (German Civil Code).

**§ 2 Offer, Acceptance**

The seller shall accept this offer within a reasonable time not exceeding the date of acceptance stated in the order.

**§ 3 Scope of Agreement**

(1) The Agreement 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 in terms of goods and services, including given guarantees, are specified in the Agreement. The Contractor shall inform TGE promptly of any missing planning parameters or other relevant documents. The Contractor may not rely on any missing determination of such planning parameters and preconditions in the Agreement once the Parties have agreed on its Subject Matter.

(4) The Contractor shall promptly and carefully inspect the documents, handed over by TGE, and is obliged to ask without delay for clarification, in case it has doubts or sees mistakes or contradictions.

(5) The planning, construction, manufacture and inspection of the Subject Matter, as well as the drafting of technical documentation shall, unless otherwise determined in the Agreement, be carried out in accordance with the standards and regulations at the Place of Use of the total plant 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 Subject Matter 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.

(6) 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 Agreement.

**§ 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 Agreement.

(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 Subject Matter, the Technical Specifications or the 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 para. (2).

**§ 5 Order Modifications**

(1) During the execution of the Agreement, TGE is entitled to request order modifications within a reasonable extent as far as such request is necessary to effectuate the purpose of the Agreement.

(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 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 with the Contractor.

(4) A potential order modification shall be issued by means of an order revision containing a full description of the work to be performed, the schedule of its execution as well as the effects on the total price and the delivery date.

(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 or the original delivery date.

**§ 6 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) 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 goods. The Contractor shall promptly notify TGE in writing of any changes it made to its technical documentation and shall clearly mark such changes.

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

(4) 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 Dates, Delivery and Packaging**

(1) All delivery dates stated in the order or otherwise agreed upon are binding. A schedule evidencing the actual manufacturing and delivery status shall be available at all times and shall be submitted to TGE in accordance with the Agreement, however, at least at each month's end.

(2) The Contractor shall immediately inform TGE of any threatening or existing delay in delivery, the reasons for such delay and the anticipated duration of such delay. The foregoing shall not affect the occurrence of a default in delivery.

(3) Any delivery shall be made free of charge to the agreed place of dispatch (hereinafter referred to as "Place of Dispatch").

(4) In case of default in delivery TGE reserves all rights under applicable law.

(5) The Contractor shall carry out the delivery and packaging of the Subject Matter in accordance with TGE's delivery and packaging instructions.

(6) Prior to delivery of the Subject Matter, 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 required in TGE's release of shipment.

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

(8) The Contractor shall be liable for any culpable excess of the dates agreed pursuant to § 7 para. (1) and shall pay a contractual penalty per calendar day of delay amounting to 0.25 % of the total order value, however all in all not exceeding 5 % of the total order value. Such contractual penalty may be claimed until the issuance of the final invoice.

(9) As far as events or circumstances occur which predictably delay the delivery of the Subject Matter or the performance of the services, the Contractor shall inform TGE about the estimated time of delay. As far as the date of delivery 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 Subject Matter or the performance of the services on its own costs.

(10) Notwithstanding the applicability of statutory rights to withdraw from the contract in case of partial shipments, TGE is also entitled to withdraw from the contract prior to the maturity of the respective contractual obligation in case pursuant to the information provided in accordance with § 7 para. (9) the delay will predictably result in a non-performance on the date of maturity and for such reason there is a danger for the security of the operation of the total plant.

(11) Any further statutory rights in case of delayed deliveries remain reserved, in particular TGE shall remain entitled to withdraw from the Agreement and shall be entitled to claim damages instead of delivery.

**§ 8 Spare Parts**

The Contractor shall, upon TGE's request, provide spare parts to TGE at reasonable prices and subject to the conditions of this Agreement. Upon start-up, the Contractor shall submit a recommendation of spare parts for an operating period of ten (10) years.

**§ 9 Passing of Risk, Shipment**

Irrespective of the costs of shipment, the risk of accidental damage, deterioration or perishing of the Subject Matter shall pass with the correct and complete delivery at the Place of Dispatch, unless an acceptance is agreed or provided pursuant to statutory provisions. In such case the risk shall pass with the acceptance of the Subject Matter.

**§ 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 Subject Matter, the Contractor may use these parts or materials exclusively for the Subject Matter. 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.

(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.

(3) Any agreed processing or reshaping by the Contractor shall be made on behalf of TGE. As far as materials supplied by TGE are processed, mixed or joined with other goods not owned by TGE, TGE shall obtain joint legal title to the new good in relation to the value of the good supplied by TGE to the other goods at the time of processing, joining or mixing. As far as the processing, joining or mixing is made in a manner that the good of the Contractor is to be considered as main good, it shall be deemed as agreed that the Contractor transfers to TGE proportionate joint ownership.

**§ 11 Prices, Payment**

(1) Prices shall include any costs for packaging.

(2) The purchase price is due and payable net within thirty (30) days from 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 the right to make payments for the Subject Matter prior to delivery only against prior transfer of the ownership or the granting of an equal security.

(6) 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 pursuant to statutory law or the Parties' mutual understanding, TGE and the end customer shall be entitled to request specific inspections and tests with regard to the manufacture and quality of the Subject Matter 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 customer for 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 customer.

(3) The Contractor shall provide to TGE and the end customer 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 customer 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 Retention of Title

(1) TGE does not consent to any prolonged or extended retention of title clauses in favor of the Contractor.

(2) As far as the Subject Matter shall be retrofitted into or connected with another good, or a new good is assembled out of the Subject Matter, this shall not happen on behalf of the Contractor as the manufacturer.

#### § 14 Acceptance

(1) As far as the acceptance of the Subject Matter is necessary pursuant to statutory provisions or is agreed between the Parties, such acceptance procedures for the Subject Matter 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 Subject Matter and 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 Subject Matter has been fully and duly assembled, 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 goods could be put into operation fully and properly and the technical documentation was delivered. Statutory claims shall remain unaffected.

(4) As far as the Agreement provides for certain operation data with regard to the Subject Matter, for example the consumption and volume streams, TGE will only grant acceptance of the deliveries and services of the Contractor after the successful trial run at the plant.

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

#### § 15 Defects and Liability

(1) Apparent defects are to be notified within a reasonable course of time. As far as the Subject Matter or parts thereof are delivered packed (preserved), it shall be sufficient for the obligation to examine such goods and notify any defects if TGE or its agents inspect the

respective Subject Matter upon first use and shall then promptly notify the Contractor.

(2) TGE reserves all rights and remedies for non-conformity provided by applicable law. 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) The right to claim remedy of defects shall already exist prior to the completion of the Subject Matter.

(4) As far as the Contractor does not comply with its obligation to remedy 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 on the Contractor's cost. This right shall already exist if the Contractor refuses to remedy defects, which have been detected during the performance of the Agreement, 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 shall be time-barred after 36 months of the passage of risk.

#### § 16 Warranty of Title

(1) The Contractor warrants that the Subject Matter as well as its operation at the Place of Use 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.

(2) Claims based on defect in title shall be time-barred pursuant to § 15 para. (6).

#### § 17 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 delivered goods. The above indemnification shall not apply if the claim is based on TGE's intentional or grossly negligent breach of duties.

(2) The Contractor shall maintain all required compulsory 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 these insurance certificates evidencing the insurance coverage required by the Purchase Order.

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

#### § 18 Confidential Information

(1) Any confidential information which the Contractor receives from TGE regarding the execution of the Subject Matter shall remain the sole property of TGE and shall be treated as confidential. These documents must not be copied, published or made available to third parties or used otherwise than for the execution of the Agreement 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 § 18. 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; however, even in such case the Contractor agrees to keep secret and confidential the fact that it obtained such confidential information from TGE.

(5) Any legal title in the Technical Specifications as well as all drawings, documents, computer programs, models, data carriers and other technical information provided by TGE to the Contractor for the Contractor's performance of the Agreement shall at all times remain the sole property of TGE. Unless necessary for the execution of the Agreement, the Contractor shall not be granted any exploitation rights or licenses.

(6) The Contractor shall not publish any details or information in connection with and about the Subject Matter, the plant or the end customer or cause any such publicity to be issued without TGE's prior written consent.

#### § 19 Termination and Withdrawal

(1) TGE shall be entitled to terminate the Agreement at any time. Unless the termination is made for good cause, TGE shall pay the agreed remuneration under deduction of the costs saved by the Contractor as well as of such part of the remuneration which the Contractor has omitted to gain by other use of the work force elsewhere or which he maliciously failed to obtain. Upon TGE's request, the Contractor shall disclose all costs occurred and agrees to an inspection of such costs by TGE.

(2) The Contractor agrees to promptly adhere to any of TGE's requests to discontinue the manufacturing.

(3) The right of TGE to terminate the Agreement 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) Notwithstanding any further statutory rights of withdrawal, TGE shall be entitled to withdraw from the Agreement if the economic circumstances of the end customer have significantly changed since the time of ordering, particularly if the end customer has suspended or terminated the order for the total plant without responsibility of TGE, or if the approvals by local authorities necessary for the manufacturing or the operation of the total plant have not been granted.

(5) Notwithstanding further statutory rights to withdraw from the Agreement, TGE shall be entitled to withdraw from the Agreement in part or in whole as far as TGE is not able to deliver the Subject Matter to the end customer due to force majeure.

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

#### § 20 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 this Agreement without the prior express written consent of TGE.

#### § 21 Applicable Law, Jurisdiction

(1) The Agreement shall be exclusively governed by the substantive laws of the Federal Republic of Germany.

(2) Place of performance and exclusive place of jurisdiction for all disputes arising out of or in connection with the Agreement shall be TGE's official business location.

#### § 22 Settlement of Disputes

The Parties shall use their best endeavours to amicably settle any disagreement in connection with or arising out of the Agreement. In absence of such a settlement, the dispute shall be referred to the competent German ordinary courts.

#### § 23 Final Provisions

(1) The language of Agreement and dispute shall be English. Technical documentation shall also be delivered in the English language.

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