Voith Turbo Vertriebs GmbH & Co KG

General Terms of Sale

§ 1 General

1.1 These General Terms of Sale shall apply to:
   - any person acting in a commercial or self-employed professional capacity (entrepreneur) upon conclusion of the contract, or
   - legal entities under public law, or public special assets.

1.2 All supplies and services shall be based on these General Terms of Sale as well as separate contractual agreements, if any. Deviating purchasing conditions of the Buyer shall not become part of the contract either by acceptance of the order or unless objections are made. In particular, no contract actions taken by the Seller shall be interpreted as an agreement to deviating contractual conditions. In the absence of special agreement, a contract shall enter into effect upon the Seller's written acknowledgment of order or - in the absence of this order confirmation - through acceptance of the delivered goods through the customer. Written form of the order confirmation shall also include confirmations sent in textform by data transfer (e.g. email) or telefax.

1.3 If clauses customary in the trade are agreed, the rules on interpretation of them as defined in the latest version of Incoterms shall apply, unless otherwise specified in the following.

1.4 Documents such as illustrations, drawings, and information regarding dimensions and capacities shall be regarded as an approximate guide only, unless it is explicitly stated that they are binding.

1.5 The Seller reserves ownership of and copyrights to samples, cost estimates, drawings and the like, and to information embodied in a tangible or intangible manner, including in electronic form. This information shall not be reproduced or made available to a third party without the consent of the Seller. The Seller shall make documents designated as confidential by the Buyer available to a third party only with the Buyer's consent.

1.5.1 Supplies and services for railcars and special vehicles: To ensure proper operation, maintenance and ease of installation and removal of the units, the Buyer shall submit to the Seller for inspection the drawings and plans for connection of the units on the in- and output sides before the first installation as well as before any modifications later on.

1.5.2 Supplies and services for industrial applications: The goods to be delivered shall always conform to the technical standards and regulations in force in Germany or Austria. The Buyer shall bear the costs of inspections and acceptance procedures above and beyond the normal scope of inspection at the Seller's works. Inspections in accordance with foreign standards and regulations, which are to take place in the Seller's country, shall be performed at the Buyer's expense by companies accredited in the Federal Republic of Germany or in Austria, unless the contract provides otherwise.

§ 2 Price and Terms of Payment

2.1 Unless otherwise expressly agreed, the prices shall be ex works including standard packaging and loading at the works (except for the business establishment in Vienna), however, excluding unloading. The prices shall be subject to turnover tax in the statutory amount.

2.2 In the absence of special agreement, the payment shall be made, without any deduction, into the Seller's account as follows:
   - one third as an advance payment when the order is placed,
   - one third after expiry of half the period within which delivery is to be made,
   - balance upon delivery, or upon notification of readiness for dispatch if the delivery cannot be effected immediately upon completion of the goods due to reasons for which the Seller is not responsible.

2.3 Unless otherwise specified in the acknowledgement of order, payments shall be due net (without deduction) within 30 days of the invoice date. The statutory provisions regarding the consequences of default in payment shall apply.

2.4 The Buyer shall only be entitled to offset rights, if his counter-claims have legal force and are uncontested or acknowledged by the Seller. In addition, the Buyer shall be authorized to exercise his right of retention only insofar as his counterclaim is founded on the same contractual relationship.

§ 3 Intragroup Set-Off Clause

The Seller shall be entitled to set off any amounts due and not due, as well as amounts due in future, payable by the Buyer to the Seller or to companies of the Voith group, against such amounts payable by any of the stated companies to the Buyer. Upon request, the Buyer shall be informed about the status of participating interests. The Buyer shall agree that all securities given to the Seller are also used for securing any amounts payable by the Buyer to the above companies. Vice versa, all securities the Buyer has given to these companies shall also be used for securing the amounts owed by the Buyer to the Seller – from whatever title they may arise.
§ 4 Delivery Period, Delay in Delivery

4.1 The delivery period shall be as agreed upon by the parties. Compliance by the Seller with the agreed delivery dates requires that all commercial and technical issues have been settled and the Buyer has fulfilled all its obligations, such as obtaining the required official approvals or making an advance payment. If this is not the case, the delivery period shall be reasonably extended. This shall not apply if the Seller is responsible for the delay.

4.2 The delivery period shall be deemed to have been met if the goods have been dispatched from the Seller's works, or notification of readiness for dispatch has been given, before the expiry of such period. If acceptance is contractually required, the contractually specified acceptance deadline, or alternatively the time at which notification of readiness for acceptance is given, shall be authoritative, except in the case where the Buyer justifiably refuses acceptance.

4.3 If shipment or acceptance of the article to be supplied is delayed for reasons for which the Buyer is responsible or if the Buyer culpably violates other duties of cooperation on his part, the Seller shall be authorized to demand compensation for the damage he has incurred in this regard including any additional expenses.

Without prejudice to further claims, the Seller can otherwise dispose of the article to be supplied after he has set a reasonable period of grace and this has expired without remedy, in particular store the article to be supplied at the risk and expense of the Buyer and/or supply the Buyer within a reasonably extended period of time.

4.4 If a failure to observe the delivery period is due to force majeure, such as natural disasters, epidemics, war, armed conflicts, civil war, revolution, terrorism, sabotage, nuclear/reactor accidents, labour disputes or other events that are outside the Seller's control, the Seller shall be discharged from his performance obligations for the duration of the event and the delivery period shall be extended appropriately.

The Seller shall inform the Buyer of when such circumstances start and end as soon as possible. If the event lasts for more than 6 months, the Seller shall also be authorized to terminate the contract.

4.5 Claims due to delayed delivery shall exclusively be based on § 8 of these Conditions.

§ 5 Transfer of Risk, Acceptance, Packaging

5.1 Unless otherwise agreed individually, the goods shall be at the Buyer's risk from the time when loading at the Seller's works is started (respectively notification of the readiness for dispatch in the business establishment in Vienna), even if partial deliveries are made or if the Seller has assumed ancillary obligations, such as an obligation to bear the dispatch costs or deliver and install the goods.

5.2 If an acceptance is to take place, it shall immediately be carried out on the date of acceptance or alternatively after the Seller has given notice of the readiness for acceptance. The Buyer cannot reject the goods due to an insignificant defect, provided the Seller expressly accepts its obligation to remedy the defect.

5.3 If the dispatch and/or acceptance of the goods is delayed or does not take place owing to circumstances for which the Seller is not responsible, the risk shall pass to the Buyer on the day of notification of readiness for dispatch or acceptance. The Seller shall be obliged to take out insurance policies, e.g. a transport insurance, as demanded by the Buyer, the costs of which shall be borne by the Buyer.

5.4 Partial deliveries and their invoicing shall be allowed to the extent that they are reasonable for the Buyer.

§ 6 Retention of Title

6.1 The Seller shall retain title to the goods supplied until all its claims against the Buyer, including any outstanding balances, arising out of the business relationship with the Buyer have been settled (goods subject to retention of title).

The Seller shall be obliged to treat the delivered article subject to retention of title (retained goods) with care; in particular, he shall be entitled to insure it adequately against theft, breakage, fire, water and other damage, unless the Buyer proves to have taken out such insurance policy. In addition, the Seller shall have the right to mark the goods on the outside as being the Seller's property. The Buyer shall meet the formal requirements for the retention of title.

6.2 If the goods delivered under retention of title are incorporated into other goods that they are an integral part of the other goods, the Seller shall acquire joint ownership of the other goods. The new goods produced as a result of incorporation or processing of the goods the property of which is retained shall be such that joint ownership is always acquired by the Seller.

6.3 If the Buyer resells the goods supplied and/or processed, as laid down in 6.2, in accordance with the intended use, the Buyer shall assign to the Seller, with all incidental rights, any claims (final invoice amount incl. turnover tax) against its customers arising out of the resale, or an adequate part thereof, until full payment of the amounts owed by the Buyer has been made.

6.4 The Buyer shall remain authorized to collect the claim assigned pursuant to Section 6.3; the Seller's authorization to collect the claim himself shall remain unaffected thereby. The Seller shall not collect the claim as long as the Buyer does not take all steps necessary with the Buyer or has not discontinued payment, and an application for instigation of insolvency or composition proceedings has not been filed against the Buyer. If one of the above situations applies, the Seller can demand that the Buyer disclose the claims assigned or the Seller as security and provide all details required to collect them.
6.5 If the Buyer acts in contravention of the terms of the contract, particularly if it defaults in payment, the Seller shall be entitled, after sending a reminder, to retain all deliveries and services until the agreed consideration has been paid, to withdraw from all unfilled parts of the contract or to supply any outstanding services only with payment in advance without having to grant a period of grace before. All other rights of the Seller remain unaffected thereof.

Taking back, as well as seizure of the products by the Seller, shall not give reason for the Seller to rescind the contract.

The Buyer is obliged to informing the Seller immediately about all the acts concerning the retention of title, especially about compulsory execution or detraction of the goods subject to retention.

6.6 An application to initiate insolvency proceedings shall entitle the Seller to rescind the contract and demand the immediate return of the supplied goods, to provide delivery and services only after full receipt of payment or conditional upon payment-performance.

§ 7 Warranty
Subject to the provisions in § 8, the Seller shall assume a warranty obligation, to the exclusion of any further claims, for material defects and defects of title as follows:

as follows:

7.1 Material Defects
7.1.1 Parts which turn out to be defective due to a circumstance which took place prior to the passing of risk shall, at the Seller’s discretion, be repaired or replaced with new parts by the Seller free of charge. The Seller shall be notified in writing without delay of the ascertainment of such defects. Replaced parts shall become the property of the Seller. The presumption clause under § 924 ABGB (General Civil Code) shall be excluded. The Buyer can assert claims due to a defect only if he has properly fulfilled his obligations to examine the supplied article and to give notice of defects in accordance with Section 377 UGB (Austrian Commercial Code). A notice of defect has to be reported in writing in the adequate period of time and it has to include a detailed description of the defects claimed by the Buyer.

7.1.2 For essential products by other manufacturers, the warranty shall be limited to the assignment of the warranty claims of the Seller against its subsupplier(s). If the Buyer is unable to enforce such assigned warranty claims despite recourse to the court and measures of execution levied upon the property of the subsupplier(s), the warranty claims against the Seller shall revive.

7.1.3 Details furnished by the Seller regarding the properties of its products shall conform to the results of its measurements and calculations and shall be deemed to be quality features, but not warranted properties or guarantees.

7.1.4 The Buyer shall, in coordination with the Seller, grant the Seller the required time and opportunity to perform all amendments, repairs and replacement deliveries deemed to be necessary; otherwise, the Seller shall be relieved from liability for any resulting consequences. In urgent cases only, where the operational safety is endangered, and/or to prevent unreasonable damage, of which the Seller must be notified immediately, the Buyer shall be entitled to remedy the defect itself, or to have it remedied by a third party, and to demand the Seller to reimburse the incurred expenses.

7.1.5 Of the costs arising from the amendment, repair and/or replacement delivery, the Seller shall bear – provided that the complaint proves to be justified – the costs of the replacement part including dispatch costs to the place of performance, as well as the adequate costs of dismantling and installation, if installation of the part that later became defective was originally part of the contract. Furthermore, if this can be reasonably demanded in a single case, the Seller shall also bear the costs of providing any necessary fitters and assistants provided these costs are not increased due to the fact that the supplied article has been moved to a place other than the place of performance.

7.1.6 The Buyer shall, under the legal provisions, have the right to rescind the contract if the Seller – taking the statutory exceptions into account – allows the fruitless expiration of a reasonable period of time granted for repairing or replacement delivery. In the case of an insignificant defect, the Buyer shall only be entitled to demand a reduction in the contract price.

7.1.7 The Seller shall not assume any warranty obligations for defects which are attributable to measures taken or designs used at the express demand of the Buyer, or if they occur in materials or products supplied by the Buyer. In particular, the Seller shall not be liable for:
Inappropriate or improper use, faulty installation and/or start-up by the Buyer or third parties, failure to use genuine parts and materials, natural wear and tear, incorrect or negligent handling, improper maintenance, unsuitable operating media, substitute materials, faulty construction work, unsuitable subsoil, unusual influences of whatever nature (e.g. vibrations of units by other manufacturers, ingress of foreign particles), chemical, electrochemical or electrical influences, failure to back up or inadequate backing up of data by the Buyer; failure to check or inadequate checking of programs and data for computer viruses by the Buyer - unless they can be attributed to culpable acts or omissions on the part of the Seller.

In the case of repair orders or modifications or rebuilds of old equipment and equipment by other manufacturers as well as for used goods, the Seller shall not assume any warranty.

7.1.8 The Seller shall not be liable for the resulting consequences if the Buyer or a third party performs repair work inadequately. The same shall apply if modifications are made to the goods delivered without the previous consent of the Seller.

7.1.9 The Buyer shall be obliged to return the defective part to the Seller if requested by the Seller.

7.1.10 Subject to Section 9.2, the above warranty provisions shall apply accordingly to rectification of defects.
7.2 Defects of Title

7.2.1 If the use of the supplied goods infringes upon any domestic industrial property rights or copyrights, the Seller shall obtain the right of continued use for the Buyer, or alter the goods in a manner that can be reasonably expected by the Buyer so as not to infringe on property rights any longer. If this is not possible on reasonable economic terms or within a reasonable period of time, the Buyer shall have the right to rescind the contract. On the stated conditions, the Seller shall also have the right to rescind the contract. In addition, the Supplier shall, if being at fault, indemnify the Buyer against uncontested or legally established claims raised by the affected holders of industrial property rights.

7.2.2 Subject to the provisions in § 8, the Seller’s obligations under § 7.2.1 shall be exclusive with respect to property right or copyright infringements. They shall exist only if:
- the Buyer notifies the Seller immediately of property right or copyright infringements,
- the Buyer assists the Seller to a reasonable extent in rejecting the asserted claims and/or enables the Seller to perform the modification measures mentioned under § 7.2.1,
- the Seller has the right to decide on all defensive action, including settlement out of court, - the legal imperfection in title is not attributable to an instruction by the Buyer or to the fact that the infringement only occurred as a result of combination of the supplied article by the Buyer with products or deliveries outside the Seller’s scope of supply and,
- the infringement of a right is not due to the fact that the Buyer has altered the supplied goods without permission or has used them in a manner not conforming to the contract.

7.2.3 The Seller does not warrant that the end products manufactured on the supplied article, including the manufacturing process used, are free of third-party property rights.

§ 8 Liability

8.1 If the supplied article cannot be used by the Buyer in accordance with the contract because the Seller is to blame for failure to implement or inadequate implementation of suggestions and advice provided before or after conclusion of the contract or for violation of other additional contractual obligations – in particular the obligation to provide instructions on the use of and maintenance of the supplied article – the provisions of Sections 7 and 8.2 shall apply accordingly, to the exclusion of further claims by the Buyer.

8.2 The Seller shall be liable for damage not caused to the supplied article itself – on whatever legal grounds – only:
- if he has acted with intent or gross negligence - in the case of defects to the supplied article, provided the Seller is liable for injury to persons or damage to privately used articles pursuant to the Austrian Product Liability Law (PHG) – within the limits of statutory provisions.

The Buyer has the full onus of responsibility for all conditions of entitlement.

The Seller shall not be liable for damage due to acts of ordinary negligence nor for consequential damages or damages for economic losses, loss of profits or savings, or loss of interest and damage resulting from third-party claims against the Buyer.

The liability of the Seller shall generally be limited to the typical, foreseeable damage.

8.3 Further claims for damages – on whatever legal grounds – shall be excluded.

8.4 The Seller shall not be liable for any damages in case of non-compliance with instructions for storage, assembly, commissioning and operation.

8.5 Claims that exceed the contractual penalties that were agreed on are excluded from the respective title.

§ 9 Statute of Limitations

9.1 All claims of the Buyer - on any grounds whatsoever - shall be statute-barred after twelve (12) months. The legal limitation periods shall apply to intentional or fraudulent conduct and claims under the Product Liability Law. The statute of limitations shall start to run, as defined by law; warranty claims, however, shall be statute-barred after twelve (12) months from the economic start-up, but not later than fifteen (15) months from the date of delivery. For special vehicles, a total utilization time of 2000 operating hours shall apply in addition, whichever comes first. The limitation period shall be reduced to twelve (12) months after delivery in the event of multiple shift operation.

9.2 If, as part of rectification of a defect, the Buyer obtains new rights in relation to defects, all claims shall become statute-barred at the latest 24 months from when the original part was supplied.

§ 10 Use of Software

10.1 To the extent that software is included in the scope of supply, the Buyer shall be granted a non-exclusive right to use the supplied software, including its documentation. Permission shall be given to use the software with the delivered products it is meant for. The use of the software on more than one system is prohibited.

10.2 The Buyer may reproduce, revise or translate the software or convert from the object code into the source code only within the legally permissible scope. The Buyer shall undertake not to remove manufacturer's information – in particular copyright notices – or to change them without the prior written consent of the Seller. All other rights to the software and the documentation, including the copies, shall remain with the Seller and/or the software supplier. Sublicensing shall not be permitted.

10.3 Before providing the software to the Buyer, the Seller shall use state-of-the-art, up-to-date protection measures to check it for computer viruses. Trojan horses, virus hoaxes and similar programs, program parts and malicious functions that may result in loss or falsification of data or programs or impairment of systems or parts of them (hereinafter referred to as “computer viruses”). Nevertheless, it is not possible to rule out the risk that the software contains unknown or mutated computer viruses or that such viruses may enter an (operating or control) system of the Buyer at a later time and possibly change or delete program data of the software or other data or programs or impair systems.
10.4 Consequently, the Buyer himself shall likewise take measures to protect against computer viruses and other destructive data. The Buyer shall be obliged to test whether the supplied software or files are infected with computer viruses before executing the software or opening the files. This shall also apply to software the Buyer wishes to use as part of his (operating or control) systems, where the functionality of his software may be affected thereby.

10.5 The Buyer shall be obliged to back up data himself on a regular basis in order to prevent loss of it as a result of computer viruses. If data is lost or manipulated, the Seller shall be liable only for the cost involved in restoring the correct data if the Buyer has backed it up properly.

§ 11 Applicable Law, Place of Jurisdiction

11.1 All legal relations between the Buyer and the Seller shall exclusively be governed by the law of the Republic of Austria excluding the referral rules. Application of the UN Convention on Contracts for the International Sale of Goods is renounced.

11.2 For Buyers based within the European Union the place of jurisdiction shall be the Provincial Court of St. Pölten competent for the headquarters of the Seller.

Unless another legal venue is mandatory under statutory law, all disputes arising out of or in connection with contracts between a Seller and the Buyer shall be settled by arbitration proceedings under the Rules of Arbitration of the International Chamber of Commerce by one or several arbitrators appointed in accordance with the said rules. The version of the Rules of Arbitration as in force at the date when the Notice of Arbitration is received shall apply. The place of arbitration shall be Vienna. The language of arbitration is German.

However, the Seller shall be entitled, at its own discretion, to alternatively bring action against the Buyer at the Buyer’s venue.

§ 12 Federal Data Protection Law

The Seller shall be entitled to store, transfer within the Seller’s country and abroad, use, alter and erase data related to persons as given by the Buyer in the course of business. The Buyer shall thus be notified.

§ 13 General Provisions

13.1 Unless otherwise specified in the acknowledgement of order, the place of performance for the mutual obligations arising from the contractual relationship shall be the Seller’s headquarters. This provision shall also apply if trade terms have been agreed.

13.2 Any declarations made with the intention of establishing, safeguarding or exercising rights shall be made in writing. Written form shall also include declarations sent in textform by data transfer (e.g. email) or fax, unless the written form is mandatory according to applicable law.

13.3 The Buyer may not, without the Seller’s written consent, assign its rights under the contract to third parties.

13.4 If the Seller provides installation, commissioning, maintenance, repair or similar services, the relevant special terms and conditions of the Seller shall apply additionally and with precedence.

§ 14 Severability

Should one provision of these General Terms of Sale or one provision of an agreement individually concluded between the parties be invalid, the validity of the remaining provisions of these General Terms of Sale or of the individual agreement shall not be affected. The same shall apply accordingly to gaps in these General Terms of Sale or the individual agreements, if any.