

General Terms of Delivery of GUGLER Water Turbines GmbH

I. General:

1. The General Terms of Delivery (GTD) are applicable to contracts placed with us as Sellers regarding delivery of goods and equipment and installation works in connection with shipments.
2. Deviations from the GTD or supplementary agreements require the explicit written approval of the Seller to come into force.
3. Subsidiary the installation works are subject to the Conditions of Installation of the Austrian Trade Association of the Mechanical and Structural Steel Association in the relevant prevailing version.

II. Contract conclusion:

1. The conclusion of the contract is effected – after the conveyance of an offer from the Seller and submittal of an order by the Buyer – with the dispatch of the Confirmation of Order to the Buyer.
2. Changes and/or amendments of the contract require the Seller's confirmation to come into force.
3. Specifications stated in catalogues, brochures, product descriptions etc. are binding only if these are explicitly referred to in the Confirmation of Order as being item of the contract.
4. In case import and/or export licences, foreign exchange authorisations and/or other approvals are required for the execution of the contract, the Buyer is pledged to provide the necessary licences and/or authorisations in due time.

III. Delivery:

1. The Term of Delivery commences from the date where the Buyer has met all the technical, commercial, financial and other requirements incumbent upon him. In particular the time of delivery shall begin with the receipt of the down payment. In case the payment has to be secured by bank guarantee(s) and Letter of Credit respectively, the time of delivery shall begin with the receipt of the bank guarantee and a workable Letter of Credit respectively and with the receipt of the down payment.
2. The Seller is entitled to allocate partial and/or pre-shipments.
3. The Seller indicates the Buyer his readiness for shipment before the equipment is dispatched. In case the Buyer shows the Seller that the dispatch of the equipment is undesired, the equipment is to be considered as delivered and the Seller can arrange for the storage against the reimbursement of all costs involved.
4. In case of unforeseeable circumstances or circumstances beyond the control of Seller and its suppliers, such as all cases of force majeure, which impede compliance with the agreed period of delivery, the latter shall be extended in any case for the duration of such circumstances; these include in particular armed conflicts, official interventions and prohibitions, delays in transport and customs clearance, damages in transit, shortage of energy and raw materials, labour disputes, defective goods of a larger or important piece of work, default on performance by a major sub-supplier or sub-contractor etc.
5. If a contractual penalty for default of delivery was agreed upon by contracting parties when the contract was concluded, it shall be executed as follows, and any deviations concerning individual items shall not affect the remaining provisions: Where delay in performance can be shown to have occurred solely through the fault of Seller, Buyer may claim for each completed week of delay an indemnity of at most one half of one per cent, however limited to a total of no more than 5 % of the value of that part of the goods to be delivered which cannot be used on account of Seller's failure to deliver an essential part thereof, provided the Buyer has suffered a damage to the aforesaid extent. Assertion of rights of damages exceeding this extent is precluded.

IV. Drawings, Records and Documentation:

1. The price includes two sets of sectional drawings with specifications of spare parts of the wearing parts as well as operating and maintenance instructions of each component. The documentation is predominantly in German. Several data sheets and descriptions of the components can also be provided in English.
2. A software backup copy of the turbine control system is supplied as CD-ROM in copyable version.
3. If the client requests the translation of the documentation stated under point 1., the Seller has to be notified of this demand within 14 days after the forwarding of the confirmation of order. He will then arrange for the translation to be done at the Buyer's expense.
4. Specifications of weights, dimensions, capacities, prices, efficiencies and suchlike which are stated in the catalogues, brochures, circulars, advertisements, illustrations and price lists etc. are without engagement.
5. Drawings, sketches, project records, manuals and other technical documentation shall always remain, as well as the samples, models, catalogues, brochures, illustrations and suchlike, the intellectual property of the Seller. These may not be made accessible to third parties without the Seller's explicit consent. Any utilisation, duplication, circulation, publication and demonstration thereof shall only take place with the Seller's explicit approval. If a conclusion of the contract does not occur, the documentation has to be returned immediately at the Seller's request.

V. Place of Fulfilment and Passage of Risk:

1. Place of fulfilment shall be, unless otherwise agreed upon in the contract, the Seller's place of business, ex works according to Incoterms latest edition. Regardless who organised respectively executed the transport or at whose ex moment the forwarding agent takes over the goods.
2. Place of fulfilment of the installation works shall be the place at which the service is rendered. The risk in respect of such services shall pass to the Buyer at the time the services have been rendered. If in connection with a shipment there are installation works to be carried out, then point 1. is applicable; and for installation works this point is valid.
3. Quality testing which has been separately agreed upon or the execution of a trial run does not influence the clause regarding place of fulfilment and passage of risk.

VI. Installation:

Unless otherwise agreed the installation costs are not included in the prices.

VII. Commissioning:

After the installation works the commissioning and the testing shall commence. This shall take place in close collaboration with all the companies involved in the erection of the power plant.

VIII. Trial run, Take over:

1. After the delivery and installation works the Buyer shall execute a 2-weeks trial run.
2. A shutdown which occurs during the first week of the trial run due to a fault on the Seller's side and lasting altogether five hours, will not interrupt the continuity of the trial run. If during the second week of the trial run a shutdown caused by a fault on the Seller's side takes place, a new two weeks trial run will restart after the fault has been eliminated.
3. If during the testing and trial run deficiencies are detected, the Buyer sets the Seller an adequate time limit to eliminate these. After the elimination of the deficiencies a new testing will be executed. The expenses in connection with the elimination of the deficiencies shall be borne by the Seller.

4. After the successful termination of the trial run the Buyer declares the equipment as taken over and the utilisation of the plant passes over to him.

IX. Prices:

The prices are to be considered as fixed prices for the period of the offer or contract, excluding sales tax.

X. Exemption for Liability:

The seller is neither liable for his own slight negligence nor for negligence of other persons whose services he used for the fulfilment of his obligations with the exception of bodily injury. The proof of gross negligence is incumbent on the buyer. Excluded is the liability for costs of litigation incurred by the Buyer due to indictments from third parties as well as indirect and/or consequential damages, profit loss, interruption of the operation, loss of business information and financial losses. Any claims for damages are subject to a limitation of period of three years after the termination of the trial run and the amount is limited with the public liability insurance.

XI. Payment:

1. Unless otherwise agreed, 40 % of the contract sum are due on receipt of the Confirmation of Order, 25 % are due four (4) months after contract signature, 25 % are due on delivery of goods ex works, 5 % are due on completion of installation and 5 % are due two weeks after the successful termination of the trial run.
2. On default in payment 8 % default interest p.a. above the respective prime rate shall be charged. In case of default in payment the Seller is moreover entitled, as protection of his interests, to decommission the plant in an adequate way.
3. The retention of payments to the Seller, the set off with claims against the Seller and the cession of claims against the Seller is forbidden.
4. Payments are to be effected net, without any discount, on an account made known by the Seller immediately after receipt of the invoice in the agreed currency.

XII. Retention of Title:

1. The goods shall remain property of the Seller until the purchase price has been paid in full.
2. If the payment of the purchase price is endangered, particularly due to lack of payment, impending insolvency or pending forced sales etc., the Seller is entitled to dismantle the equipment and place in safe-keeping at the Buyer's expenses. The Buyer has to inform the Seller immediately if any bankruptcy or clearing proceedings are led open on his assets or if a forced sale is conducted on his assets.
3. The Buyer has the responsibility to take the goods into custody and to see to their maintenance for the whole period of Retention of Title.

XIII. Warranty:

1. The Buyer has to inspect immediately each delivery and workmanship effected on its completeness and to check if these are free from defects. Possible defects and reclamations etc. shall be reported immediately to the Seller by means of a written list naming the defects in detail or else claims of any kind shall be excluded. The shifting of the burden of proof according to § 924 of the Austrian Civil Code and the Special Right of Recover according to § 933b of the Austrian Civil Code are excluded.
2. Upon receipt of such notice Seller shall, in case of a defect covered by the warranty, have the option to repair the defective goods or defective parts thereof or else to replace them or to grant a fair and reasonable price reduction.
3. Excluded from compensation is of course natural wear and tear, improper treatment, operation and maintenance which is effected inadequately or not in compliance with the operation and maintenance instructions.
4. The warranty shall lapse immediately if, without written consent of Seller, Buyer himself or a third party not expressly authorised undertakes modifications or repairs on any items delivered.

XIV. Industrial Property Rights and Copyrights:

1. Documentation such as plans, sketches, records such as mentioned under point IV or other technical documentation remain, like the models, catalogues, brochures, illustrations and suchlike, the intellectual property of the Seller.
2. If the Seller manufactures equipment based on construction specifications, drawings and models or other specifications given by the Buyer, the Buyer will indemnify and hold harmless the Seller from and against possible infringements.

XV. Withdrawal from contract:

1. Buyer may withdraw from the contract only in the event of delays caused by gross negligence on the part of Seller and only after a reasonable period of grace has elapsed. Withdrawal from contract shall be notified in writing by registered mail.
2. Irrespective of his other rights Seller shall be entitled to withdraw from the contract
 - a) if the execution of delivery or the inception or continuation of services to be rendered under the contract is made impossible for reasons within the responsibility of Buyer and if the delay is extended beyond a reasonable period of grace allowed;
 - b) if doubts have arisen as to Buyer's creditworthiness and if same fails, on Seller's request, to make an advance payment or to provide adequate security prior to delivery, or
 - c) if, for reasons mentioned in clause III., point 4, the period allowed for delivery is extended by more than half of the period originally agreed or by at least 6 months.
3. For the reasons given above withdrawal from the contract shall also be possible in respect of any outstanding part of the delivery or service contracted for.
4. If bankruptcy proceedings are instituted against any contracting party or an application for bankruptcy proceedings against that party is not granted for insufficiency of assets, the other party may withdraw from the contract without allowing a period of grace.
5. Without prejudice to Seller's claim for damages including expenses arising prior to a lawsuit, upon withdrawal from contract any open accounts in respect of deliveries made or services rendered in whole or in part shall be settled according to contract. This provision also covers deliveries or services not yet accepted by Buyer as well as any preparatory acts performed by Seller. Seller shall, however, have the option alternatively to require the restitution of goods already delivered.
6. Withdrawal from contract shall have no consequences other than those stipulated above.

XVI. Arbitration, Place of Venue:

The Austrian Substantive Law will be applicable under exclusion of the UN-Right of Purchase. The exclusive place of venue is the competent Court of Law at the Seller's place of business. The Seller is free to choose another place of venue.

XVII. Validity:

If single or several (partial-) regulation of the contract have no legal force or become null and void, this shall not affect the validity of the rest of the regulations.

In lieu of an invalid regulation another regulation shall be considered as valid, whose economical purpose comes nearest in a legally permissible manner to the invalid regulation.

The validity for offers is 3 months from the date of issue.