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## Standard Terms and Conditions of Business for Customer Services and Deliveries of Spare Parts

### 1. Scope of Application of the Terms and Conditions

**1.1** The following Standard Terms and Conditions of Business govern all our services and deliveries in connection with repairs, maintenance, sales of spare parts and service products. Except where otherwise stipulated below, all deliveries of goods (e.g. spare parts, exchange parts, service products) shall be governed by our Standard Terms and Conditions of Business for Deliveries and Payments (cf. No. 1.4). This reference particularly extends to terms of sale, reservation of title, the warranty and any recourse claim pursuant to section 478 of the German Civil Code [BGB].

**1.2** Our customer services and our deliveries of spare parts shall be rendered or made exclusively pursuant to our Standard Terms and Conditions of Business and any separate contractual agreements. Deviating terms and conditions of the Purchaser that we have not expressly recognised in writing shall not be applicable.

**1.3** Agreements deviating from these Terms and Conditions and/or collateral agreements must be in writing.

**1.4** Our Terms and Conditions of Business do not apply in relation to consumers. Subject to any subsequent amendments, these Terms and Conditions apply equally to all future services and deliveries. Our Standard Terms and Conditions of Business for Deliveries and Payments as valid at the time are available at [www.turbo-hks.com](http://www.turbo-hks.com)

### 2. General

**2.1** The assignment of our service personnel shall occur at our discretion, particularly as far as the level of ability and qualification of the individual employee is concerned in respect of the specific subject-matter of the contract. The personnel and any necessary tools shall first be requisitioned once all preparations for carrying out the work have been completed. If service personnel are replaced for reasons not attributable to us, the Purchaser shall bear the costs incurred as a result thereof. The service personnel shall not be allowed to make legally binding declarations.

**2.2** The Purchaser shall provide at its own expense and risk helpers and, in so as agreed, tools, hoisting gear along with operating personnel as well as all other required materials and a dry, lockable room suitable for safely storing delivery parts, tools, articles of clothing and other property of the service personnel. If tools or devices that we have provided at the place of assignment are damaged or lost, the Purchaser shall be obliged to pay compensation, provided that and to the extent that the Purchaser is responsible for the loss or damage.

**2.3** The Purchaser undertakes to ensure that the place of work is safe, prevailing safety rules are complied with and the working conditions are appropriate. In particular, the Purchaser shall clean the machinery on which repairs are to be carried out. It shall point out to our personnel specific safety rules prevailing at its works. The Purchaser shall obtain at its expense any necessary internal work permits, passes etc.

**2.4** The Purchaser shall bear the cost of interruptions in the work of our service personnel that are due to a breach of the above duties or are otherwise not attributable to us.

**2.5** Upon completion of the service assignment, but no later than at the end of every week of work, the Purchaser shall certify the hours worked by our service personnel on the work certificate to be presented by our service personnel. This certificate shall be binding upon the Purchaser.

### **3. Prices and Payment**

**3.1** Except where otherwise agreed, the remuneration that we invoice for goods and services shall be calculated commensurate with our domestic service rates or, in the case of assignments abroad, commensurate with our service rates for abroad. The remuneration shall be due upon receipt of the invoice.

**3.2** We shall be entitled to invoice the Purchaser for payments on account at the rate of 90 % of the value of the services rendered in each particular case. If the Purchaser defaults on its payments, we shall charge during the period of default interest at the rate of at least 8 percentage points above the base interest rate, unless we are entitled to claim a higher rate of interest on any other legal basis. We reserve the right to assert a further claim for damages caused by default.

**3.3** The Purchaser shall have the right to withhold payments or set off payments against counter-claims only to the extent that its counterclaims have been declared final and absolute, are undisputed or have been acknowledged by us.

**3.4** If payment is delayed, we may - after having correspondingly notified the Purchaser in writing - cease to perform our obligations until we have received payment.

**3.5** All our prices are ex works (excluding turnover tax, packaging and unloading). Our prices shall be charged exclusively in euros. Payments shall be made exclusively in euros at no cost to us.

### **4. Cost Estimate**

If the Purchaser wishes for a cost estimate before an order is to be carried out, it shall make this known to us in writing. Cost estimates shall only be binding if they have been submitted in writing and have been referred to as binding. A cost estimate may be exceeded by up to 15 % of the net order value without requesting the Purchaser's approval.

### **5. Remuneration for Orders Not Carried Out**

If we are unable to carry out an order because the defect complained about is not apparent during an examination, the Purchaser culpably fails to meet the agreed service date, required spare parts are not obtainable within a reasonable period due to circumstances not attributable to us or the work to be carried out is already dealt with elsewhere before our employee arrives, the cost incurred shall be invoiced to the Purchaser. If the Purchaser terminates an order whilst it is being carried out, section 649 of the German Civil Code [BGB] shall apply.

## **6. Travel Expenses**

The travel expenses of our service personnel (including the cost of transportation and transport insurance in respect of their personal luggage, tools taken along with them and tools forwarded) shall be invoiced as per expense. This also includes any and all costs in connection with obtaining a visa, medical and sanitary examinations and obligations as well as levies, security deposits and/or other payments relating to cross-border transactions. Travel expenses also include the cost of collectively agreed journeys home by the service personnel during the assignment period. Except where otherwise agreed, the cost of travelling by rail (along with surcharges) or the cost of travelling by air shall be charged for the service personnel. If a motor vehicle is used, an allowance per kilometre shall be charged commensurate with the cost rates valid at the time. We shall select the respective means of transport at our reasonable discretion. If the accommodation is further than two kilometres away from the place of assignment, the daily travelling expenses and daily travelling time shall be charged as travel time.

## **7. Acceptance**

The Purchaser shall be obliged to accept services that are in conformity with the contract following notification of their completion, where applicable following any testing contractually stipulated in the specific case. The performance shall be deemed accepted at the time the machine or the unit is commissioned, but no later than at the end of the fifth working day following notification of completion, whereby we shall not be required to fix a further time-period.

## **8. Warranty**

**8.1** We warrant, subject to the following provisions, that customer services shall be rendered free from defects of quality and/or defects in title. The warranty for new and used, delivered or installed spare parts and exchange parts shall be determined in accordance with the Standard Terms and Conditions of Business for Deliveries and Payments.

**8.2** A prerequisite for claims of the Purchaser in respect of defects is that obvious defects shall be reported to us in writing and complained about no later than seven working days following acceptance or commissioning. In the case of hidden defects, the period allowed for reporting and complaining about defects shall be extended to no longer than 2 weeks after the discovery thereof.

**8.3** We do not give any warranty for defects resulting from unsuitable or improper use (in particular the use of media other than those taken as a basis in the tender), faulty assembly or commissioning by the Purchaser or a third party, normal wear and tear, faulty or careless handling, wear and tear due to dirt-related excessive stress on mechanical and/or electronic parts, improper maintenance, use of unsuitable operating materials, defective construction work, unsuitable subsoil and/or chemical or electro-chemical or electrical influences. The same applies to consequences of improper alterations made by the Purchaser or a third party without our consent.

**8.4** In so far as a defect of quality or a defect in title exists, we shall at our option be entitled to render subsequent performance by remedying the defect or delivering a replacement. The Purchaser shall not be entitled to a specific method of subsequent performance. If all or part of the agreed remuneration has not yet been paid, we shall be entitled to make subsequent performance dependent upon payment of part of the remuneration by the Purchaser, taking account of the defect asserted. The Purchaser shall grant us reasonable time and opportunity to carry out all repair work and substi-

tute deliveries that we consider necessary. Otherwise, we shall be released from our liability for defects. If following a request by the Purchaser for work under the warranty it emerges that the defect complained about is due to a technical cause other than the cause existing at the time of the original service assignment, warranty claims shall be excluded. Costs incurred and supported by documentary evidence shall be invoiced to the Purchaser.

**8.5** Subsequent performance shall only extend to those parts that contain the defect and to parts automatically damaged by the defect despite proper handling. Replaced parts shall become our property.

**8.6** The Purchaser shall be entitled, at its option, to reduce the remuneration or cancel the contract and claim compensatory damages in lieu of performance pursuant to No. 9 of these Terms and Conditions if we have seriously and finally refused to render subsequent performance pursuant to No. 8.4 of these Terms and Conditions, or if the method of subsequent performance that we have chosen has failed or is unreasonable for the Purchaser, or the Purchaser has set us a reasonable period for subsequent performance to no avail.

**8.7** Claims for cancellation of the contract and for compensatory damages in lieu of performance pursuant to No. 8.6 of these Terms and Conditions are excluded if and to the extent that the defect asserted does not restrict, or only insignificantly restricts, the fitness of the performance for the contractually assumed use or the use typical of performances of the same kind.

**8.8** Claims pursuant to sections 437, 634 a of the German Civil Code [BGB] shall become time-barred after one year, unless they relate to building services. The limitation period shall begin at the time of acceptance or imputed acceptance pursuant to No. 7 of these Terms and Conditions. The above limitations of liability shall not apply if and to the extent that we have maliciously concealed a defect or the performance has been used for a building structure commensurate with its typical use and has caused defects therein.

**8.9** If use of a spare part leads to an infringement of industrial property rights or copyrights within Germany, we shall secure for the Purchaser at our expense the right to further use the spare part or shall modify the delivery item in a manner reasonable for the Purchaser such that industrial property rights are no longer infringed. If this is not possible on commercially reasonable terms or within a reasonable period, the Purchaser shall be entitled to cancel the contract. Subject to the aforementioned preconditions, we shall also have the right to cancel the contract. Moreover, we shall indemnify the Purchaser against undisputed claims, and/or claims declared final and absolute, of the respective holders of industrial property rights. Our aforementioned obligations shall apply only if the Purchaser informs us without delay of alleged infringements of industrial property rights and copyrights, the Purchaser supports us to a reasonable extent in repelling asserted claims or enables us to carry out modifications, we retain the right to take all measures for repelling asserted claims including out-of-court settlements, the infringement of industrial property rights is not due to an instruction given by the Purchaser and the infringement has not been caused as a result of the Purchaser having altered the spare part without authorisation or having used the spare part in a manner that is inconsistent with the contract.

**8.10** Every liability for defects over and above this shall be subject to the provisions in No. 9 of these Terms and Conditions.

## **9. Liability; Compensatory Damages**

**9.1** Except where otherwise provided below, other and more extensive claims of the Purchaser against us are excluded. This particularly applies to damage claims based on default, impossibility of performance, culpable breach of contractual subsidiary duties, culpa in contrahendo and tort. Therefore, we shall not be liable for consequential damages (e.g. lost profit) or other pecuniary losses that have not occurred on the delivered goods themselves.

**9.2** The above limitations of liability shall not apply in cases where we are liable under the provisions of the Product Liability Act [Produkthaftungsgesetz]. They shall equally not apply if a negligent or intentional breach of duty arising from the contractual relationship leads to personal injury or if a grossly negligent or intentional breach of a duty arising from the contractual relationship causes the Purchaser some other damages. In the case of all other damages in the context of the above sentence, liability shall however be limited to damages that can typically occur. This does not include consequential damages (such as lost profit for example).

**9.3** Furthermore, the limitations of liability shall not apply where we have maliciously concealed a defect in the performance or have given a guarantee for the quality of the performance.

**9.4** Where our liability is excluded or limited, this shall apply accordingly to the personal liability of our statutory representatives and persons assigned by us to perform an obligation.

## **10. Handling of Exchange Parts**

**10.1** Prices that we quote for exchange parts shall apply only on condition that a corresponding used part is made available to us for exchange and ownership thereof is transferred to us. If the part to be exchanged is not made available within two weeks (within Germany) or six weeks (abroad) after the risk in connection with the exchange part passes to the Purchaser, we shall be entitled to invoice the price of a corresponding new spare part instead of the price of an exchange part. In principle, the Purchaser shall send parts to be exchanged to us free domicile and shall insure these.

**10.2** Exchange parts must be in a condition ready for exchange, i.e. capable of being processed and recycled, and the number, model and completion thereof must correspond to the exchange part delivered. They must be free from defects due to wear and tear resulting from improper use or use contrary to the intended use. If the condition of exchange parts deviates from these requirements, an additional charge commensurate with the prices valid at the time for new parts shall be invoiced. This applies regardless of when the deviation is discovered.

## **11. Miscellaneous**

If a provision in these Terms and Conditions of Business or a provision in the context of any other agreements is or becomes ineffective, this shall not affect the validity of any other provisions or agreements. Ineffective or lacking clauses shall be replaced by effective clauses that come closest to the object aimed at in commercial terms.

## **12. Governing Law, Place of Jurisdiction, Place of Performance, Data Protection**

**12.1** These business relations as well as any and all legal relations between the Parties shall be governed by the laws of the Federal Republic of Germany. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG - "Vienna Sales Convention") dated 11 April 1980 is excluded.

**12.2** Gottmadingen is the place of performance for deliveries and payments.

**12.3** Gottmadingen shall be the place of jurisdiction for all legal disputes, including those arising in the context of proceedings for the enforcement of payment by check or bill of exchange. We shall also have the right to file suit at the Purchaser's registered place of business.

**12.4** Note pursuant to section 26 of the German Data Protection Act [BDSG]: We shall store personal data of our customers. (Please note our privacy policy)