

VBR Turbine Partners General Terms and Conditions of Sale.

1. General.

- 1.1. All offers from, order acknowledges of and agreements with VBR Turbine Partners, hereinafter referred to as **Seller**, for the supply and/or performance of VBR Turbine Partners of goods, works, rerates, services and/or combinations thereof (hereafter referred to as **Supply**) are subject to these conditions. The word "rerate" shall be considered to mean a change in one or more of the original design conditions, in particular the rebuilding of the equipment to other than the original nameplate conditions.
- 1.2. The other party, hereafter referred to as **Purchaser**, shall, by entering into the agreement with Seller, be deemed to waive any other condition and or stipulation, even if the same is expressly referred to and/or is stated expressly in or on any purchase order or other document originating from the Purchaser. Seller hereby explicitly rejects and does not recognize such terms, conditions and/or stipulations, unless and insofar as they have been accepted by Seller in writing.
- 1.3. Unless otherwise stated on the face of this order, the following terms and conditions shall apply.
- 1.4. Neither commencing performance of the supply nor acceptance of Purchaser's payment shall constitute the acceptance of Purchaser's order.
- 1.5. Acceptance by the Seller of any of Purchaser's conditions shall not automatically be deemed to extend to all future orders from and agreements with Purchaser.
- 1.6. Any document containing general or specific information, submitted with Seller's proposal or otherwise, are meant to assist in the understanding of the supply, and are not to be construed as determining the scope of supply or the performance of the specific service part, repair or rerate discussed in the proposal and do not become a part of the order.

2. Agreement.

- 2.1. An agreement, under which in this article orders, changes and/or additions are included, shall not be binding, unless agreed upon by Seller in writing.
- 2.2. In the event one or more stipulations of the agreement, thereby included stipulations of these General Terms and Conditions of Sale, are null and void or become legally invalid, the agreement shall remain valid, applicable and in force for the remaining. Parties shall consult on the stipulations which are null and void or have become legally invalid, in order to make alternative arrangements.

3. Price.

- 3.1. The prices for the supply pursuant to this quotation or order will be fixed and firm and shall not be not subject to any escalation during the course of the order, unless otherwise specified in writing.
- 3.2. These prices will be excluding V.A.T., including suitable packing for the selected transport and based on delivery EXW (Incoterms 2000), unless agreed otherwise.

4. Sales and similar taxes.

- 4.1. Taxes are not included in the price of supply provided. The amount of any present or future sales, use or other tax imposed by any Government, or any state or local governmental authority, except taxes imposed on net income, which Seller now or hereafter shall be required to pay, either on its own behalf or on behalf of Purchaser, or otherwise, with respect to the service parts, repair or rerate covered by this agreement, shall (unless such prices are expressly stated to be inclusive of such tax) be added to the prices contained herein and paid by Purchaser in the same manner and with the same effect as if originally added hereto. If Purchaser wishes to claim exemption, Purchaser shall provide Seller with evidence of such exemption. However, use or similar taxes which are applicable shall be payable by Purchaser to Seller at or before the time when said taxes are due.
- 4.2. If the taxes, for which Purchaser is liable, are demanded of Seller by any governmental agency, Purchaser shall pay them to Seller upon receipt of an invoice thereof from Seller. All stamp taxes, fees and similar expenses pertaining to this transaction, including, without limitations, its execution, translation, registration, legalization and authentication shall be for the account of Purchaser.

5. Invoicing.

- 5.1. Upon completion of delivery Seller shall issue an invoice in duplicate, duly signed by a person authorized by the company of Seller, stating the:
 - Purchaser's contract number
 - Seller's VAT-number, IBAN-number and account number
 - Goods, including all the relevant part numbers, and/or services and/or installment
- 5.2. Seller shall prior to or with each shipment, or together with the relevant invoice, provide Purchaser with the documentation as specified in the order.

6. **Payment.**

- 6.1. Payment by Purchaser shall take place within thirty (30) calendar days after receipt of Seller's invoice.
- 6.2. If the service parts, repairs or rerates are supplied in partial shipments, pro rata payments shall be due for the partial shipments.
- 6.3. Alternative and/or revised payment terms may be applicable, to the sole discretion of the Seller, due to change in Purchaser's credit rating, and such alternative and/or revised terms may include, without limitation, cash payment before shipment.
- 6.4. Payment by Purchaser of the total sum specified on the invoice does not relieve Purchaser from his obligations under this order and cannot be considered or interpreted as payment for any other supposed obligation of Purchaser against Seller.
- 6.5. At no time shall Purchaser, nor shall Purchaser allow its customer, to assert a lien against Seller or Seller's supplier or Seller's subcontractor with respect to any due payment pursuant to this order.
- 6.6. In the event that payment by Purchaser is overdue, Purchaser is automatically in default without further notice on expiry of the applicable payment term, and Seller shall become immediately entitled to and Purchaser shall pay to Seller, interest on the sum overdue at a rate of one half percent (0,5%) per week commenced, without prejudice to the right of Seller to claim additional compensation when this rate does not cover the loss actually suffered by it.
If the payment by Purchaser is overdue for more than three (3) months, Seller may enlist the services of a collecting agency. All the costs arising from this will be for the account of the Purchaser.

7. **Inspection and testing.**

- 7.1. Purchaser, its customer or third party acting on Purchaser's instructions shall be entitled to inspect or test the supply ordered at Seller's premises, at their own expenses.
- 7.2. As applicable, Seller shall inform Purchaser in due time about the date on which any of the supply is ready for inspection or testing to enable Purchaser, its customer or third party to be present thereat.
- 7.3. Seller shall use its best efforts to permit Purchaser or its representative to perform expediting functions or inspections at subcontractor's facilities. In the event subcontractor refuse to permit such expediting or inspection, Seller will perform these functions. Any delay in shipment resulting from this inspection will be the responsibility of Purchaser. Seller will coordinate all expediting or inspections.
- 7.4. In the event that Seller performs the expediting or inspection functions for and on behalf of Purchaser, regardless of the reason, all the costs of these inspections and expediting, including but not limited to cost of travelling, board and lodging, will be for Purchaser's account.
- 7.5. Any part of the goods rejected or otherwise not meeting the standards, shall remain the inalienable property of Seller, and will be returned for repair, replacement or re-performance to Seller at Seller's expense.

8. **Delivery, delay and storage.**

- 8.1. The Seller shall ship all goods at the most advantageous rates, suitably packed for the selected transportation, on the date stipulated in the order, to the designated location specified by Purchaser, unless otherwise agreed upon in writing by Purchaser.
- 8.2. The delivery terms shall have the meaning as set forth in "Incoterms 2000" issued by the International Chamber of Commerce, Paris, France.
- 8.3. In the event that delivery or any other act or condition affecting payment for the supply or any part thereof, shall be delayed on account of failure of Purchaser to give appropriate shipping or delivery instructions, or on account of any request, act or default of Purchaser, or in the event Purchaser is unable to receive shipment, or in the event Seller is prevented from making shipment due to causes beyond Seller's reasonable control, as described in article 8.5 below, payment therefore shall become due as if shipment had been made, in which case the title shall pass to Purchaser.
- 8.4. In any such case, as defined in article 8.3 above, Seller will store the goods in a suitable manner, for and on behalf of Purchaser and shall be entitled to and Purchaser will pay to Seller, reasonable storage, transportation and handling charges, insurance and administration costs, as well as compensation for the loss of interest. These costs will be charged by separate invoice to Purchaser monthly.
- 8.5. In no event shall Seller be liable for delays in delivery when such delays are caused by conditions beyond its reasonable control, including but not limited to, strikes, labor or transportation difficulties, war (declared or undeclared), floods, fires, earthquakes, explosions, epidemics, acts of Governments, governmental priorities, allocations, regulations or orders affecting materials or facilities, acts of God, freight embargoes or when Seller's delay in performance is caused by acts (or omissions) of Purchaser, including but not limited to delay in return of approved specifications and other data, and/or request for additional specifications or other data. In such event Seller's time for performance under the agreement shall be extended accordingly.



9. **Packaging.**

- 9.1. Seller shall properly pack the goods, suitable for the mode of transportation and the normal handling at the place of destination, and shall be marked in accordance with Purchaser's instructions.
- 9.2. All packaging used shall become the property of Purchaser, unless otherwise agreed upon in writing between Purchaser and Seller.

10. **Identification.**

Each shipment under this order will be positively identified by suitable marking on the outside of the package. An itemized list of content will be contained in each shipment bearing Purchaser's order number

11. **Warranty.**

- 11.1. Seller warrants that the supply delivered under or pursuant to this order shall be free of any claim of any nature by any third party and that Seller will convey clear unencumbered title thereto to Purchaser as provided hereunder.
- 11.2. Seller warrants that the supply delivered under or pursuant to this order shall be unused and of first class design, construction, materials, composition, quality and workmanship, and shall be free from defects.
- 11.3. Should any part of Seller's supply prove, under normal use and service, to have been defective when shipped (as determined by Seller), Seller warrants that it will, at its sole option, repair or replace the defective part at Seller's expense, against same delivery conditions as when sold, provided that Purchaser notifies Seller in writing of such defect, within twelve (12) months, from the date of delivery of the supply at Purchaser's destination, unless agreed otherwise. In the event that the defective part has been delivered and installed by Seller, than Seller will at Seller's expense perform the de-installation, installation and re-commissioning of the repaired or replaced part or, at Seller's sole option, pay the cost thereof if and as agreed between Purchaser and Seller prior to the de-installation of the defective part.
- 11.4. On request of Seller, the part claimed to be defective will be returned to Seller or, to the option of Seller, to the factory where made, for inspection and test.
The costs of transportation, insurance, tax and duties is to be prepaid by Purchaser.
- 11.5. If in Seller's opinion repairs have to be effected at Purchaser's premises, local labor shall be placed at the disposal of Seller's Representative by Purchaser, free of charge to Seller, and likewise lifting and hoisting equipment of sufficient capacity, upon request of Seller's representative.
- 11.6. Seller shall not be liable for any damages or delays caused by defective material or workmanship. No allowance will be made for repairs or alterations made by others without Seller's written approval or consent. If repairs or alterations are attempted without Seller's approval or consent, Seller's warranty is void. Unless otherwise clearly and emphatically agreed and stated in writing, no part of the supply shall be deemed to be defective by reason of its failure to resist the action of erosive or corrosive gases or liquids, or the deposition of foreign material from such gases or liquids.
- 11.7. Seller assumes no responsibility for damages caused by improper installation or by violation of its rated operation condition internal or otherwise, or by improper handling or maintenance. Except as provided in this clause, all liability of Seller howsoever arising, and all warranties, representations or conditions, whether expressed or implied, in relation to service parts, repair or rerate are excluded.

12. **Assignment.**

Substantial or minor portions of this order may be assigned, subcontracted or transferred by Seller without prior written consent of Purchaser.

13. **Confidential information.**

The Seller shall treat all business information, in the broadest possible meaning of the word, in connection with Purchaser, which has been brought or come to his knowledge by the Purchaser and/or within the framework of the agreement, confidential and shall neither disclose the same to any third party, nor use this information for purposes other than the execution of the work pursuant to this order, unless prior written consent has been obtained from Purchaser.

14. **Setoff.**

The Purchaser is not allowed to set off or deduct any amount owed by Purchaser or Purchaser's affiliated companies to Seller or to Seller's affiliated companies on this order.

15. **Limitation of Liability.**

- 15.1. In no event will Purchaser, nor shall Purchaser's customer, nor shall their affiliated companies, be liable to Seller for any indirect, incidental, consequential, or punitive damages, or for loss of profits, revenue, or data, whether in an action in contract, tort, strict liability, or otherwise, even if advised of the possibility of those damages. Purchaser's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this order or from the performance or breach thereof shall in no case exceed the price allocable to the supply or unit thereof, which gives rise to the claim. Purchaser shall not be liable for penalties of any kind. Any action resulting from any breach on the part of Purchaser as to the supply delivered hereunder must be commenced within one (1) year after the cause of action has accrued and all rights of Seller to commence any court action or proceeding with respect to this order shall terminate one (1) year after the cause of action has accrued.
- 15.2. In no event will Seller, nor shall any of Seller's affiliated companies, be liable to Purchaser, to Purchaser's customer or to their affiliated companies for any indirect, incidental, consequential, or punitive damages, or for loss of profits, revenue, or data, whether in an action in contract, tort, strict liability, or otherwise, even if advised of the possibility of those damages. Seller's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this order or from the performance or breach thereof shall in no case exceed the price allocable to the supply or unit thereof, which gives rise to the claim. Seller shall not be liable for penalties, except for liquidated damages for late delivery. Any action resulting from any breach on the part of Seller as to the supply delivered hereunder must be commenced within one (1) year after the cause of action has accrued and all rights of Purchaser to commence any court action or proceeding with respect to this order shall terminate one (1) year after the cause of action has accrued.
- 15.3. If Seller advises or provides assistance to Purchaser concerning any service part, system or work, not necessary or required pursuant to this order or any document pertaining to the order or any other mutual agreement in writing, the assistance or advise to Purchaser shall not constitute any ground to Purchaser to hold Seller responsible for or start any lawful act for warranty, tort (including negligence), strict liability, indemnity or otherwise.

16. **Title and Risk of loss.**

- 16.1. The title to goods, pursuant to this order, shall pass to Purchaser upon physical delivery to Purchaser or Purchaser's customer and upon receipt by Seller of full payment from Purchaser or Purchaser's customer. In the event of prepayment, the title to the goods, including the materials from which they are made, shall pass to Purchaser as soon as the prepayment from Purchaser is received by Seller.
- 16.2. Seller assumes the following risks:
- a. all risks of loss or damage to all goods, work in process, materials and other things until delivery thereof as herein provided
 - b. all risks of loss or damage to third persons and their property until delivery of the goods as herein provided
 - c. all risks of loss or damage to any property received by Seller from or held by Seller, its supplier or its subcontractor for the account of Purchaser, until such property has been delivered to Purchaser or its customer as the case may be
 - d. all risks of loss or damage to any of the goods or part thereof rejected by Purchaser, from the time of shipment thereof to Seller until redelivery thereof to Purchaser.

17. **Changes and additions.**

Purchaser shall have the right to make changes to any one of the following, provided such changes are agreed to in writing by Seller and Purchaser:

- specifications, drawings and data of the service parts, repair or rerate which are specifically manufactured for Purchaser
- method of shipment or packing
- place of delivery

If any such change result in an increase or decrease in the cost, or the time required for the performance of this order, Seller shall notify Purchaser within ten (10) calendar days following the change requested by Purchaser with Seller's written proposal for adjustment to price or delivery along with sufficient supporting data to justify such adjustments for Purchaser's consideration and discussion with Seller. Purchaser will advise Seller, within ten (10) calendar days following the receipt of Seller's proposal, either by written change order or otherwise in writing, the final result of his considerations.

18. **Suspension, termination and cancellation.**
- 18.1. Purchaser shall have the right at any time to direct Seller by written, telegraphic or electronic notice, or verbal notice confirmed in writing, to rescind or to suspend all or any part of the work associated with the supply being done pursuant to this order. If the work associated with the supply is suspended pursuant to this paragraph, Seller is entitled to an equitable adjustment for any increase in the delivery time and the cost or both, performing this order necessarily caused by such suspension, and Purchaser will issue a written change order accordingly. Seller will advise Purchaser the consequences of this suspension in writing within ten (10) working days following written notification of the termination of the suspension.
- 18.2. Purchaser shall have the right to cancel or to terminate all or any part of the work associated with the supply being done pursuant to this order, after having submitted a notice of default to Seller, if and insofar as the Seller does not, does not in a timely fashion, or does not adequately fulfill any obligation towards Purchaser, as well as in case of moratorium or bankruptcy and closing down or liquidation of its business. Upon receipt of such notice of termination or cancellation, Seller shall immediately act so that no further costs are incurred, and shall thereafter do only such work as may be necessary to preserve and protect work already in progress and to protect material and equipment in transit to Purchaser.
- 18.3. In case of termination or cancellation Seller is entitled to raise cancellation charges, by submitting claims to Purchaser within fifteen (15) calendar days of the order cancellation date.
In case of termination or cancellation, Purchaser is obliged to compensate the Seller at the pro rata price for the supply already delivered to and accepted by Purchaser up to the date of cancellation, without prejudice to Purchaser's right to damages to which it is entitled by virtue of article 11.
In case of termination or cancellation, Purchaser shall reimburse Seller for costs incurred by Seller for unfinished goods, which are specifically manufactured for Purchaser and which are not standard goods of Seller, as from the date of cancellation.
Purchaser will not be held responsible for loss of anticipated profit, however Seller is entitled to and Purchaser shall pay to Seller the value assignable to lost utilization of shop capacity of Seller or Seller's subcontractor that cannot be replaced, however the total reimbursement shall not exceed the order value.
19. **Intellectual property.**
Seller warrants that the supply under this order do not, and will not, infringe any valid patent, copyright, trademark, trade secret or any other intellectual property interest owned or controlled by any other person, and Seller is obliged to replace or modify the supply or part thereof such that the infringement is rectified immediately following notification from Purchaser of such an infringement.
In the event, despite the good intentions of Seller, an infringement takes place, Purchaser is obliged to inform Seller in writing without any delay about this incident, and Purchaser is assumed to temporarily defend the interests of Seller for any and all losses, liabilities, damages, penalties, injuries, claims, demands, actions, suits, costs and expenses arising out of a claim or suit at law or equity for actual or alleged infringement of such intellectual property, by reason of the buying, selling or using the supply under this order.
20. **Indemnity.**
Seller shall indemnify and hold harmless Purchaser, buying or using the supply or parts thereof specified herein, from and against any and all losses, liabilities, damages, penalties, injuries, claims demands, actions, suits, costs and expenses of whatsoever kind and nature, in contract or tort, or under any other theory of law:
a. Arising out of any misinterpretation by Seller or relating to any breach or default in the performance of Seller's obligations under this order with respect to ownership, possession, use, operation, condition, sale, purchase, lease, maintenance, election, manufacture, or delivery of any item of the supply
b. Arising out of any claims for injury to or death of persons or damage to property in any manner due to, in whole or in part, any act or omission on the part of Seller
c. Any defect in goods sold or services provided to Purchaser to this order.
This indemnity shall survive termination, cancellation or expiration of this order.
21. **Seller's property.**
The Seller shall provide for all the necessary tools and auxiliary materials, including appropriate clothing and safety devices as well as drawings, specifications, programs and software developed by Seller for the execution of the work under this order. All these tools, auxiliary materials, clothing, safety devices, drawings, programs, software and the like will be and will remain the inalienable property of Seller, and no detail or shop working drawing or any other information which may be of a proprietary nature of the supply will be provided by Seller to Purchaser, unless otherwise specified.

22. **Purchaser's property.**

- 22.1. Unless otherwise identified and agreed in writing, signed by an authorized representative of Purchaser, information, drawings, sketches, illustrations, blueprints, calculations, specifications, designs, excluding models, tools, molds, jigs, dies, patterns and other material, furnished by Purchaser pursuant to this order or any materials affixed or attached hereto shall be considered free of charge and do not need to be returned to Purchaser.
- 22.2. Purchaser's property, like models, tools, molds, jigs, dies, patterns and other material, furnished or paid for by Purchaser pursuant to this order and whenever practical each individual item thereof shall be clearly marked or otherwise adequately identified as "Property of Purchaser" and shall be stored in accordance with Purchaser's instructions.
- 22.3. Seller assumes all risks and liabilities for loss of or damage to Purchaser's property in its custody or control and shall insure such property at its own expense at an amount at least at the replacement cost thereof with loss payable to Purchaser.
- 22.4. Seller shall, by Purchaser's written request and at Seller's expense, prepare such property for shipment and shall redeliver to Purchaser in the same condition as originally received by Seller, reasonable wear and tear expected.
- 22.5. All information of Purchaser shall be kept confidential by Seller.

23. **Safety, environment.**

- 23.1. Seller will comply, in addition to the legal and governmental regulations concerning safety, healthcare and environment, with the prescriptions and instructions from Purchaser and/or Purchaser's customer, in relation to the execution of the work or the supervision thereof.
- 23.2. In the performance of this order, Seller confirms that all goods and services provided hereunder will comply with the equivalents of the Occupational Safety and Health Act of 1970 (OSHA), the Toxic Substance Control Act (TSCA), the Consumer Product Safety Act (CPSA).
- 23.3. In consultation with Purchaser, the Seller and its subcontractor shall arrange for the daily removal of all rubbish, waste, surplus materials and substances left behind by those carrying out the work and undertake to comply with the environmental regulations in force during the execution of the work.

24. **Survival.**

The obligations of the parties under this order which by their nature would continue beyond the termination, cancellation or expiration of this order, including those in articles 7, 11, 13, 15, 16, 19, 20, 21, 22, 24 and 25 shall survive termination, cancellation or expiration of this order.

25. **Disputes and applicable law.**

- 25.1. All disputes arising or existing between parties, inclusive those only considered so by one of the parties, shall be tried exclusively by a competent court in The Netherlands.
- 25.2. This agreement and all other agreements, whether or not deriving from this agreement, shall be exclusively subject to Dutch law.
- 25.3. The UN convention on the International Sale of Goods, in whatever national or international version, shall not apply to the agreement.
- 25.4. The parties agree that before the initiation of any legal action or proceeding, all claims controversies and disputes arising out of or in relation to the performance, interpretation, application or enforcement of this order, including without limitation any breach thereof, their representatives familiar with the issue will schedule a meeting to discuss the dispute and to attempt in good faith to resolve it.
- 25.5. If after such discussions, either of the parties concludes that no resolution of the dispute is possible, then the dispute shall be promptly referred to arbitration. In that case the arbitration shall be take place in accordance with the Dutch Arbitration Institute (NAI) in Rotterdam.
- 25.6. If the dispute is not resolved after the completion of such arbitration, the parties can pursue any available legal remedy, in accordance with per article 25.1 above.
- 25.7. Subjecting a dispute to the court of law or to arbitration, does not constitute any authority to Purchaser to discontinue or to slacken in the execution of payment under this contract.
- 25.8. In the event, that a process of settling a dispute either before a court of law or by arbitration is pending, and Purchaser slackens or discontinue the payment to Seller under this contract, than Seller has the right, after having urged Purchaser in writing, to suspend or terminate the order.

26. **Contracting out of work.**

- 26.1. If the Seller wants to make use of other than his own personnel, either by way of borrowing personnel or by way of contracting out, he will inform Purchaser in writing before commencing of the work. All personnel will be able to identify themselves at any time at the location where the work is being carried out.
- 26.2. Sub-contractor shall provide for all the necessary tools and auxiliary materials, including appropriate clothing and safety devices.
- 26.3. The Seller will insure his liability, both with regard to Purchaser and vis-à-vis third parties for a sufficient amount at the discretion of the Seller.