

General Terms and Conditions for business, sales, and services (TCS)

Version: AT 01.20; September 2021

1. Scope of application

- 1.1 We address our services to individuals within the meaning of paragraph 1 of the Austrian Commercial Code (UGB) who act within the scope of their business activities (B2B).
- 1.2 This TCS applies to legal transactions between companies, particularly for the delivery of goods and mutatis mutandis, for the provision of services. These TCS apply to all stages of our legal transactions unless we expressly agree in writing otherwise. They shall also apply to all other services which we provide accordingly.
- 1.3 General terms and conditions of the Buyer shall only be effective if we have expressly confirmed their applicability in writing, even if they do not conflict with our TCS. Any exclusion of our TCS and any amendments or supplements thereto by the Buyer shall only be effective if we have expressly agreed to this in writing.
- 1.4 If any provision in this TCS is or becomes invalid, the validity of the remaining provision shall not be affected.

1.5 Definitions

- 1.5.1 **Buyer:** means any ordering party, purchaser or other contractual partner of ITS;
- 1.5.2 **Supplier:** means ITS - Industrial Turbine Services GmbH (in short ITS, we or us), Fabriksplatz 1, 4662 Steyrermühl, Austria;
- 1.5.3 **Offer:** means any cost estimate or offer by ITS and any similar request to the Buyer to submit an offer (or an Order) to ITS;
- 1.5.4 **Order:** every offer made to ITS by the Buyer for the conclusion of a contract;
- 1.5.5 **Conclusion of the contract:** means the consent between the Buyer and ITS concerning the Order;
- 1.5.6 **Purchase order:** means any kind of intended or concluded contract between ITS and the Buyer;
- 1.5.7 **Goods:** means the performance to be rendered by ITS following the requirements of the respective order (object of the contract); in particular any item to be delivered by ITS;
- 1.5.8 **Delivery:** means the performance of the service owed by ITS;
- 1.5.9 **Order value:** means the actual or anticipated invoice amount;

2. Offer

- 2.1 We base all our Offers on this TCS. All Offers are non-binding and subject to change unless we expressly state a certain commitment period in writing.
- 2.2 **All documents**, especially but not limited to documents issued with Offers, such as illustrations, drawings, descriptions, dimensions, and weights, are non-binding and only close approximations unless explicitly termed as binding. There may be changes due to new technologies, experiences, and improvements. In particular, no warranty or liability claims can be made based on the documents provided in an Offer.
- 2.3 **Concepts, plans, sketches, estimates, and other materials** such as brochures, samples, product descriptions, and similar documents remain our **sole intellectual property**. Any use, especially but not limited to forwarding, copying, publishing, and distribution, even partially, requires our express consent. We reserve the right to demand the return of all our documents if you place an order with another company.
- 2.4 Unless otherwise agreed, our prices include other price components but are calculated without taxes in Euro (€). We invoice taxes as applicable on the day we send you our invoice. Unless otherwise agreed, our prices don't include transport and customary packaging (EXW Steyrermühl, Incoterms 2020). Any transport, import or export fees are not included in the price calculation and shall be covered by the Buyer unless otherwise agreed upon. The Buyer shall also be deemed to bear the risk for the transport unless otherwise agreed.
- 2.5 The **prices** offered are **valid for the current Offer only**. Offers shall apply exclusively for the country of destination specified by the Buyer. You are liable for all prejudice and claims against us due to the use of the products supplied outside such country.

Unless otherwise agreed, interpretation of contract terms customary in the trade shall be governed by the Incoterms 2020, including the supplements valid at the time when the contract is concluded.

- 2.6 The Supplier shall be entitled and, at the request of the Buyer, obliged to adjust the contractually agreed fees once a year.

The basis for the change of services is the collective agreement for employees in the metal industry, and for products and materials, the consumer price index published monthly by Statistics Austria (CPI 2015=100) or an index replacing it.

The adjustment shall be made to the extent that the actual production costs at the time of the conclusion of the contract change compared to those at the time of the actual performance of the service, provided that the Supplier is not in default.

3. Order confirmation, the conclusion of the contract

- 3.1 The contract is concluded when we send you an order confirmation or your Goods, depending on which event occurs earlier.

4. Service, Terms of Payment

- 4.1 Unless otherwise agreed, advance payment is deemed to be agreed upon. The Buyer agrees to release payment of the agreed amount upon conclusion of the contract.

- 4.2 The delivery period shall commence at the latest of the following events:

- 4.2.1 Date of the **order confirmation**
4.2.2 The date of **completion of all requirements by the Buyer**, irrespective of the nature of these requirements;
4.2.3 The **date** on which ITS **receives a deposit or advance payment or other security**.

- 4.3 We will deliver within a reasonable period unless a specific delivery period has been agreed upon.

- 4.4 If the delivery is delayed due to reasons within the reasonable control of the Buyer, delivery shall be deemed to have been fulfilled at the time of the agreed collection date. From this time onwards, the risk for the Goods is transferred to the Buyer.

- 4.5 The Buyer shall reimburse the storage costs for storage at our facilities if the Buyer is responsible for any delayed delivery.

- 4.6 If either party suffers a delay in performance or delivery due to any cause **beyond their reasonable control**, the time for delivery and performance shall be extended to a period equal to the period of delay and its consequences. These circumstances include but are not limited to **force**

majeure, such as armed conflicts, official interventions and prohibitions, transport and customs delays, transport damage, energy and raw material shortages, pandemics, labor disputes and the loss of a major supplier who is hard to replace. These aforementioned circumstances also entitle the Supplier to extend the delivery period if they occur with suppliers of the Supplier.

- 4.7 We reserve the right to make **partial deliveries and to submit** corresponding partial invoices. Unless otherwise agreed, payment terms for partial deliveries are net upon receipt of the invoice.

- 4.8 If the parties agree to a trial operation in the Order, the trial operation must be completed before acceptance. The acceptance by the Buyer **shall be deemed complete** if the Goods and Services are **used commercially**.

- 4.9 All payments shall be made to the **payment agency determined by the Supplier without any deduction** and free of charge. Payment terms are considered as adhered to if the Supplier can dispose of the full amounts within the agreed period. Any expenses or interest that may arise in connection with the payment shall be borne by the Buyer.

- 4.10 Payments received from the Buyer may be used to settle other open balances. Other than that, payments are settled in the following order: interest, costs, the capital.

- 4.11 The right of retention, as well as any set-off by the Buyer, is excluded.

- 4.12 If the **payment** of the Buyer is **late**, we may, without prejudice to our right,

- 4.12.1 **charge the statutory default interest** from the due date, unless we can claim greater damages. Pursuant to § 456 of the Austrian Commercial Code (UGB), the corporate default interest rate shall be 9.2 percentage points above the base interest rate of the Austrian National Bank per annum.

- 4.12.2 **demand immediate payment** of all open balances from the current and any other transactions and charge default interest if delay as stated in 4.12.1.

- 4.12.3 **set your payment conditions** after two delays **to prepayment only**.

- 4.12.4 to withdraw from the contract in the event of a partial default or an instalment payment agreement, setting a reasonable period of grace and, in the event of culpable default, to additionally claim non-performance damages.

4.13 If the Buyer suspends payment, is over-indebted, or subject to any bankruptcy-related proceedings, all outstanding balance **shall become due immediately**. The same shall apply if the Buyer is experiencing any significant financial deterioration.

4.14 The Buyer shall **compensate for costs** incurred for **dunning fees** and expenses of payment collection. The Buyer will also reimburse reasonable fees of debt collection agencies or lawyers. If we decide to operate your customer account ourselves, we charge Euro 40,00 as a lump-sum compensation for operating costs within the meaning of § 458 of the Austrian Commercial Code (UGB).

5. Retention of title

5.1 The Goods supplied shall **remain our sole property** until all debts have been paid in full, including interest and expenses. The Buyer shall neither lien nor transfer the ownership of the reserved goods as a guarantee.

5.2 A retrieval of our Goods doesn't equal a declaration of withdrawal from the contract unless otherwise expressly declared.

5.3 We are entitled to retrieve the Goods at any time at your expense without your approval if you fail to fulfill your contractual obligations, which includes partial delay in payment.

5.4 You may sell, mix, or lease the Goods on reasonable commercial terms and assign all current or future claims arising from the resale, combination, or leasing to us. The assignment shall extend to balance claims based on current account relationships or upon the termination of such relationships between the Buyer and his customers. We are entitled to notify any third-party debtors about the assignment.

5.5 If you resell or rent the Goods in a bulk or package deal, you will assign to us the corresponding part of the agreed price, which equals the value of the Goods. The assignment shall have priority over any other remaining claim.

5.6 If the Buyer complies with his payment obligation and no detrimental change occurs in his financial standing, the Supplier will not collect the debts assigned. If the reservation of ownership in the foregoing form is not effective under the law of the country of destination, the Buyer must cooperate in establishing a similar security right complying with the provisions of his country in favor of ITS.

6. Warranty

6.1 For any defects in the products supplied, including the absence of promised characteristics, ITS shall be liable in such a way that he will repair or replace at his option all parts in which defects are proved to have arisen within **24 months** or **36 months** from the **date of production**, whichever event occurs first – without regard to the duration of the operation – after the date of transfer of risk owing to any circumstance before the transfer of risk, in particular parts which become unusable due to faulty construction, inferior material or defective execution or the usefulness of which is considerably impaired.

The warranty conditions for software can be found in Clause 8. If we sell refurbished or used goods, we provide a **3-month warranty** if the goods are classified by us as operational. Warranty is **excluded** for unchecked used goods or goods that have been classified as **non-functional**.

6.2 The Buyer must report defects affecting the functionality of the Goods within eight days in writing to ITS, including a detailed description and submission of all documents or data required for the assessment of the defect and its causes. The warranty period starts either with the transfer of risk to the Buyer or in case of default in acceptance, with the announcement of our readiness to hand over the Goods. If the Buyer fails to notify ITS of the defects in good time, the Buyer shall lose all claims, in particular warranty claims and compensation for damages. The Buyer shall compensate costs caused by unjustified or unconditional notices of defects to us.

6.3 Defects that could not be detected even after careful inspection (hidden defects) shall be notified by the Buyer within a reasonable period after they have been detected - however, notifications must be sent to the Supplier within a maximum of three months after the first opportunity for inspection.

6.4 In the event of timely notification of defects, we shall remedy the defect by repairing the defect-free of charge or by adding the missing part. The Buyer shall grant us the necessary time and opportunity to remedy the defect to a reasonable extent. If the Buyer refuses to do so or if this time and opportunity are unreasonably shortened, we shall be released from the obligation to rectify the defect.

6.5 In case the defects are not remedied within a reasonable time, or if the repairs fail to remedy the defects, the Buyer is entitled to claim the right of abatement (reduction of purchase price).

- 6.6 The Buyer will provide the necessary devices, equipment, or support staff free of charge during work to remedy any defect. The retrieved parts are the property of ITS.
- 6.7 If ITS manufactures goods based on specifications, drawings, designs, models, or other information provided by the Buyer, our liability shall be limited to the proper execution following the Buyers requirements.
- 6.8 Further warranty rights of the Buyer are expressly excluded. In particular, defects resulting from installation or assembly which is not executed by ITS, insufficient settings or calibration, usage for parts beyond the performance specifications, negligent or incorrect handling, and use of unsuitable operating materials. This also applies to defects that are due to defects of material in materials provided by the Buyer. We do not accept any liability whatsoever for defects or damage of any kind resulting from atmospheric discharges, overvoltage, and chemical influences. The warranty does not apply to parts that are subject to natural wear and tear or for deviations in dimensions, weight and quality customary in the trade or tolerated by the applicable standards.
- 6.9 The warranty expires immediately if the Buyer himself or a third party makes changes, repairs, or revisions without our written consent.
- 6.10 The application of § 924 ABGB (presumption of defectiveness) and § 933b ABGB (special recourse) is expressly excluded.

7. Property rights

- 7.1 Per the following provisions, we grant that the goods - except for any circuits used in them - are free of third-party industrial property rights. Provided that the Buyer informs us without delay of the assertion of claims arising from industrial property rights which third parties assert against it and that the Buyer acts in agreement with us in enforcing his rights against the third party. The violation of even one of these conditions releases us from any liability.
- 7.2 If there is an infringement of industrial property rights of third parties for which we are liable and if the Buyer is therefore legally prohibited from using the goods in whole or in part, we may at our own expense and our discretion either
- 7.2.1 procure for the Buyer the right to use the goods or
- 7.2.2 design the goods free of industrial property rights or
- 7.2.3 replace the goods with another object of equivalent performance which does not infringe any property rights, or
- 7.2.4 take back the goods against a refund of the price.

- 7.3 If the Buyer makes changes to the goods, installs additional equipment, or connects the goods with other equipment or devices and in this way infringes the industrial property rights of third parties, any liability of the Seller of any kind shall lapse.
- 7.4 Likewise, we shall not be liable for the infringement of third-party industrial property rights for goods manufactured according to drawings, developments, or other information provided by the Buyer. In this case, the Buyer shall indemnify us at his own expense against any claims of third parties and shall hold us completely harmless in this respect.
- 7.5 Any claims of the Buyer beyond the claims mentioned above (Clauses 7.1. - 7.4.), regardless of their nature, are expressly excluded. In particular, we assume no liability for consequential damages, such as loss of production and use, as well as for the loss of profit. This does not apply in so far as our liability is mandatory by law.
- 7.6 The Buyer does not acquire any claims for the use of industrial property rights available to us, which concerns the interaction of the goods with other objects.

8. Software

- 8.1 ITS does not guarantee the functionality, compatibility, and interface suitability for third-party software programs.
- 8.2 The **warranty period** for software is **six (6) months**.
- 8.3 The use of anti-virus or security-related software on the end device can lead to limitations in the performance and functionality of the software. Necessary protective measures for the hardware and software are to be taken by the Buyer within the framework of network security.
- 8.4 ITS assumes **no liability for the loss of data**. All data must be backed up before updates of any kind. Particularly in the case of updates/upgrades of operating systems/anti-virus programs and of the same, the functionality of the software must be checked after each update. If the software contains archiving and recording functions, the Buyer is obliged to check and maintain the software and the data stock regularly.
- 8.5 The Buyer must check the time synchronization in applications with archiving and recording functions. The time synchronization must be checked at the latest when system updates are implemented. The Supplier excludes any liability for inconsistent data based on inadequate time synchronization. Services in connection with these errors must be ordered separately by the Buyer.
- 8.6 The warranty is **limited to reproducible defects documented in writing**.
- 8.7 Defects that are based on the provision of or cooperation by the Buyer or a violation of the Buyer's obligations are excluded from the obligation to remedy defects free of charge.

8.8 The warranty shall expire immediately if the Buyer himself or a third party makes changes, repairs or revisions, both to hardware and software, without our written consent.

9. Copyrights

9.1 ITS grants the Buyer a non-exclusive license to use the software products or products with firmware.

9.2 The copyrights to the products, including the associated documentation, are held by ITS.

9.3 The Buyer shall have the exclusive right to use the purchased software or the products with firmware as intended by ITS.

9.4 The Buyer is not permitted to decompile, reverse engineer, translate, integrate or adapt either individual components or the entire software application or firmware application. The same shall also apply to the reversion of the machine code into a readable, modifiable or derivable form.

10. Damages

10.1 To the extent as we are liable for damage, we shall only be liable for intent and (gross) negligence. This limitation does not apply to personal injury.

10.2 The Buyer may no longer assert claims for damages after the expiry of six months from knowledge or the possibility of knowledge of the damage.

10.3 We assume no liability for the correctness, completeness and content of the information provided.

10.4 Our liability for damages for personal injury and property damage shall be governed by the statutory provisions, unless otherwise provided for in separate written agreements or the present TCS; however, liability for property damage shall be limited to € 130,000.00 per damaging event and a total of € 260,000.00.

10.5 Recourse claims brought under the title of product liability within the meaning of the Product Liability Act (PHG) shall be excluded if the party entitled to recourse does not prove to us that the defect was caused by the Seller's fault or at least by gross negligence.

10.6 Any other and further liability, in particular for mere financial losses and loss of profit, is excluded. This does not apply in so far as our liability is mandatory by law.

10.7 The right to rescind the contract due to a reduction by more than half pursuant to § 934 ABGB (laesio enormis) is excluded.

11. Buyer items

11.1 If the Buyer sends products or samples to the Supplier for processing, these shall be held in custody until the completion of the Order.

11.2 For products that cannot be returned to the Buyer despite the request to take them back, the Supplier can charge a monthly amount of € 10.00 plus VAT for safekeeping.

12. Export and foreign trade law

12.1 Depending on the final purpose and destination of our goods, an approval requirement may arise.

12.2 All offers are subject to the provision that no national or European export regulations, in particular, but not exclusively, AWG, AWW, Dual-Use VO, KWKG, embargo rights, and customs control laws, as well as the regulations of the US export and re-export are in conflict with the Offer.

12.3 The Buyer is obliged to obtain all necessary permits. If the approval is not obtained in time, the delivery time will be extended accordingly.

13. Place of performance, place of jurisdiction

13.1 The **place of performance** for all **payments** is **Steyermühl**, even if the handover of the goods or the provision of another service takes place at a different location as agreed.

13.2 The **place of performance** for all other legal and contractual claims is, at our discretion, **our company headquarters** or our **warehouse**.

13.3 For services, the place of execution of the services is the place of performance. In this case, deviating statements in the Order confirmation are subordinate. The risk shall pass to the Buyer upon the performance of the agreed (partial) service.

13.4 The **place of jurisdiction** for all disputes arising from the order, its formation, its execution, and its cancellation is the competent court in **Wels, Austria**. ITS reserves the right to sue at any other place of jurisdiction.

14. Confidentiality, secrecy

14.1 Business information of any kind which the ordering party and ITS share, receive, or otherwise is to be treated as a business secret by the respective other contracting parties. An exception to this rule is information that is already publicly known at the time the information was shared.

15. Data protection

- 15.1 ITS complies with the applicable data protection laws, in particular the GDPR. Our privacy statement can be found at <https://www.turbineservices.at/privacy.php>.

16. Final provisions

- 16.1 Amendments to these TCS shall only be effective if they have been **confirmed in writing by both Parties**.

- 16.2 All agreements and any amendments thereto, as well as all declarations to be made based on the agreements concluded, shall only be effective if made in **text form**, whereby declarations made by fax and e-mail shall be deemed to be in text form, but not in writing.

- 16.3 For all contracts conducted with our headquarters in Austria, all contractual relations shall be governed by the

Law of the Republic of Austria except for the application of the Hague Conventions of 01.07.1964 relating to Uniform Laws concerning the International Sale of Goods. This also applies to the question of validity, applicability, and interpretation of these General Terms and Conditions for business, sales, and services (TCS).

- 16.4 For all purposes, the **German language** version of this TCS shall be the original governing instrument and understanding of the Parties. In the event of any conflict between the German language version and any subsequent translation into any other language, the German language version shall govern and control.

- 16.5 The foregoing provisions apply to deliveries made abroad. Services carried out abroad shall be governed by ITS GmbH, General Conditions for Services Abroad in their version valid at the time in question.