

General Terms and Conditions of Business for the Purchase of Goods/Equipment/Materials

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PARAGRAPH 1
Definitions

In this Contract and all order documents, the following words have the meaning defined as follows:

- 1.1 The "Purchaser" is the company Amitech Germany GmbH, with registered offices in Mochau; this term also includes the company's legal successors and assignees (cessionaries), provided this and/or the assignment itself is not excluded or is incompatible with the context or its significance.
- 1.2 "Supplier" denotes the person (company/businessperson, i.e. e.g. natural person or legal entity and private companies, partnerships, commercial partnerships and corporations; hereinafter referred to as: Person), who concludes a contract with the Purchaser for the delivery of goods, which are called with the purchase order. The term includes the Supplier's legal successors, therefore, in particular their heirs, the executor of their will¹, the inheritance, estate and asset administrator, provided this is not excluded in the purchase order. If documents which are part of the purchase order refer to a "Provider" or "Seller", they mean the Supplier; references to work mean the "Goods".
- 1.3 "Component Supplier" denotes the Person who concludes a contract for the supply of parts of the Goods to the Supplier directly with the Supplier and not with the Purchaser, as defined in the following, with the exception of the purpose of standard items or prefabricated machines or stocks. The Supplier remains fully responsible for this work assigned in the subcontract just as they are responsible for all actions and/or omissions or non-performance of the Component Supplier. The Component Supplier is in this respect, vis-à-vis the Purchaser, the Supplier's vicarious agent in accordance with § 278 BGB (German Civil Code).
- 1.4 "Consultant" denotes the Person engaged in writing by the Purchaser and authorised to act on behalf of the Purchaser with respect to all purchase orders signed by the Purchaser.
- 1.5 "Tester" denotes the expert or the person named by the Purchaser to perform regular tests on the goods in accordance with the conditions specified in the purchase order and further to determine the status of production of the goods.
- 1.6 "Purchase Order" denotes the Purchaser's Purchase Order and all Special Terms and Conditions in this or other General Terms & Conditions of Business and arrangements for the purchasing department and in all documents, design drawings and specifications attached to the Purchase Order or referred to in it.
- 1.7 "Change Order" denotes the proper approved change issued by the Purchaser in writing for the Supplier in order to change the Purchase Order.
- 1.8 "Goods" denotes and includes all work related to the Supplier's provision of work and services for the Purchaser, i.e. in particular including the complete supervision, the services, materials, machines, equipment, spare parts, tools, stocks; Goods shall be complete in every respect in order to conform to the performance parameters and facilities defined in the Purchase Order, which the Supplier provides in accordance with the Purchase Order.

- 1.9 "Order Drawings" denotes all design drawings, documents, data and files listed in the purchase order.
- 1.10 "Specifications" denotes and includes the time schedules, the detailed designs, the lists of technical data, the performance and characteristics, etc., in which the requirements and description of the equipment and materials are given and which are made available within the scope of the order.
- 1.11 "Approval" always means a written approval which is issued by a properly authorised person on behalf of the Purchaser.
- 1.12 "As Approved", "Already Approved", "As Instructed" or similar words or expressions used in this Contract are to be understood to mean "Approved", "Instructed", etc. by the Purchaser/Consultant/the Authorised Unit.
- 1.13 "Satisfactory" means satisfactory for the Purchaser/Consultant.
- 1.14 "Details" denotes and includes:
- a. Specifications
 - b. Design drawings and
 - c. a trademark or designated patent, with which the product of a person is named.
- 1.15 "Or Equivalent", if it refers to a substitution proposed by the Supplier, denotes that the proposed substitution is also suitable for acceptance by the Purchaser/Consultant; the Purchaser/Consultant alone decides whether it is acceptable.
- 1.16 "Written Notification" denotes handwritten, typewritten or printed reports or other signed or sealed documents and includes telegrams, telexes and notifications by facsimile or documents which have been properly signed by a person lawfully authorised to represent the Party to the Contract who becomes obligated as a result of it.
- 1.17 "Delivery Date" denotes the date(s)/deadline(s), given in the Purchase Order for complete delivery of the Goods and/or Documents to the Location.
- 1.18 "Effective Date" denotes the date of the Purchase Order.
- 1.19 "Period" is calculated in calendar days. The time during which the activities are to be performed will be calculated by excluding the first day of a given Period and including the last day. If the last day is a Sunday or a public holiday at the place of performance specified in § 37, the activity will be ended on the next working day.
- 1.20 "Calendar Days" denotes consecutive days without interruption due to weekends or public holidays and includes the day on which the notification/enquiry is received.
- 1.21 "Location" denotes the place considered by the Purchaser to which the Goods are to be delivered, set up, assembled, started up and operated, or another place named in the Purchase Order.

- 1.22 "Order Price" denotes the price specified in the Purchase Order and which the Purchaser shall pay the Supplier, and it represents the full remuneration, including taxes, etc. which the Purchaser shall pay the Supplier for the delivery of the Goods and satisfactory fulfilment of all the Supplier's obligations in accordance with the Purchase Order.
- 1.23 "Supervision" denotes the supervisory and advisory services to be provided in Mochau within the scope of the Purchase Order for the installation, the setup, the tests, the start-up and putting into service of the Goods which the Supplier has delivered within the scope of the Purchase Order.
- 1.24 "Warranty Period" denotes the period given in Paragraph 13.1.4 of this Contract during which the warranty specified in Paragraph 12.1 applies.
- 1.25 "Performance Tests" denotes the test or test series which is performed in accordance with the information in the Special Terms and Conditions or, if these do not exist, the standard test according to usual business practice for such or similar Goods.
- 1.26 "Performance Guarantees" denotes the guaranteed performance given in the Special Terms and Conditions which the Goods shall achieve during the performance tests.
- 1.27 "EXW or FCA or FAS or FOB or CFR or CIF or CPT or CIP or DAF or DES or DEQ or DDU or DDP or similar standard trade terms" mean that attributed to them in the Incoterms of the International Chamber of Commerce, applicable on the date of the Purchase Order.

PARAGRAPH 2
Scope and interpretation

- 2.1 All Goods, deliveries, work and services and quotations of the Suppliers are made solely on the basis of the Purchase Order including all Special Terms and Conditions in these and other General Terms and Conditions of Business and other arrangements for the purchase in all documents, design drawings and specification attached to or referred to in the Purchase Order.
- 2.2 These "General Terms & Conditions for the Purchase of Goods/Equipment/Materials" are part of all contracts concluded by the Purchaser with suppliers for the Goods, supplies or services offered by them. They also apply to all future deliveries, work, services or offers or quotations to the Purchaser, even if they are not separately agreed again.
- 2.3 The terms and conditions of business of the suppliers or third parties do not apply, even if the Purchaser does not separately contradict their applicability in each individual case. Even if the Purchaser refers to a letter which contains or refers to the terms and conditions of the Supplier or a third party, this shall not be deemed to be consent to the applicability of those terms and conditions of business.
- 2.4 The sub-headings and section headings and the corresponding lists in the Purchase Order are added solely for the purpose of simplifying reference and are not deemed to be part of them and do not affect the significance or effect of the Purchase Order.

- 2.5 Words which denote persons include companies/businesspersons, i.e. e.g. natural person or legal entity and private companies, partnerships, commercial partnerships and corporations, regardless of whether they have their own legal entity or not. Words which indicate the masculine or singular include the feminine and plural and vice versa, (English translation uses the neutral "they" form), if the Purchase Order provides for or allows this. The words "including" and "include(s)", if used in this Contract, shall not be interpreted as being restrictive, provided the context does not result otherwise.
- 2.6 Should a contradiction, deviation or inconsistency exist between the General Terms and Conditions of Business, the Special Terms and Conditions and other documents or drawings, the interpretation shall be based on the following ranking in order to satisfy the requirements of the Purchase Order.
- Special terms and conditions
 - These General Terms & Conditions of Business
 - Specifications for the equipment
 - Drawings
 - General specifications
- 2.7 The Purchase Order shall be interpreted as a whole taking into account the above restrictions of Paragraph 2.
- 2.8 References to laws or legal provisions or documents include reference to their amendment, extension or renewed enactment.

PARAGRAPH 3 Form of the Purchase Order and Changes

- 3.1 The Purchaser is solely tied to the orders or changes listed or confirmed on the printed order form or the Change Order form of the Purchaser, not to any others. The substitution of materials or additional costs of any kind whatsoever or changes to or cancellation of or exceptions to the terms and conditions for the Purchase Order will only be recognised if they are confirmed on the printed order form or Change Order form of the Purchaser, properly signed by the authorised signatory of the Purchaser.
- 3.2 Delivery of the Goods or the submission of a security guarantee by the Supplier constitutes tacit acceptance of the terms of the Purchase Order, if the Purchase has not already been notified of acceptance.
- 3.3 The Purchaser/Consultant is entitled to change the time and place of delivery and in particular design specifications or the drawings, to instruct additions or omissions or to change the Goods in any other form at any time by written notification with at least 14 calendar days' notice before the agreed delivery date, provided this can be implemented within the scope of the Supplier's normal production process without substantial additional expense. The verified and reasonable additional costs incurred by the Supplier due to the change will only be reimbursed by the Purchaser if the written approval for implementation of this work has been arranged and confirmed on the printed order form or Change Order form of the Purchaser, properly signed by the Purchaser. The value of all these approved modifications or changes will be determined by measurement and reference to the tariffs and prices given in the Purchase Order for similar or analogous work. If such tariffs or prices do not exist or are not applicable, the value shall be reasonable under all circumstances and the Purchaser shall be given access to the Supplier's information which substantiate that this is the case.

If such changes result in delivery delays, which cannot be avoided through reasonable effort in the Supplier's normal production and business operations, the originally agreed delivery date is postponed accordingly. The Supplier shall notify the Purchaser in writing of the expected, carefully estimated additional costs or delivery delays in good time before the delivery date, however within three (3) working days of receipt of the notification in accordance with Sentence 1 at the latest, provided it is possible to estimate these with respect to the scope of the changes, otherwise without delay; however, always before starting the work on the Goods to be delivered. Otherwise the arrangements for the change options and change procedure described in Paragraph 29 apply.

- 3.4 The provisions in the Purchase Order apply to all these modifications or changes to the same extent or with the same effect as if they had been listed in the original Purchase Order, and the Supplier undertakes all these modifications or changes if the Purchaser/Consultant requires them in writing.
- 3.5 The Purchaser is entitled to cancel the Purchase Order including changes and additions at any time by issuing a written declaration giving reasons, if the Purchaser is no longer able to use the ordered products in their own business operations due to circumstances which occurred after the Contract was concluded. In this case, the Supplier will be remunerated for the partial work they have done.

PARAGRAPH 4
Authorisation for Persons who Sign Documents

The authorisation of a person who signs documents which are part of the Purchase Order on behalf of another person to obligate the other person is deemed to be guaranteed. Persons who give this signature shall submit proof of their authorisation.

PARAGRAPH 5
Responsibility for Handling a Purchase Order / Joint and Several Liability

- 5.1 General information / joint and several liability

The Supplier is fully responsible for proper completion of the Purchase Order and the performance of the Goods under all aspects concerning the content and significance of the details. If the Supplier is more than one person, these persons are jointly and severally liable with respect to the primary and secondary obligations in the Purchase Order.
- 5.2 It is deemed to be agreed that the Supplier has thoroughly checked these General Terms and Conditions of Business, the Special Terms & Conditions, the details and other documents which are part of the Purchase Order and has satisfied themselves of the type of Goods to be produced and/or supplied and of other relevant details and if applicable the Location conditions.

5.3 Subcontracting the Purchase Order

Without the prior written consent of the Purchaser, the Supplier shall not subcontract the Purchase Order or parts of it, or transfer or assign rights, apart from the purchase of bought-in products according to the list submitted by the Supplier, which are usually purchased from external sources. Beside this, the non-assignment clause does not extend to outstanding debts.

If the Supplier circumvents this condition, the Purchaser is entitled to withdraw from the Purchase Order and to order the Goods from elsewhere. The Supplier is liable for losses or damage suffered by the Purchaser as a result of or associated with this replacement of the Goods, unless the Supplier is not responsible for the breach of duty which justifies withdrawal and which is the cause of the losses and damage.

5.4 Import licence and foreign exchange

If necessary, the Supplier shall acquire the import licence and foreign exchange required for deliveries themselves in the form required for the components to be imported and the Purchaser issues the necessary written confirmation that the Goods are intended for use by the Purchaser. In the event of delay in the issue of the import licence or other relevant official approvals or permits the Purchaser shall not grant any extension of the delivery period, unless the Supplier is not responsible for the delay.

PARAGRAPH 6 Responsibility for Completeness

The Supplier is responsible for ensuring that the Goods are delivered in accordance with the Purchase Order. The Supplier shall provide all equipment, valves and fittings, materials, supplies and resources and / or services required for the setup, startup and efficient operation of the Goods and which are to be delivered and provided in accordance with the Purchase Order, without additional billing - regardless of whether they are defined in the details or not, and they shall fully comply with the performance parameters defined there.

PARAGRAPH 7 Purchase Order and Supporting Documents

- 7.1 The Purchase Order contains the whole agreement between the Supplier and the Purchaser. Only the assurances, incentives or arrangements in the Purchase Order are legally valid.
- 7.2 The order documents mutually complement each other, taking into account the provisions in Paragraph 2; in particular, this also means that what is required and arranged in one order document is as binding as if it were required in all of them.
- 7.3 Should an error or contradiction occur in the Purchase Order, the Supplier shall bring it to the attention of the Purchaser/Consultant in writing before they continue; the Purchaser/Consultant then immediately decides what significance it has and at their own discretion has the necessary corrections made.

- 7.4 In the case of contradiction between the drawings and specifications, in general the latter are decisive, provided they are not General Specifications (cf. Paragraph 2.6); nevertheless shall immediately inform the Purchaser/Consultant of this contradiction so that the Purchaser/ Consultant can correct it at their own discretion.
- 7.5 The drawings and specifications are to be interpreted in accordance with the Purchase Order.
- 7.6 English is the official language for this Purchase Order and is therefore the negotiation language. All documents shall be submitted in English. The operating and maintenance manuals and manuals for the startup phase shall be submitted in English.

PARAGRAPH 8 **Acceptance of the Purchase Order**

The Supplier accepts the Purchase Order with all the conditions specified in it without restriction by signing the confirmation copy of the Purchase Order and returning it unchanged. Paragraph 3 applies otherwise.

PARAGRAPH 9 **Insurance, Waiver, Indemnity and Taxes**

Insurance, Waiver and Indemnity

- 9.1 The Supplier shall take out insurance which covers the Goods and their business premises, equipment, materials, tools, etc. and shall maintain them and pay for them until the Goods have been delivered in accordance with the Purchase Order; the Supplier shall also take out insurance for their supervisory personnel or other employees who, if applicable, travel to the Location and have to work their for the purpose of fulfilling the Supplier's obligations in accordance with the Purchase Order; they shall also maintain and pay for these insurances accordingly.
- 9.2 The Supplier herewith declares that they waive all reimbursement claims against the Purchaser associated with their possessions and property while they are working in Mochau and during the return travel to and from Mochau; the Purchaser accepts this waiver. Further, the Supplier declares that they release the Purchaser from any compensation claims made by the Supplier's personnel and other external vicarious agents against the Purchaser to the scope stated in Sentence 1. The Supplier shall arrange for their insurance policies to be taken out in accordance with Paragraph 9.1 include a waiver of subrogation of rights in favour of the Purchaser.
- 9.3 Taxes and charges
- 9.3.1 All taxes, import and export duties and local charges to be paid, which are levied by the state or local authorities of countries other than Germany shall be borne and paid by the Supplier. The Supplier shall submit certification of the country of origin and if applicable an export licence.
- 9.3.2 A local Supplier is completely responsible for payment of all taxes, charges, licence fees, etc., which are incurred up to delivery of the Goods to the Purchaser.

PARAGRAPH 10
Protection of Ownership

- 10.1 The Purchaser reserves ownership and copyright to the orders and contracts they have given and the drawings, illustrations, calculations, descriptions and other documents den made available to the Supplier. Without the explicit consent of the Purchaser, the Supplier shall not make them accessible to or inform third parties of them, and shall not use or reproduce them either themselves or by third parties. At the request of the Purchaser the Supplier shall return all these documents and any copies made, if they are no longer required by the Supplier for their proper business or if negotiations do not lead to the conclusion of a contract.
- 10.2 Tools, devices and models made available to the Supplier by the Purchaser or produced for the purposes of the Contract and for which the Supplier charges the Purchaser separately remain the property of the Purchaser or become their property. They are to be clearly labelled by the Supplier as the Purchaser's property, carefully stored, safeguarded against any type of damage whatsoever and are only to be used for the purposes of the Contract. The costs of maintenance and repair of these items shall be equally borne by the Parties to the Contract, unless agreed otherwise elsewhere, i.e. each shall bear one half of the costs. However, if these costs are due to defects in the items produced by the Supplier or improper use by the Supplier, their employees or other vicarious agents, they shall be solely borne by the Supplier. The Supplier shall notify the Purchaser immediately of any damage other than to these items unless it is negligible. On request, they are obliged to hand over these items to the Purchaser in proper working condition, if they are no longer needed by the Supplier for performance of the contracts concluded with the Purchaser.
- 10.3 The Supplier's reservations of ownership only apply if they relate to the Purchaser's payment obligation for the respective products for which the Supplier reserves ownership. In particular, extended reservations of ownership are not permitted.

PARAGRAPH 11
Materials Issued Free of Charge

- 11.1 If material is made available to the Supplier free of charge, they undertake to replace any material scrapped beyond the lump sum waste material allowance granted at their own cost. All material issued free of charge remains the property of the Purchaser and all work done on it immediately becomes the Purchaser's, who is to such an extent the manufacturer.
- 11.2 This property is deemed to be in a good condition when it is accepted by the Supplier or on their behalf, unless the Supplier notifies the Purchaser/Consultant of any defects within fourteen (14) days of receipt.
- 11.3 The Supplier shall keep separate records of receipts and disposals of materials for audit purposes.

PARAGRAPH 12
Warranty - General Provisions

- 12.1.1 In the event of material or defect of title, the Purchaser is entitled to unlimited statutory warranty claims according to the laws of the Federal Republic of Germany. The uniform warranty period is 60 months.
- 12.2 Quality and quantity deviations are also complained of in good time if the Purchaser notifies the Supplier of them within 7 working days of receipt of the Goods by the Purchaser. Concealed material defects are also complained of in good time if the notification is sent to the Supplier within 14 working days of their discovery.
- 12.3 The type of subsequent performance (removal/repair or new production/substitution) shall be chosen by the Purchaser.
- 12.4 The Supplier shall provide the necessary supervision for the subsequent performance and pay the costs for the dismantling and renewed assembly and installation of the work at the Location. All transport costs for parts which are to be repaired or replaced shall be borne by the Supplier.
- 12.5 Following unsuccessful expiry of a reasonable period determined by the Purchaser for subsequent performance, they are entitled to remove the defect themselves and to demand reimbursement of any necessary expenditure from the Supplier, if the Supplier does not rightfully refuse subsequent performance. Article 637 BGB (German Civil Code) applies regarding the dispensability of the setting of a time limit for subsequent performance. The Purchaser is further entitled to demand an advance payment for the expenditure required to remove the defect.
- 12.6 The Purchaser does not waive warranty claims through acceptance or through approval of submitted samples or test pieces. (Part) payments do also not represent acceptance, approval or acknowledgement of debt or waiving of warranty rights.
- 12.7.1 The limitation of warranty claims is in abeyance with receipt of the Purchaser's written defects notice by the Supplier. In the event of substitute delivery and defects correction the warranty period for replaced and made good parts begins again unless, based on the Supplier's attitude, the Purchaser must assume that the Supplier did not consider themselves obliged to take action but only provided substitute delivery or corrected defects for reasons of good will or similar reasons.
- 12.8 Approvals or information which the Purchaser and/or the Consultant and/or the Tester possibly grant or give with respect to the work or the technical performance, including changes at the Location (regardless of whether the Supplier or the Purchaser performed tests or not), do not release the Supplier from their responsibility under the Purchase Order.

PARAGRAPH 13
Equipment Warranty

- 13.1 The Supplier guarantees that the quality of the Goods delivered/to be delivered in accordance with this Purchase Order conforms to the Purchase Order and the given standards and that the Goods reflect absolute expertise, care and competence with respect to the technical performance.

- 13.2 The Supplier guarantees that these Goods comply with and conform to the requirements in all relevant laws, regulations, provisions and orders issued by the government of Germany and the European Union or its subordinate bodies.
- 13.3 The Supplier guarantees that the Goods acquired in accordance with this Purchase Order are new or recently produced, have the given quality and are free of all defects and dysfunctions, that there are no concealed defects and that they strictly conform to the drawings and specifications and all relevant codes which apply to the Goods in Germany.

PARAGRAPH 14
Warranty with respect to Spare Parts

The Supplier guarantees that for a period of ten (10) years from the date of the successful startup of the Goods they will maintain a stock of consumables and spare parts for the equipment and the material included in the Purchase Order at reasonable prices and within a reasonable period and shall make accessible or deliver this stock on request, and that after a period of ten (10) years shall issue written notification with a notice period of nine (9) months for each product in the future which is technically outdated. The Supplier shall also provide suitable drawings/samples for these parts so that the Purchaser can take measures for the production of these parts.

PARAGRAPH 15
Product Liability

- 15.1 The Supplier is responsible for all claims for personal injuries or damage to property made by third parties which are due to a faulty product supplied by the Supplier and is obliged to indemnify the Purchaser against any resulting liability. If the Purchaser is obliged is forced to perform a recall action from third parties due to a defect in a product supplied by the Supplier, the Supplier shall bear all costs associated with the recall action.
- 15.2 The Supplier is obliged, at their own cost, to take out and maintain product liability insurance with at least EUR 5,000,000 cover which, unless agreed otherwise in a specific case, does not need to cover the recall risk or penalties or similar damages or losses. On request the Supplier shall send the Purchaser a copy of the third party liability insurance policy at any time.

PARAGRAPH 16
Performance Tests and Performance Guarantees

- 16.1 The performance guarantees are in addition to the statutory warranty rights and do not limit these. The performance test specified in the Purchase Order will be performed following installation of the equipment at the Location. Following completion of the test the Purchaser/Consultant decides whether the performance test has been successfully performed or not.
- 16.2 If the performance requirements have been fulfilled the Purchaser/Consultant issues the written acceptance certificate for the equipment.

- 16.3 If the performance tests have not been successfully performed the following shall apply:
- 16.3.1 Following consultation with the Supplier, the Purchaser/Consultant decides which suitable measures shall be taken to correct the defect. The Supplier shall take every possible effort to carry out the corrective action as quickly as possible.
- 16.3.2 If the performance guarantee itself partly or completely cannot be given after the performance test period given in the Purchase Order has expired, the performance test shall be deemed not to have been passed. Whether and to what extent the Supplier is obliged to pay a contract penalty in this case depends on the separate provisions possibly listed in the Special Terms and Conditions.
- 16.3.3 If the achieved performance parameters lie below the acceptable minimum level given in the specifications, then the Goods are defective.
- 16.3.4 During the period in which the Supplier attempts to correct defective lack of compliance with the performance guarantees the Purchaser is entitled to full use of the equipment at the reduced performance level that then exists. The quality and/or parameters defined for determination of the performance of the equipment in the test do not change due to this use of the equipment and the Supplier remains responsible for correcting the non-compliance by either adding, changing or replacing everything necessary for compliance with the performance test requirements.
- 16.3.5 If the first performance test is not successfully performed, the Supplier shall bear the costs for performance of subsequent performance tests which will be limited to a mutually agreed number.

PARAGRAPH 17
Licence Fees and Patents

- 17.1 The Supplier assumes responsibility for ensuring that in relation to the Goods delivered in accordance with the Purchase Order and their sale, use or processing, no industrial property rights of third parties, e.g. patents, copyrights or trademarks, etc. are infringed in countries of the European Union, North America or other countries in which they produce the products or has them produced.
- 17.2. The Supplier shall, at their own cost, defend the Purchaser and its subsidiaries and associated companies against all current and future claims based on or resulting from alleged or actual infringements of the aforementioned industrial property rights of third parties.
- 17.3 The Supplier is obliged to release the Purchaser from all claims made by third parties against the Purchaser due to the infringement of industrial property rights named in Paragraph 1, and shall reimburse all expenses necessary in relation to this claim. This does not apply if the obligor is not responsible for the breach of duty.

PARAGRAPH 18
Delivery Period, Delivery and Passing of Risk

- 18.1 The delivery period (delivery date or deadline) given in the Order is binding. Premature deliveries before the due date are not permitted.

- 18.2 The Supplier is obliged to immediately notify the Purchaser in writing if circumstances occur or become identifiable, which mean that the delivery period cannot be met.
- 18.3 If the day on which the delivery shall take place at the latest can be determined on the basis of the Contract, the Supplier is in default at the end of this day, without this requiring a reminder from the Purchaser.
- 18.4 In the case of default of delivery the Purchaser is entitled to the unlimited statutory claims, including the right to rescind the Contract and the claim for compensation instead of performance following fruitless expiry of a reasonable extension of time.
- 18.5 In the event of delivery delays, following prior written warning to the Supplier, the Purchaser is entitled to demand a contract penalty equal to 0.5%, maximum 5%, of the respective order value for each week of delivery delay started. The Contract Penalty shall be offset against the losses or damage caused by delayed, to be reimbursed by the Supplier.
- 18.6 Unless other provisions or the circumstances indicate otherwise, the Supplier is not entitled to make part deliveries.
- 18.7 Even if dispatch has been agreed, risk does not transfer to the Purchaser until the Goods are handed over to them at the agreed final destination.

PARAGRAPH 19 Hold Harmless Clause

The Supplier promises to hold the Purchaser and their representatives or agents and their subsidiary, Group and associated companies and their employees harmless due to all claims, lawsuits, summonses, judgements and arbitration awards (including all costs of a legal dispute), which arise due to the objectively completion of this Purchase Order by the Supplier contrary to the Supplier's duties and shall hold them harmless them unless the Supplier is not responsible for the breach of duties.

PARAGRAPH 20 Payment by the Supplier and Rights of Lien

- 20.1 The Supplier is fully responsible for all payments in relation to their Component Suppliers as no contractual relationship whatsoever exists between the Purchaser and the Supplier's Component Suppliers.
- 20.2 The Supplier assures that they will keep the Purchaser free of any claims made by third parties, e.g. due to rights of lien, as a result of judgements or arbitration awards, due to reimbursement of costs resulting from a legal dispute and in particular also due to costs for materials, employees, stocks, workers and miscellaneous costs which are possibly from the Supplier before or after the final payment and which arise from or in association with the Goods. Whenever the Purchaser requests, the Supplier shall provide evidence that all such rights of lien, claims, law suits, judgements and arbitration awards, etc. have been fulfilled and closed. In emergencies the Purchaser is further entitled to pay amounts directly to a supplier, provider, contractor or material supplier of the Supplier due to this supplier, provider, contractor or

material supplier from the Supplier for the contribution or provision of work, workers, material, stocks, tools, equipment or other things used or are to be used in connection with performance of this Purchase Order if they are justified and due; the Purchaser can charge individual or all payments to the Supplier's account.

- 20.3 The Supplier assures sole liability for the payment of income taxes, holiday pay or contributions to unemployment pay insurance or pensions which are calculated on the basis of the actual wages, salaries or other remunerations paid to the employees of the Supplier and/or their providers/Component Suppliers.
- 20.4 The Supplier assures that they will comply with all laws and instructions and regulations of the authorities with respect to wages, working hours and other comparable or non-comparable matters, which are binding for the Supplier in relation to the work or the Purchase Order in relation to the Goods, the work, the materials, the stocks, the tools, the equipment or other things which are to be provided or made available by or used by the Supplier in accordance with the Purchase Order.
- 20.5 The Supplier further confirms that all equipment and materials provided in accordance with this Purchase Order are produced and sold in accordance with the relevant industrial law requirements in their currently valid version and in accordance with the corresponding regulations or orders issued in the country of production. The Supplier shall therefore hold the Purchaser free of all third party liabilities resulting in this respect from this Purchase Order.

**PARAGRAPH 21
Assertion of Rights**

If one of the two Parties to the Contract fails to exercise their rights existing in accordance with the Purchase Order, this shall not be interpreted as being a waiver of such rights. The regulations and contractual provisions regarding limitation of liability in time and forfeiture remain unaffected.

**PARAGRAPH 22
Legal Succession, Non-Assignment
and Insolvency**

- 22.1 This Purchase Order is binding and applies to the benefit of the Purchaser and the Supplier and the respective heirs, inheritance, estate and asset administrators, legal successors and assignees (cessionaries).
- 22.2 The Supplier shall not assign individual or all rights arising out of this Purchase Order without the prior written consent of the Purchaser. This does not apply provided claims for money are involved.
- 22.3 If the Supplier applies for insolvency or similar proceedings or such proceedings are initiated by the Supplier's creditors or they go bankrupt, the Goods are or shall not be deemed to be part of the insolvency assets.

PARAGRAPH 23
Fulfilment of the Specifications

- 23.1 Whenever materials, equipment, production methods or processes are given in a Purchase Order without description and/or through catalogue number or are specified; these specifications shall be used for the purpose of introducing a quality standard and to simplify the description of the intended main production method or process.
- 23.2 In such cases the Supplier can offer to supply other materials, equipment or processes as those listed in the Purchase Order, which are essentially equivalent in every respect. To this end, the Supplier shall submit to the Purchaser all technical details of the proposed substitution.
- 23.3 The Purchaser/Consultant decides about the quality of the material, the equipment, the production methods or processes offered to them as substitution and shall inform the Supplier within ten (10) working days of receipt of the offer of substitution, whether they approve it or not. This substitution approved by the Purchaser/Consultant is deemed to be approved with the wording "approved as equivalent".

PARAGRAPH 24
Design Drawings

- 24.1 The Supplier provides the Purchaser/Consultant with all drawings and documents required in accordance with the Purchase Order, with the number of copies and within the periods specified in the Purchase Order.
- 24.2 The checking and approval of the drawings by the Purchaser/Consultant does not release the Supplier from the responsibility to fulfil the specifications listed in the Purchase Order or to take responsibility for errors, omissions or neglect by the Supplier according to the statutory and contractual provisions.

PARAGRAPH 25
Ownership of Design Drawings and Information

All drawings and information exchanged between the Purchaser/Consultant and the Supplier become the property of the Purchaser who shall however not use them for or pass them on to third parties for any purposes other than for the project.

PARAGRAPH 26
Quality Assurance

- 26.1 Quality assurance systems

The Supplier shall ensure the following quality assurance requirements:

The Supplier shall have introduced an effective quality assurance system into their company which preferably conforms to the requirements of ISO 9001, 9002 or 9003 - depending on which is applicable or their current equivalents.

The Supplier is responsible for auditing the quality assurance system of their Component Suppliers for fulfilment with the requirements listed above and for approving the system. This audit and approval shall be documented in writing.

The documents of the quality assurance systems of the Supplier's Component Suppliers, which are especially oriented to this Purchase Order and have been approved by the Supplier can be subjected to checking and approval by the Purchaser/Consultant before work begins. The Supplier is responsible for ensuring that their Component Suppliers are capable of fulfilling the requirements contained in this Purchase Order.

The Purchaser reserves the right to audit the quality assurance, in order to be able to check at any time whether the quality system(s) of the supplier and their Component Suppliers fulfil(s) the requirements listed in this Purchase Order and comply with any applicable ISO 9001, 9002, 9003 or their current equivalents.

In the case of deviations from the specified requirements the corrective action shall be clearly given on the basis of the Supplier's quality assurance system.

26.2 Quality Assurance

Within four (4) weeks of the Contract Award the Supplier shall submit to the Purchaser/Consultant a quality assurance plan especially prepared for this project for checking and approval.

26.3 Auditing of the quality assurance schemes

The Purchaser reserves the right to audit the Supplier's quality assurance scheme to the extent deemed necessary for the type of work concerned.

PARAGRAPH 27 Quality Control

27.1 Test requirements

The materials/equipment contained in this Purchase Order will be subjected to testing by the Purchaser/Consultant and/or an appointed technical inspectorate ("TÜV"). The Purchaser bears the costs incurred due to the technical inspectorate. However, the order price includes the costs incurred for tests and material tests with witnesses provided for in the order requirements and/or the relevant specifications.

The test methods will be specified in writing in the "Instructions for testing and trial" document.

27.2 Procedure in the event of quality deviations/imperfections and repairs

The Supplier shall notify the Purchaser/Consultant of repairs or procedures necessary due to quality deviations. This concerns quality deviations found in materials which are part of the Goods to be delivered within the scope of the Purchase Order during the audit or tests at which no auditor/tester was present as witness. This includes repairs or procedures for handling quality deviations in materials which Component Suppliers have delivered.

Repairs made by the Supplier or their Component Suppliers shall comply with the regulations in the relevant specification(s).

The Auditor/tester shall be given unrestricted access to the Supplier's documentation of these instructions and repairs.

27.3 Interim and final acceptance

The Supplier is responsible for the measures taken for all interim acceptances and the final acceptance (to be carried out by third parties) and bears the cost of these, excepting the direct costs incurred for the Tester which are borne by the Purchaser.

PARAGRAPH 28
Time Schedule Monitoring and Testing

- 28.1 The Purchase Order is subject to time schedule monitoring/progress control and testing by the Purchaser/Consultant/Tester or by their authorised representatives. The schedule controllers and Testers of the Purchaser shall be given free access to the workshops of the Supplier and the Component Suppliers and the Supplier shall provide the necessary means for this purpose during all work phases. The Supplier shall provide the Purchaser/ Consultant/Tester a list of all Component Suppliers of materials and work which are part of this Purchase Order and the scope of work/supply of these Component Suppliers. The Supplier shall inform the Purchaser immediately and comprehensively according to Paragraph 18.2 of any postponements and their reasons.
- 28.2 The Purchaser/Consultant is entitled to issue instructions to the Supplier regarding preparation of the time schedule in good time by the Supplier and actual compliance with it by the Supplier. The time schedule includes technical activities, the issue of drawings and data, material procurement, production, assembly, installation, testing, trial and dispatch.
- 28.3 The Purchaser/Consultant is entitled to inspect and to test the equipment at reasonable times during production of the materials and the technical performance.
- 28.4 The Supplier shall perform the testing and trial of the equipment and materials at the place of manufacture in the form considered necessary by the Purchaser/Consultant for the purpose of fulfilment of the Purchase Order and for compliance with the applicable codes and standards.
- 28.5 The Supplier provides, at their own cost, the support, workforce, materials, electricity, fuel, equipment and instruments possibly required for effective performance of these workshop tests.
- 28.6 The Supplier shall inform the Purchaser/Consultant in writing at least fifteen (15) days beforehand of the date and place on or at which the equipment and materials are to be ready for testing and/or trial. The Purchaser/Consultant or their representative can, at the discretion of the Purchaser/Consultant, be present during the testing and/or trial.
- 28.7 If the Purchase Order specifies that the Supplier shall offer a test attended by witnesses, the Supplier shall notify the Purchaser/Consultant of the test date in good time in accordance with Paragraph 28.6, and the Supplier shall take measures for the named test and shall not carry out the work until the named tests have been witnessed by the authorised representatives of the Purchaser/Consultant or the Purchaser/Consultant issues a written waiver in this context.

- 28.8 The fact that the Purchaser/Consultant has tested materials or technical equipment does not release the Supplier from the responsibility for making goods errors/defects found after this test.
- 28.9 If defects become obvious during the test and/or trial, the Supplier shall correct the defects found at their own cost to the satisfaction of the Purchaser/Consultant within the scope of the assured properties.
- 28.10 All Goods rejected by the Purchaser/Consultant due to lack of compliance with the drawings, the specifications and/or the Purchase Order shall be immediately replaced by the Supplier at their own cost with other materials or with Goods which comply with the specifications, drawings and/or the Purchase Order
- 28.11 Following completion of production and trial of the Goods the Supplier shall provide the Purchaser/Consultant with the test results and reports and test certificates which certify that the Goods have been produced in accordance with the Purchase Order and that the whole necessary quality assurance and/or all quality tests have been successfully and satisfactorily performed.
- 28.12 The Supplier notifies the Purchaser/Consultant in writing at least ten (10) days beforehand of the place at which the equipment or materials are to be packed for transport, unless separately agreed otherwise in writing
- 28.13 Equipment or materials - regardless of whether they belong to the Supplier or not - shall not be packed for transport until a written instruction has been requested from the Purchaser/Consultant and this has been received by the Supplier, which states that the equipment and materials can be packed, unless separately agreed otherwise in writing.
- 28.14 If equipment or materials - for whatever reason - were not tested during production or before packing, the Purchaser/Consultant is entitled to test this equipment and these materials at the final destination or at the LOCATION - depending on the circumstances, with the proviso that the Purchaser/Consultant informs the Supplier of this intention within the scope of their written instruction to start packing.

PARAGRAPH 29
Changes to Goods to be Delivered

- 29.1 The Purchaser/Consultant can order additional work or make changes in which the Goods are modified or the quantity of Goods is increased or reduced by sending written notification to the Supplier with a notice period of at least 14 calendar days before the agreed delivery date. The order price can then be appropriately adjusted according to the provisions of the Purchase Order and taking into account Paragraph 3.
- 29.2 If the Supplier claims that changes according to Paragraph 1, which they received from the Purchaser/Consultant justify an increase/reduction in the Order Price, they shall notify the Purchaser/Consultant in writing in good time before the delivery date, however at least within three (3) working days following receipt of the Purchaser's notification, provided it is possible to estimate with respect to the scope of changes, otherwise without delay; however, always before they start the work on the Goods to be delivered.

Such additional work on the Goods to be supplied shall not justify any claim to remuneration beyond the Purchase Price given here except if a detailed cost estimate is approved by the Purchaser/Consultant.

29.3 If a change or modification to the Goods results in a reduction in the work to be carried out or the materials or equipment to be delivered, the Order Price will be lowered accordingly and the Supplier shall not receive any lump sum for the loss of originally expected profits on the Goods which no longer exist.

29.4 Notwithstanding differences of opinion or disputes between the Parties to the Contract regarding individual provisions of Paragraphs 29 and 3, the work shall not be interrupted during the continuation of disputes or differences of opinion.

29.5 Change Order procedure

After the Purchaser has approved the Supplier's written notification regarding additional work, as given in Paragraph 29.2, the Supplier shall carry out this additional work and the costs and time effect of this additional work will be recorded together by both Parties to the Contract. The additional costs are calculated according to the provisions in Paragraph 29.2 and 3.3.

PARAGRAPH 30 Delivery

30.1 The Supplier assures that the Goods will be delivered according to the delivery date(s) and terms and conditions of delivery listed in the Purchase Order.

30.2 The Purchaser/Consultant can require changing of the agreed delivery date(s). In such a case the Purchaser/Consultant shall discuss the matter with the Supplier and a new date is agreed in writing, after agreement has been reached regarding the changed date(s) and other necessary changes to the Purchase Order.

30.3 All Goods will be expected at the Location by 12.00 a.m. local time on a calendar day and for freight/Goods shipments received by 12.00 a.m. local time, it shall be deemed that they have arrived by 12.00 a.m. local time on this day. Freight/ Goods shipments arriving after 12.00 a.m. local time on this day shall be deemed to have arrived on the next calendar day. After this the Supplier provides the Purchaser thirty (30) free hours to unload the usual truck freight of ten (10) tonnes.

PARAGRAPH 31 Receipt of Goods

31.1 On arrival of the Goods at the final destination or at the Location - depending on the circumstances - the Purchaser/Consultant shall visually inspect the packaging for damage or manipulation.

If damage or manipulation are obvious, the Purchaser/Consultant notifies the Supplier within ten (10) days of the type and scope of damage or manipulation and the Supplier has the choice, at their own cost, of sending a representative to check the Goods. The Purchaser/Consultant performs the test on the Goods immediately, within thirty (30) days at the latest, to determine the precise extents of the damage or shortfall.

- 31.2 The Purchaser/Consultant also compares the received Goods with the Purchase Order/if applicable the packing list and the Supplier shall correct any possible missing quantities at their own cost. Notwithstanding this visual inspection and/or notification of shortfalls, the Supplier continues to be responsible for delivering the Goods complete in every respect for the purpose of fulfilment of the defined performance parameters.

PARAGRAPH 32
Manuals of the Manufacturer

The Supplier provides manuals for assembly, installation, startup, operation and maintenance as specified in the Purchase Order. This obligation is part of the Supplier's duties arising out of the Purchase Order and is therefore paid for with the Order Price, unless the Purchaser and Supplier come to a different written agreement.

PARAGRAPH 33
Monitoring the Installation

At the request of the Purchaser/Consultant the Supplier shall provide qualified personnel capable of performing the supervisory and advisory service for installation of the equipment and materials included in the Purchase Order in the environment planned for the work at the project location. This personnel shall be provided in accordance with the instruction "Provision of services - location conditions", attached to the Purchase Order.

PARAGRAPH 34
Rights not Waived through Payment or Acceptance Certificate

- 34.1 Before the formal acceptance of the Goods, certificates issued or payments made by the Purchaser/Consultant shall not in any case deem to be proof of acceptance of the Goods, neither for parts of them nor for all Goods.
- 34.2 Certificates and/or payments shall never be deemed to be acceptance of faulty Goods or unsuitable material and equipment, and they do not release the Supplier from their responsibility and their comprehensive obligations defined in the Purchase Order and resulting from the statutory provisions.

PARAGRAPH 35
Termination / Withdrawal from the Purchase Order

- 35.1 Termination by the Purchaser
- 35.1.1 The Purchaser can cancel this Purchase Order in writing at any time with a notice period of thirty (30) calendar days. The declaration of cancellation should give the cancellation date and the scope of work to be carried out by the Supplier before expiry of the cancellation notice period.
- 35.1.2 In case of termination or cancellation in accordance with the above Paragraph 35.1.1, the Purchaser shall pay the Supplier the value of all work carried out up until the expiry of the cancellation period, plus the costs and expenditure incurred by the Supplier to satisfy claims by Component Suppliers involved in the work (direct costs) and plus a lump sum profit allowance equal to 5 % of all work completed by then.

- 35.1.3 The Purchaser is also entitled to the statutory rights of retention with respect to the amounts owed to the Supplier according to Paragraph 35.1.2.
- 35.1.4 At the end of the notice period the Supplier shall hand over to the Purchaser all equipment and materials at their current location at this time and in the then given condition of completion, according to the mutually defined terms and conditions. The Supplier is not obliged to store this equipment and materials on their premises for longer than (180) days after receiving this notice of cancellation.
- 35.2 Termination / withdrawal due to a breach in the terms and conditions of the Purchase Order by the Supplier

In the case of breach of main or secondary contractual duties the statutory provisions shall apply.

- 35.3 Termination in case of merger
 - 35.3.1 If the Supplier intends merging with another company and/or the Supplier dissolves their company, the Supplier shall notify the Purchaser in writing as early as possible before the merger date and name and appoint the new company with prior written consent of the Purchaser as the Supplier within the scope of the Purchase Order.
 - 35.3.2 Before the merger the Supplier shall make all legal and other arrangements necessary to ensure that the new company is fully responsible for all existing obligations and guarantees under the Purchase Order.
 - 35.3.3 If the Purchaser does not accept the arrangements made, the Purchaser is entitled to stop all payments and - notwithstanding the financial compensation which the Purchaser may be entitled to claim according to the statutory provisions, and/or the demand for additional security which the Purchaser may consider necessary - to terminate the Purchase Order for good cause.
- 35.4 Termination for other good cause
 - 35.4.1 The Purchaser can terminate the Purchase Order at any time without additional compensation for the Supplier - notwithstanding any claims for compensation against the Supplier - for good cause, especially in one of the following cases:
 - if the Supplier is declared insolvent at any time before the last delivery date or agrees debt composition proceedings or legal settlement in bankruptcy with their creditors or stops payments or if the firm is dissolved according to the statutory arrangements,
 - if the Supplier as a company passes a resolution or a court issues the order for them to wind up their business operations,
 - if judicial foreclosure is served against the Supplier,
 - if, contrary to Paragraph 5.3 and Paragraph 22.2, the Supplier assigns rights arising out of the Purchase Order without the prior written consent of the Purchaser
 - or if the Supplier has concluded subcontracts for parts of the work which are disadvantageous for good technical performance and thereby disregard the Purchaser's instructions to the opposite

- 35.4.2 Termination for another good cause remains unaffected.

PARAGRAPH 36 Force Majeure

- 36.1.1 In cases of force majeure, the affected Party to the Contract is released from the delivery or acceptance obligation for the duration and scope of the effect. Force majeure is any event outside the control of the respective Party to the Contract through which they are wholly or partly hindered from fulfilling their obligations, including fire damage or loss, floods, strikes and lawful lockouts, and operating disruptions or official orders for which they are not responsible. Supply difficulties and other performance disruptions affecting the Supplier's Component Suppliers are only deemed to be force majeure if the Supplier themselves are in turn hindered in performing their duties due to an event in accordance with sentence 1 f. The term force majeure in the sense of this provision also includes war, invasion, revolution, public unrest, flooding, severe earthquakes, a typhoon, heavy storms, a plague and epidemics.
- 36.2 The Party to the Contract affected shall notify the other Party to the Contract immediately, however within fifteen (15) days from start of the force majeure at the latest of its occurrence, whereby the matter which constitutes the force majeure shall be precisely described with proofs of the disadvantageous effect on performance of the Purchase Order. Equally, the Party to the Contract concerned shall immediately notify the other Party to the Contract when the force majeure ceases. Further, the Party to the Contract shall make every effort to cancel the force majeure and to limit its effects as far as possible.
- 36.3 In the event of force majeure occurring, the Parties to the Contract will agree further action and performance of the Purchase Order and decide whether after the Goods not delivered during this time should be subsequently delivered or not after it has ended. The Supplier is not entitled to demand an increase in Order Price for this reason. If the Parties to the Contract fail to reach an agreement, the other Party to the Contract not hindered in fulfilling their obligations has the right to terminate the Purchase Order.
- 36.4 Notwithstanding this, each Party to the Contract is entitled to withdraw from the Purchase Order concerned if the force majeure lasts more than sixty (60) days since the agreed delivery date or during the delivery period for this period or in all probability will last so long. The right of each Party to the Contract to terminate the Contract for good cause due to long, sustained force majeure in accordance with Paragraph 35.4.2 remains unaffected.
- 36.4 The period for fulfilment of obligations negatively affected by a case of force majeure shall be automatically adjusted by a number of days which corresponds to the period of delay due to the force majeure.

PARAGRAPH 37 Place of Performance

The place of performance for both sides is the place where the Purchaser has their registered offices, therefore Mochau.

PARAGRAPH 38
Place of Jurisdiction

The sole place of jurisdiction for all disputes arising out of this contractual relationship is the court responsible for place where the Purchaser has their registered offices.

PARAGRAPH 39
Applicable Law

The contracts concluded between the Purchaser and the Supplier, in particular including the Purchase Order, are subject to the laws of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods.

PARAGRAPH 40
Secrecy / Confidentiality

- 40.1 The Supplier shall not disclose information on or about the Purchase Order and shall treat all data confidentially, apart from information which the Purchaser has published or which was generally accessible at the time of disclosure.
- 40.2 The Supplier is obliged to maintain secrecy regarding the terms and conditions of the Order and all information and documents made available for this purpose (with the exception of information published and made accessible to the public by the Purchaser) for a period of 2 years following the end of the Contract and to only use it for completion of the Order. After dealing with inquiries or processing orders, the Supplier will return the information, documents, etc. immediately at the request of the Purchaser.
- 40.3 Without the Purchaser's prior written consent the Supplier shall not refer to the business relationship in advertising material, brochures, etc. and shall not exhibit items produced for and supplied to the Purchaser.
- 40.4 The Supplier shall obligate their Component Suppliers according to this Paragraph 40.

PARAGRAPH 41
Severability Clause

- 41.1 Should individual or several terms and conditions of this Contract wholly or partially breach binding law or be or become invalid or inoperative for other reasons, the validity of the remaining provisions shall remain unaffected.
- 41.2 The arrangement in Paragraph 1 also applies if it should be determined that these Terms and Conditions of Business contain a loophole. The loophole shall be closed by way of supplementary interpretation of the terms of the Contract. Otherwise the statutory provisions shall apply.

Dated: April 2008