

## 1. General

- 1.1. These General Terms and Conditions of Sale and Delivery (hereafter «GTC») shall apply to all contracts under clause 1.2 between Hoval Aktiengesellschaft, with registered office in 70 Austrasse, LI-9490 Vaduz, Liechtenstein (hereafter «Supplier») and its customers (hereafter «Buyers») in the context of energy recovery. By placing an order, the Buyer agrees to these GTC. The GTC shall also apply, mutatis mutandis, to the provision of services by the Supplier in connection with the contractual relationship (e.g. initial set-up, installation and planning work).
- 1.2. The contractual relationship (hereafter “Contract”) between the Supplier and the Buyer is based on the following (in descending order of precedence): (1) the Supplier’s order confirmation, (2) the supply contract (where applicable), (3) the GTC and (4) the applicable law at the Supplier’s country of registered office.
- 1.3. Derogations from the GTC, including the acceptance of different general terms and conditions, are only binding if they are expressly referred to in the order confirmation or the supply contract. In presence of any conflict, these GTC shall prevail. The details and information included in general product documentation and price lists are only binding if they are expressly referred to in writing in the order confirmation or the supply contract.
- 1.4. If any of the provisions in these GTC turns out to be wholly or partially invalid or void, this provision will be replaced with a new provision which comes as close to the legal content and economic purpose of the original provision as possible.

## 2. Applicable requirements in the country of destination/export controls

- 2.1. No later than when placing an order, the Buyer shall advise the Supplier on the applicable requirements and standards on the quality of the goods or services provided and on their operation in the country of destination.
- 2.2. The deliveries and services will comply with the requirements and standards applicable in the country of destination insofar as the Buyer has advised the Supplier of them in accordance with clause 2.1.
- 2.3. The Buyer shall inform the Supplier in good advance of any application-specific features of a product that the Buyer has ordered if these features differ from the Supplier’s general recommendations.

- 2.4. Deliveries under this contract are subject to the condition that their fulfilment does not conflict with national or international export control regulations, e.g. embargoes or other sanctions. The Buyer agrees to provide all information and documentation required for the export or shipment. Delays due to export controls or authorisation procedures shall override deadlines and delivery times. If any necessary authorisations are not granted or the delivery or service is not capable of being authorised, the Contract will be regarded as not concluded in relation to the affected parts.
- 2.5. The Supplier may terminate the Contract without notice if the Supplier is required to do so to comply with national or international laws.
- 2.6. In case the Contract is terminated in accordance with clause 2.5, the Buyer is precluded from bringing claims for damages or assert any other rights because of the termination.
- 2.7. When reselling the goods supplied by the Supplier domestically and abroad, the Buyer shall comply with the applicable provisions on export control of national and international law.

### **3. Offer/order/amendment/cancellation**

- 3.1. The Supplier's offers are non-binding. Orders are only considered accepted by the Supplier when the Supplier has confirmed them in writing.
- 3.2. After receiving the order, the Supplier either makes an offer or immediately issues an order confirmation based on the current version of the product catalogue. The Supplier reserves the right to refuse an order without providing any reasons.
- 3.3. If the Supplier's offer is accepted during the offer's validity period, a contract is formed. The Supplier confirms the formation of the contract with an order confirmation.
- 3.4. The order confirmation sent by the Supplier is considered acceptance. The order confirmation is the exclusive basis for the scope and performance of the supply. The Supplier reserves the right to retrospectively amend the Contract if goods and materials ordered are no longer available or no longer available for the same price at the time of delivery. Any additional costs shall be borne by the Buyer.
- 3.5. If materials and services are delivered without order confirmation, the contract terms are based on the invoice or the delivery note.

- 3.6. Changes to orders are only binding on the Supplier if the Supplier agrees to them in writing. Any additional costs resulting from the change shall be borne by the Buyer. Any reduction in costs will be credited to the Buyer.
- 3.7. In case of cancellations, costs shall be refunded as follows:
- Cancellations up to 16 days before the delivery date = 0 % of the agreed purchase price;
  - Cancellations between 15 and 11 days before the delivery date = 30% of the agreed purchase price;
  - Cancellations between 10 days and 6 days before the delivery date = 70% of the agreed purchase price;
  - Cancellations 5 days or less before the delivery date = 100% of the agreed purchase price.

#### **4. Acceptance of returned goods**

- 4.1. The Supplier is not obligated to accept the return of any goods ordered that were delivered free from defects. This particularly applies to accessories and replacement parts.
- 4.2. Returns, along with the delivery note, shall be sent to the place designated by the Supplier at the Buyer's cost and risk.

#### **5. Characteristics and technical specifications**

- 5.1. The technical specifications, descriptions, measurements, standards, schedules and weights in the documents (hereinafter "Technical Specifications") can be changed by the Supplier at any time and are not binding against the Buyer unless they are expressly referred to in the order confirmation or supply contract. The Supplier reserves the right to change the specifications. The Supplier may replace materials with equivalent materials at any time. The Technical Specifications shall be dictated by the Supplier and may not be used by the Buyer for any purposes other than those agreed in the respective supply contract. The Technical Specifications may not be used for other purposes, copied, reproduced, passed on to third parties or published without the Supplier's consent.
- 5.2. When placing an order, the Buyer shall inform the Supplier of all the details on the intended use of the goods which differ from the Supplier's recommendations.

## **6. Price**

- 6.1. The prices are calculated in accordance with the agreed Incoterms (International Rules on Interpreting National and International Trade Terms of the International Chamber of Commerce) in the version that applies on the day of the order confirmation and include packaging.
- 6.2. The Supplier reserves the right to adjust the prices if labour costs or material prices change between the time of the order confirmation and the contractual performance. Price increases are generally communicated three months in advance. The Supplier is bound by the price determined in an order confirmation for a period of three months after the date on which the price increase comes into effect.

## **7. Payment terms**

- 7.1. If there are no written agreements which provide otherwise, the Supplier's invoices shall be paid within thirty days without the possibility to use a discount code. The payment obligation is considered fulfilled when the due amount is irrevocably credited to the Supplier's account.
- 7.2. Payments shall not be reduced or withheld because of complaints or counterclaims that have not been accepted by the Supplier.
- 7.3. Payments shall be made even if non-essential parts which do not render the use of the supply impossible are missing, or if repair work becomes necessary. The Supplier may refuse to remove the defects if the Buyer fails to comply with its payment obligations.

## **8. Delivery times**

- 8.1. The delivery times and dates specified by the Supplier are not binding unless a date has been expressly declared binding in writing.
- 8.2. The delivery time will be extended by a reasonable time if the Supplier does not receive the details required to perform the contract on time or if the Buyer subsequently changes them.
- 8.3. If the Supplier anticipates that it will not be able to deliver the goods in the delivery time agreed, it will notify the Buyer in writing and specify the new estimated delivery date.

- 8.4. The delivery time will also be extended by a reasonable period in the occurrence of obstacles which cannot be averted despite due care being taken by the Supplier (including but not limited to: serious interruption of services, industrial disputes, delayed or defective deliveries, natural disasters).
- 8.5. If a binding delivery date is exceeded by more than 14 days, the Buyer shall grant the Supplier a reasonable extension. The Buyer shall not bring any claims for damages due to non-performance or delayed performance or any consequential damages if there is no gross negligence or intent attributable the Supplier.

## **9. Delivery terms/passing of risk**

- 9.1. Unless expressly provided otherwise in writing, deliveries will be made according to the “DAP” Incoterms in the version in force on the day of the order confirmation.
- 9.2. The passing of risk is determined by the agreed Incoterms in the version in force on the day of the order confirmation.
- 9.3. The insurance against damage of any kind is determined by the agreed Incoterms in the version in force on the day of the order confirmation.
- 9.4. Complaints in connection with the transportation shall be addressed to the last carrier immediately on receipt of the supply.
- 9.5. If delivery is delayed at the Buyer’s request or for other reasons for which the Supplier is not responsible, the risk shall pass to the Buyer at the time when delivery was originally scheduled. The Buyer may demand payment from this moment. The delivery will be stored at the Buyer’s expense and risk.

## **10. Retention of title**

- 10.1. The delivered goods remain the property (reserved goods) of the Supplier until payment in full of all invoices, including invoices which may become payable in the future, to which the Supplier is entitled, regardless of any legal grounds. This applies even if any specific invoices have been paid.
- 10.2. The Supplier may manufacture and sell the reserved goods during the ordinary course of business. In the event that the Supplier's ownership expires due to combining or intermingling of the reserved goods with other goods, the Buyer transfers its ownership rights on the new supply or item to the Supplier in the amount invoiced at the time when the Contract is concluded.
- 10.3. In the event that the Supplier resells the reserved goods, the Buyer assigns its claims relating to a resale to the Supplier in the amount invoiced for the reserved goods at the time when the Contract is concluded.
- 10.4. If the Supplier uses the reserved goods in order to fulfil a work contract or a work supply contract, the claim under the work or work supply contract is assigned to the Supplier to the same extent and at the same time as the claim for the purchase price would have taken effect.
- 10.5. However, if the Buyer complies with its payment obligations, the Buyer is entitled to collect the claim assigned under the resale, but it may not assign such claims. The Buyer's authorisation to collect the claim can be revoked by the Supplier at any time. The Supplier may disclose the assignment to the third-party debtor. The Buyer shall provide the information and documents required by the Supplier to assert its rights.
- 10.6. The Buyer agrees to immediately notify the Supplier of an attachment of debts or other encumbrance by third parties on the Supplier's property.
- 10.7. The Buyer agrees to assist with any measures that are required to protect the Supplier's reserved property. In particular, by concluding the Contract, the Buyer authorises the Supplier to record or register the reservation of ownership rights in public registers, books or similar in accordance with the laws of the country and to comply with all related formalities at the Buyer's cost.

10.8. The Buyer agrees to maintain the reserved goods for the duration of the reservation of the Supplier's property rights and to insure them against theft, breakage, fire, water and other risks at its own cost for the benefit of the Supplier. It will further take all steps to prevent the Supplier's ownership rights from being encumbered or removed.

#### **11. Inspections on receipt of the delivery / notice of defects**

11.1. The Buyer agrees to inspect the goods with all due care immediately after receipt. Defects or deviations from the order confirmation or the supply contract (incl. product unsuitability) shall be notified in writing within 7 working days of receipt. If the Buyer fails to carefully inspect the goods and / or to notify visible defects on time, the Supplier's deliveries and services will be considered accepted and warranty claims against the Supplier may no longer be asserted.

11.2. Defects which become apparent later which were not visible to the Buyer when the goods were received and which could not have been discovered if the goods had been inspected with all due care (so-called hidden defects) shall be notified by the Buyer to the Supplier in writing within 5 working days of discovery but no later than the end of the warranty period.

11.3. Defective goods or defective parts shall be kept safe by the Buyer until its warranty claims are finally settled and shall be handed over to the Supplier if required and requested by the Supplier.

11.4. If the Buyer requires any initial setups from the Supplier, these shall be agreed in writing with the Supplier. The associated costs shall be borne by the Buyer. If the initial setups cannot be carried out on the agreed date or within the agreed time frame for reasons not attributable to the Supplier, the features which were to be inspected in these tests will be considered to be working unless there is proof to the contrary.

## 12. Warranty

### 12.1. Warranty period

- 12.1.1. The general warranty period is 24 months from first-time use, but no more than 30 months from delivery of the goods to the place of delivery.

If shipment is delayed for reasons not attributable to the Supplier, the warranty period ends no later than 30 months after the Supplier notified that the goods were ready for shipment.

Electrical parts are excluded from the general warranty period. The warranty period for them is 6 months from first-time use, but no more than 12 months from delivery of the goods to the place of delivery.

- 12.1.2. Please refer to clause 12.6.1 regarding the warranty period for third-party products.

- 12.1.3. The warranty period for parts which were repaired or supplied in replacement of defective parts is 12 months after the repairs or replacement are completed but no longer than the expiry of a period of twice the original warranty period as per clause 12.1.1.

### 12.2. Liability for defects in materials, commission and workmanship

- 12.2.1. The determining factor for whether the condition of the goods complies with the contract is the time at which the risk passes.

- 12.2.2. Defects shall be notified to the Supplier immediately and in writing.

- 12.2.3. The Supplier is liable for all parts which become damaged or unfit for use before the warranty period expires if this is attributable to poor materials, faulty commission or poor workmanship. At the Buyer's choice, the Supplier will either immediately repair such parts or provide replacement parts ex works free of charge.

### 12.3. Liability for warranted characteristics

- 12.3.1. Warranted characteristics are only those which have been expressly identified as such in the order confirmation or the supply contract.



12.3.2. The warranty only applies until the warranty period expires. If an inspection for acceptance has been agreed between the Buyer and the Supplier, the warranty is considered fulfilled if evidence of the relevant characteristics has been provided. If the warranted characteristics are not fulfilled or only partially fulfilled, the Buyer is entitled to request an immediate rectification. The Buyer shall grant the Supplier a time and opportunity suitable to carry out the rectification.

12.3.3. If this rectification fails to succeed or only partially succeeds, the Buyer is entitled to a reasonable price reduction. If the defect is so severe that it cannot be rectified within a reasonable time, and if supplies or services are unfit for their specified purpose at all or only with considerable restrictions, the Buyer has the right to refuse acceptance of the defective part or, if partial delivery is economically unacceptable, to repudiate the Contract. The Buyer is only obligated to refund the amounts which have been paid by the Supplier for the parts affected by the repudiation.

#### 12.4. Exclusion of liability for defects

12.4.1. The Supplier shall not be liable for damage which is not clearly attributable to poor materials, faulty commission or poor workmanship.

12.4.2. By way of example, the Supplier shall not be liable for damage which was caused by improper performance of other parties in relation to planning, preparation, assembly, operation and maintenance, as well as by installation techniques and implementations which do not conform to the current state of the art, non-compliance with the Supplier's guidelines regarding planning, assembly, initial setup, operation and maintenance, or caused by force majeure (e.g. acts of God).

12.4.3. The Supplier shall particularly not be liable for:

corrosion damage (e.g. due to aggressive air or aggressive condensate etc.);

damage due to air pollution (e.g. heavy dust build-up, aggressive fumes etc.);

damage due to malfunctioning material; and

damage due to overloading, too high air pressure, improper electrical connection or insufficient protection.

12.4.4. Parts that are subject to natural wear and tear are also excluded from the warranty (e.g. washers, driving belts).

12.5. Installation report

12.5.1. A correct operational handover and – if required – the Installation Report are preconditions for the Supplier's warranty.

12.6. Supplies and services by subcontractors

12.6.1. With regard to third-party products which form an integral component of the item to be delivered, the Supplier's liability is limited to the assignment of the claims which the Supplier has against the courier of the third-party product.

**13. Exclusion of further liability**

13.1. The Buyer does not have any rights or claims for defects in material, commission or workmanship or for a lack of warranted characteristics beyond those expressly stated in clauses 12.1 to 12.6 above.

13.2. In particular, any claims to damages, reduction, cancellation of the Contract or repudiation of the Contract are excluded. Under no circumstances can the Buyer claim compensation for damage which does not affect the delivered item itself (e.g. cost of replacement, cost for determining the damage and expert reports, loss of production, loss of use, loss of orders, income loss and any other direct or indirect losses). This exclusion of liability does not apply to gross negligence attributable to the Supplier.

13.3. The exclusion under clause 13.2 applies to all cases of breach of contract and all claims raised by the Buyer, regardless of the legal basis from which they arise. It also applies to the breach of any ancillary obligations (e.g. inadequate advice and similar).

#### **14. Intellectual property**

14.1. All intellectual property rights to technical drawings and sheets which the Supplier provides to the Buyer remain the property of the Supplier. They may only be changed, used, duplicated or passed on with the Supplier's written consent. The Supplier or its subcontractors are and remain the owners of all intellectual property rights to the goods supplied, including design rights, trademark rights and copyright to software which is a component of the goods supplied.

#### **15. Applicable law and jurisdiction**

15.1. This Contract is governed under the law of Liechtenstein, with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG). Subject to the mandatory statutory provisions on consumer contracts, the exclusive jurisdiction for all disputes arising from or in connection with this Contract is the place where the Supplier has its registered office. The Supplier has the right to sue the Buyer the place where the Buyer has its registered office.