

# TMH Technik- und Motorenservice Holm GmbH & Co. KG

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## General Terms & Conditions

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### I. General Provisions

#### 1. Scope of Application

1. The General Terms and Conditions (T&Cs) set out below apply to all the goods and services which we provide. These T&Cs will also apply to all follow-up transactions in the future even if this is not expressly agreed again.
2. Even if we have not specifically rejected them in an individual case, the Terms and Conditions of the customer or a third-party will not apply. Even if we refer to a letter that contains or refers to the Terms and Conditions of the customer or a third-party, this will not constitute acceptance of those Terms and Conditions.
3. We will notify the customer of any amendments to these T&Cs no later than one month before the proposed entry into force of the amendments. The customer will be deemed to have consented to the amendments if it does not notify us of its rejection of the amendments before their proposed entry into force. We will specifically draw the customer's attention to the effect of such consent in our notice. If it would be unreasonable for us to perform individual contracts that are in progress following a timely notice of objection by the customer, we will be entitled to terminate the contract for cause.
4. These T&Cs contain general provisions for all types of contracts in **Part I**, supplementary provisions for repair and maintenance work in **Part II**, for constructions and drawings in **Part III**, for contracts of sale in **Part IV** and for leases in **Part V**.

#### 2. Quotations and Conclusion of Contract

1. Our offers are valid for 14 days.
2. Our offers and quotations, especially in respect of quantities, prices and delivery/performance times are always subject to change and non-binding. They only cover the work which is specifically described therein. Orders are not binding on us until we have confirmed them in writing or have executed them.

### **3. Prices and Terms of Payment**

1. All prices are net prices. In addition, the customer will be subject to value-added tax in the statutory amount applicable from time to time.
2. Payment must be made to one of the bank accounts stated on our invoice.
3. In the case of sale transactions, our prices apply ex works and do not include the cost of packaging, freight, postage, shipping, insurance or assembly. Any customs duties or import/export duties will be invoiced separately.
4. Where we provide maintenance, repair or assembly services outside our facilities, we will invoice the customer separately for our travel expenses, travel time, accommodation, meals and other out-of-pocket expenses.
5. Invoices are due and payable in full immediately upon delivery of goods or services and receipt of the invoice.
6. The customer will pay the cost of any taxes, fees or other charges which arise outside the Federal Republic of Germany.
7. We reserve the right to request an appropriate advance payment at the time an order is placed.

### **4. Liability**

1. The customer will have no claims against us, our executive bodies, legal representatives, and/or agents/vicarious agents (hereinafter referred to collectively as “we” or “us” or “our”) for damages or indemnification, for any legal reason whatsoever, including, but not limited to, claims arising from breach of contract and/or tortious conduct.
2. The above-mentioned exclusion of liability does not apply in the event of willful default or gross negligence on our part and/or in the event of a willful or negligent breach of material contractual obligations. Material contractual obligations are those obligations whose fulfillment is of the very essence for the proper performance of the contract and upon whose fulfillment the customer will and may regularly rely. In the event of gross negligence or the willful or negligent breach of material contractual obligations, our liability will be limited to the typical and foreseeable loss or damage resulting from the breach of such a contract.
3. The exclusion of liability pursuant to § 4.1 and the limitation of liability pursuant to § 4.2 do not apply to loss or damage resulting from loss of life, bodily injury or illness due to willful default or negligence or where we are subject to strict liability, e.g. according to the Product Liability Act (*Produkthaftungsgesetz*).

## **5. Assignment, Set-Off and Retention**

1. The customer is not permitted to assign any rights under the contract to a third-party without our prior consent.
2. The customer is only permitted to set off a counterclaim against us if such claim is undisputed or non-appealable.
3. The customer is only entitled to exercise rights of retention against us if they arise from the same contractual relationship.

## **6. Jurisdiction and Choice of Law**

1. These T&Cs and the entire legal relationship between us and our customer will be governed by the law of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
2. Hamburg is the place of performance and the courts of Hamburg have jurisdictions for all disputes arising under this contract. However, we will also be entitled to have recourse to the court which has jurisdiction for the customer.

## **II. Repair and Maintenance Services**

### **1. Scope of Application**

The provisions in this Part apply to all the services that we provide, but do not include the sale or lease of any objects or items. In particular, the provisions cover the execution of repairs, conversions, maintenance and installation work.

### **2. Offers and Quotations**

1. If the customer wishes to receive a binding quotation before we execute the work, it must expressly request this. Our quotations are only binding if they are in writing and we have expressly labeled them as binding.
2. If, while executing a contract, we consider it necessary to perform work which was not included in the quotation or offer, we will be entitled to increase the scope of work by up to 20% of the estimated total price without consulting the customer. This does not apply if we were at fault in failing to include the additional work in the quotation. If it becomes evident to us that the above percentage is likely to be exceeded, we will inform the customer of this without delay and consult with it regarding the execution of the additional work.

3. The customer will reimburse us for work performed in connection with the submission of a quotation or offer as well as for any expenses we have incurred (e.g. identification of defects, visits to construction sites, disassembly work etc.) if, due to no fault on our part, no order is placed or an order is placed, but its scope is narrower than that provided for in the quotation.

### **3. Scope of Services and Time for Performance**

1. We will only be bound by any periods for performance (performance dates) stated if we have expressly confirmed that they are binding.
2. If the customer wishes to make any changes or additions to the services or if, during the execution of the services, it becomes apparent that additional work is necessary, the time for performance will be extended by an appropriate amount of time. The same applies if we are prevented from performance by any unforeseeable obstacles which are beyond our control and which cannot be removed at a reasonable cost, such as force majeure, mobilization, war, riot, strikes, lockouts, confiscations or embargoes. The same applies if, due to no fault on our part, our own suppliers do not make timely delivery. If, due to no fault on our part, it is impossible for us to perform all or some of our services, we will be entitled to rescind the contract. In such a case, the customer will not be entitled to demand damages or require that we remedy our performance (repair or replacement).
3. If work is discontinued for reasons for which we are not responsible, we will return the item for maintenance or repair to its original condition only if the customer expressly requests us to do so and the customer agrees to reimburse us for the resulting costs. This does not apply where the work undertaken was unnecessary.
4. Dismantled parts will be disposed of in an appropriate manner. This does not apply where we ask the customer whether it wishes to dispose of the dismantled parts itself and it notifies us, within seven days, that it wishes to do so. If we are responsible for disposing of the parts, we will invoice the customer separately for the costs of disposal, including labor and ancillary costs.
5. We may delegate the performance of work that we have been engaged to perform to a specialist subcontractor.

### **4. Cooperation and Technical Assistance from the Customer**

1. The customer is obliged to inform us of any special qualities or characteristics of the items for maintenance or repair and to inform us of any existing contamination (e.g. asbestos).
2. The customer agrees to make the items for repair or maintenance available to us or our specialist subcontractor so that we are able to perform our services unhindered.

3. Unless there is an agreement to the contrary, where we perform, as agreed, work on the items for repair or maintenance at our facilities, the transport of the items to and from our facilities, including packing and reloading by us will be carried out for the customer's account. The customer must ensure that the items for repair or maintenance are readily accessible for transport at the agreed collection time and that it is ready to take receipt of them at the time agreed for their return.
4. Where we perform, as agreed, our work outside our facilities, the customer must ensure that the place where the work is to be performed is readily accessible at the agreed time and that we can begin with the work immediately. Upon request, the customer must make available technical support and/or personnel to assist us. The customer's duties of cooperation include, but are not limited to, providing us, free of charge, with plans, drawings and instructions etc., the necessary personnel to assist us, lifting and transportation equipment, heating, lighting, power, water and electricity, including the necessary connections.

## **5. Acceptance and Warranties**

1. The customer is obliged to accept performance in accordance with the contract as soon as we have notified it of the completion of the work. Acceptance is governed by the statutory provisions.
2. The customer is entitled to the statutory warranties subject to the proviso that warranties will become time-barred 12 months from its acceptance of the work. This does not apply to the fabrication of buildings or work on buildings; claims based on loss of life, bodily injury or illness; willful default or gross negligence; or claims based on a breach of material contractual obligations (see Part I.4.2).
3. If the customer fails to take delivery on time, we will be entitled to charge storage fees for the duration of the delay at the rate customary at the storage location.

## **6. Retention of Title (ROT)**

1. We reserve title to any parts which we have installed in the course of performing our work until such time as all of our claims arising from the respective contract have been settled in full (ROT goods).
2. If a third-party attaches the ROT goods while they are in the customer's possession, the customer will notify us without delay and inform the attaching party of our retention-of-title rights.
3. If, by operation of law, title to the ROT goods should pass to a third-party due to the processing or commingling of the goods with other goods, the parties agree that the customer's co-ownership share of the commingled item will pass to us in an amount proportional to the ratio of the invoice value of work performed by us to the value of the single item at the time of commingling. We agree to release the securities to which we are entitled to the extent that they exceed the value of the secured claim by more than 10%.
4. If the customer acquires sole ownership of the new item, it will transfer to us a co-ownership share in the new item in an amount proportional to the ratio of the value of our ROT goods to the value of the new item. Moreover, it will, free of charge, hold the item in safekeeping for us.

## **7. Right of Lien**

1. If the item for maintenance or repair comes into our possession, we will be entitled to a (contractual) lien over it on account of any outstanding claims under the contract.

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2. The aforementioned lien will only cover other claims arising from our business relationship with the customer if such claims are uncontested or non-appealable.

### **III. Construction and Drawings**

1. If a construction is commissioned according to documents, execution drawings, plans, etc. provided by the customer, the customer undertakes liability for the correctness and feasibility of the design and the usability of the construction.
2. If we take over a construction according to the drawings provided by the customer and it proves to be unfeasible, we are entitled to withdraw from the contract and to charge our work according to labor and material costs at usual prices and independently of the agreed price.
3. The customer is liable for the legality of the use of drawings, sketches etc. sent to us. We are not obliged to carry out a review and are to be indemnified by the customer from all damage that we incur as a result of the assertion of industrial property rights by third parties.
4. Production molds, production devices and tools that are procured by us or made according to our drawings remain our property and are exclusively available to us, unless otherwise agreed.
5. Unless otherwise agreed, the usual tolerances for steel construction and metalworking companies according to DIN ISO 2768 Class C "coarse" and DIN EN ISO 13920 Class B "medium" apply.
6. Unforeseeable events such as force majeure, strikes, material shortages on the market and unexpected and unavoidable delivery delays by our suppliers entitle us – even within the delay – to postpone the completion of our service for the duration of the hindrance or to withdraw from the contract in whole or in part due to the unfulfilled part of the contract, without any claims against us being derived from this.

### **IV. Contracts of Sale**

#### **1. Scope of Application**

The provisions in this Part apply to the conclusion of contracts of sale.

#### **2. Delivery and Passing of Risk**

1. We will only be bound by any delivery periods (delivery dates) stated if we have expressly confirmed that they are binding.



2. We will be deemed to have made timely delivery if, within the delivery period, the delivery item was dispatched or made available for collection. Where shipping or collection is delayed due to no fault on our part, we will be deemed to have made timely delivery if we notify the customer, within the agreed period, that the delivery item is ready for shipment or collection.
3. A binding delivery period will be extended by an appropriate amount of time if failure to adhere to it is not due to any fault on our part. This applies if we are prevented from making delivery by any unforeseeable obstacles which are beyond our control and which cannot be removed at a reasonable cost, such as force majeure, mobilization, war, riot, strikes, lockouts, confiscations or embargoes. The same applies if, due to no fault on our part, our own suppliers do not make timely delivery. If, due to no fault on our part, it is impossible for us to make delivery, in whole or in part, we will be entitled to rescind the contract. In such a case, the customer will not be entitled to demand damages or subsequent delivery.
4. The shipment of the delivery item will be for the account and at the risk of the customer. The same applies where we use our own means of transport to ship the delivery item. If carriage paid delivery has been agreed, this will also be carried out at the risk of the customer.
5. In the case of items delivered to seagoing vessels, we will be responsible for taking out transport insurance and for customs clearance. The customer will bear the costs of this. In the case of delivery of items where maritime shipping is not used, we will not be responsible for taking out transport insurance or for customs clearance of the shipment. In this case, the customer must ensure that, at the time of shipment, all relevant import and export regulations, which must be complied with at the shipment's intended destination, have been complied with.
6. We may make partial deliveries if the customer is able to use the partial delivery for the contractually intended purpose, the delivery of the rest of the delivery items is ensured and such partial deliveries would not result in significantly more effort or additional costs for the customer (unless we agree to assume these costs).
7. Risk will pass EXW (ICC Incoterms 2010) Im Sande 21, 25488 Holm.

### **3. Retention of Title (ROT)**

1. We reserve title to the delivery items until we have received payment of the purchase price in full (ROT goods).
2. If a third-party attaches the ROT goods while they are in the customer's possession, the customer will notify us without delay and inform the attaching party of our retention-of-title rights.

3. Any manufacturing or processing of the ROT goods which the customer undertakes will be deemed to be undertaken on our behalf yet will not give rise to any obligations on our part. If, by operation of law, title to the ROT goods should pass to a third-party due to the processing or commingling of the goods with other goods, the parties agree that the customer's co-ownership share of the commingled item will pass to us in an amount proportional to the ratio of the invoice value of work performed by us to the value of the single item at the time of commingling. We agree to release the securities to which we are entitled to the extent that they exceed the value of the secured claim by more than 10%.
4. If the customer acquires sole ownership of the new item, it will transfer to us a co-ownership share in the new item in an amount proportional to the ratio of the value of our ROT goods to the value of the new item. Moreover, it will, free of charge, hold the item in safekeeping for us.

#### **4. Warranty**

1. No warranties are given for used goods.
2. The above-mentioned exclusion of liability does not exclude damages claims against us in the event of willful default or gross negligence on our part or that of our executive bodies, legal representatives, and/or agents/vicarious agents; or willful or negligent breach of material contractual obligations (see Part I.4.2); or loss of life, bodily injury or illness due to willful default or negligence. In the event of gross negligence or the willful or negligent breach of material contractual obligations, our liability will be limited to the typical and foreseeable loss or damage resulting from the breach of such a contract.
3. Where new goods are delivered, the customer will be entitled to the statutory warranties subject to the proviso that the warranties will become time-barred 12 months from the transfer of possession. This time limit does not apply to buildings or delivery items, which have been used in keeping with common practice for a building or in the cases mentioned in Part III.3.2. above.

### **V. Leases**

#### **1. Scope of Application**

The provisions in this Part apply to the conclusion of leases.

#### **2. Transfer of Possession and Term of Lease**

1. The customer (hereinafter referred to as the “Lessee”) must return the rental object and any accessories rented with it to us in good working order and in a fully usable and clean condition on the agreed day following the expiry of the term of the lease.
2. The Lessee must obtain our prior consent if it wishes to keep the rental object longer than the agreed term of the lease. If it does not do so, we will be entitled, at any time, to retake possession of the rental object at the expense of the Lessee and to charge it for the additional use of the rental object. § 545 of the German Civil Code (*Bürgerliches Gesetzbuch* – BGB) does not apply.

### **3. Use**

1. The Lessee must properly use the rental object in accordance with the operating instructions and treat it with care. It must also ensure that its employees or other agents use the rental object properly and in conformity with the contract. We will not provide training regarding the use of the rental object.
2. The Lessee will take appropriate measures to ensure that the rental object is adequately protected against access and, in particular, use by unauthorized third parties during the term of the lease.
3. The Lessee has no right to permit a third-party to use the rental object, either free of charge or for a rental fee, without our prior consent. If, without authority, the Lessee leases the rental object to a third-party for a rental fee, the Lessee irrevocably agrees to assign its claims to such rental fee against the sub-lessee to us. We accept the assignment.

### **4. Liability of the Lessee and Attachment**

1. The statutory provisions will govern the Lessee’s liability for any damage that occurs during the term of the lease to the rental object or accessories rented with it. They will also govern its liability for any damage that third parties suffer during the term of the lease in connection with the use of the rental object. This applies, in particular, to damage which we first discover after the return of the rental object. The Lessee will be liable for the willful default or negligence of its staff, employees or other persons who come into contact with the rental object through the Lessee in the same way as it is liable for its own willful default or negligence. The Lessee must notify us immediately if the rental object is damaged.
2. The Lessee will indemnify and hold us harmless from any claims by third parties arising from the use of the rental object by the Lessee, its staff, employees or other persons who come into contact with the rental object through the Lessee. The above does not apply insofar as the third-party’s claims are based on a willful or negligent breach of duty on our part pursuant to Part I.4.

3. The Lessee will notify us without delay if a third-party asserts any rights to the rental object through seizure, attachment or the exercise of any similar rights. Furthermore, the Lessee will, without delay, send the third-party a registered letter informing it of our ownership rights. If a third-party initiates execution proceedings in respect of the Lessee's assets, it will be obliged to identify us in a suitable way as the owners of the rental object.

## **5. Termination**

1. In the event that the lease terminates (regardless of the legal basis), the Lessee will be obliged to cease using the rental object and return it to us without delay. The Lessee will bear the risk of accidental loss of the rental object until the time of its return.
2. Either party may terminate the lease for cause at any time before the expiry of its agreed term. Good cause for us includes, but will not be limited to where:
  - (i) the Lessee is in arrears in respect of one rental payment even though we have sent a notice of default and set a deadline for payment;
  - (ii) the Lessee discontinues its payments;
  - (iii) insolvency proceedings are instituted against the Lessee's assets or if the institution of such proceedings is rejected due to a lack of assets or if application has been made for the Lessee to swear an affidavit disclosing its assets and liabilities;
  - (iv) the Lessee lets a third-party use the rental object without our prior consent, assigns rights under this contract to a third-party or grants rights of any kind whatsoever to the rental object;
  - (v) the Lessee endangers the rental object by neglecting its duty of care in respect of the rental object even though we have sent it a notice of default and set a deadline for compliance or, due to the Lessee's neglect of its duty of care or supervision, the rental object is endangered by a third-party.

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