

## General Purchase Terms of TGM Kanis Turbinen GmbH (version 10/2006)

### 1.0 Conclusion of the contract, written form, confidentiality, alterations

1.1 We only order on the basis on these General Purchase Terms. Other terms shall not become terms of the contract, even if we do not expressly raise objection to them. If we accept the delivery/performance without express objection, then this can under no circumstances be understood to mean that we accept your terms of delivery.

1.2 Quotations must be submitted in a binding manner and free of charge. They must correspond to our inquiries; alternatives are nevertheless desired. Deviations from the inquiry must be clearly marked as such.

No remuneration shall be paid for visits, the elaboration of quotations, projects and designs or for trial deliveries.

1.3 If you do not accept our purchase order within 7 calendar days after receipt in writing, then we are entitled to revoke the said purchase order. Our Purchasing Department must receive the acceptance within this deadline.

If you accept our purchase order with deviations, then you must clearly draw our attention to these deviations. A contract shall only come into existence if we have agreed to these deviations in writing.

Calls for delivery shall become binding at the latest if you do not raise objection in writing within 3 calendar days since receipt.

1.4 Only purchase orders awarded in writing shall be legally binding. Purchase orders awarded verbally or by telephone shall require our subsequent written confirmation to be legally effective. The same shall apply to verbal ancillary agreements and subsequent alterations to the contract.

Purchase orders, calls for delivery as well as their amendment and supplementation may also be effected electronically or by remote data transmission or by machine-readable data carriers.

1.5 You must treat our inquiries, the resulting quotations and also the conclusion of the contract in confidence and may only refer to business relations with us in all publications, e.g. in advertising materials and reference lists, following our written approval.

1.6 The contracting parties undertake to treat all non-public commercial or technical details which they learn through the business relationship as a business secret. Subcontractors must be placed under a corresponding obligation. Employees and workers who are commissioned by you with the execution of our purchase order must be committed by you to maintain corresponding secrecy. They must be instructed regarding Articles 17 and 18 of the German Unfair Competition Act.

If one of the contracting parties recognises that an unauthorised third party has obtained possession of a confidential piece of information or that a confidential document has been lost, then it shall inform the other contracting party accordingly without delay.

The confidentiality obligation shall also continue to apply after the fulfilment of this contract. It shall only expire if and in so far as the production knowledge contained in the surrendered documents has become public knowledge.

1.7 We may demand alterations to the delivery item, even after the conclusion of the contract, provided this is reasonable for you. In the case of this alteration to the contract, the effects on prices and delivery dates must be agreed anew.

1.8 You shall provide proof of origin requested by us without delay, namely with all necessary details and signed in a due and orderly manner. The same shall apply to statutory VAT proof in the case of foreign and intra-Community deliveries. These documents must be submitted to us 10 calendar days at the latest before the delivery date.

With the acceptance of this purchase order, you undertake to enable the customs authorities to check proof of origin documents and supplier's declarations and to provide the accordingly necessary information and to furnish any required official confirmations (information sheets). You furthermore undertake to reimburse us the loss which we suffer due to the fact that the declared origin is not recognised by the relevant authority.

You shall notify us without delay if a delivery in whole or in part is subject to export restrictions according to German law or any other law.

1.9 You must inform us of the required official permits and registration obligations for the import and operation of the delivery items.

1.10 With the delivery of the subject-matter of the order, you assign to us the right to use the subject-matter of the order for all known forms of use.

### 2.0 Prices, transfer of title, public price scrutiny, shipment, excess and short deliveries, transfer of risk, packing

2.1 The agreed prices are fixed prices and exclude all manner of subsequent demands.

Costs for packing and shipment up to the shipping address or place of use stated by us as well as the costs for customs formalities and duty are included in the prices.

If pricing ex your works or ex your sales depot is agreed, then the consignments are to be shipped at the lowest costs in each case, unless we expressly stipulate a specific mode of shipment. Again in these cases, risk shall only pass to us with the receipt of the performance or goods.

If we collect the goods from your premises, then we must receive the notification of the readiness for shipment 10 working days before the delivery date. The notification of the readiness for shipment must contain the packing list, the number of packages, the contents as well as the individual weights of the respective packages.

If no prices are stated in the purchase order, then your list prices shall be applicable minus the deductions (discounts) agreed upon with us or minus the usual trade deductions.

The delivery shall also include all contractually agreed process materials, spare parts, etc. as well as all documentation, such as drawings, quality and test certificates, service manuals, installation and operating instructions, spare parts catalogues as well as other manuals.

In the case of the delivery of third-party parts and standard parts and of products manufactured by yourself, you guarantee availability for 10 years.

2.2 If title to the products which are to be supplied already transfers to us on account of a contractual agreement at a time when the products are stored at your premises, then you must mark our property in a due and orderly manner, store it separately and indemnify us against all losses, damage and claims of third parties.

2.3 If the purchase orders concern deliveries for authorities which are subject to public price scrutiny, you undertake to provide unrestricted information about your pricing to the authorities entitled to undertake scrutiny and recognise the permissible prices as binding for you.

2.4 Our order number, the project number and also the project name must be indicated on dispatch notes, consignment notes, invoices and all correspondence with us. You are responsible for all consequences which arise from the non-compliance with this obligation.

2.5 We shall only accept the volumes or unit numbers ordered by us. Excess or short deliveries shall only be permissible following agreements previously made with us.

2.6 Shipment shall be effected at your risk. You shall bear the risk of every deterioration, including the risk of accidental loss, until delivery at the agreed shipping address or place of use. If a specific place of receipt is not stipulated by us, then delivery must be effected to our place of business.

We are not obliged to clear lorry loads before the arrival of the delivery documents.

2.7 If we request you to postpone a delivery, then you must carefully store the properly packed and marked products and insure them, however, for 3 months at the most.

2.8 If shipment is effected directly from the manufacturer/dealer to our customer, then the transport documents must be neutral and in our name.

2.9 Your return acceptance obligation for the packing is determined according to the statutory provisions. If the packing remains your property, then you shall take it back at your expense.

2.10 The goods must be packed in such a manner that damage in transit is avoided. Packing materials are only to be used to the extent necessary for achieving this purpose. Only environmentally friendly packing materials may be used.

2.11 Incoterms in their respectively valid version at the time of the conclusion of the contract shall apply first and foremost to the interpretation of trade terms.

### 3.0 Invoicing, payment, certificates

3.1 A prerequisite for demands for payment falling due is the complete and fault-free rendering of the delivery/performance as well as the submission of a verifiable invoice. Invoices which are not submitted in a due and orderly manner shall only be regarded as received by us from the time of correction.

Invoices must be submitted to us separately in triplicate with all corresponding documents and data after delivery/performance has been effected. The second and third copies must be clearly marked as duplicates.

3.2 Payment by us shall be effected in the customary manner within 14 calendar days since falling due with the deduction of 3 % prompt-payment discount or within 30 calendar days net.

- Payment by us shall not constitute confirmation of a voidable or null and void transaction.
- 3.3 If certificates on material tests or other documentation are agreed, then they shall constitute a fundamental component of the delivery and are to be sent to us together with the delivery. We must have received them, however, 10 calendar days at the latest after the receipt of the invoice. The period for payment for the invoice shall commence with the receipt of the agreed certificates or documentation.
- The documentation must be enclosed with the consignment in paper form as a single copy and must additionally be handed over once in paper form and once on a data carrier to the orderer. As an alternative to the data carrier, provision can be effected by e-mail or on the internet (for downloading) with the prior transmission of the corresponding access code and the password. Provision on the internet must be notified to us in writing.
- 3.4 In the case of faulty or incomplete delivery, we are entitled to withhold payment pro rata until due and orderly performance, namely without loss of discounts, prompt-payment discounts or similar payment privileges. If payments for faulty deliveries were already effected, we are entitled to withhold other due payments up to the amount of the effected payments.
- 4.0 Delivery dates, delay in delivery, force majeure, earlier delivery, part deliveries, surrender of documentation, stoppage of production**
- 4.1 The agreed delivery dates are binding and must be met exactly. Authoritative for the compliance with the delivery date or the delivery period shall be the receipt of the goods and/or the rendering of performance as well as the surrender of the documentation at the place of receipt or use stated by us or the timeliness of the successful official acceptance.
- If the delivery period has been termed or confirmed by you as "probably", "approximately", "with the usual proviso" or suchlike, then 8 calendar days at the most may lie between the indicated date and the actually effected delivery.
- The acceptance of the delayed delivery without reservation shall not constitute a waiver of claims for damages.
- 4.2 If you recognise that an agreed date cannot be met for any reasons whatsoever, then you must inform us accordingly without delay in writing, stating the reasons and the probable duration of the delay.
- You shall in such cases nevertheless take all necessary measures so that the agreed delivery date can be met or so that there is only a slight time delay and you shall inform us in writing what you have accordingly done and shall still do in the individual case.
- The agreed delivery date shall under no circumstances alter by the notification of a probable delay in delivery. You grant us the right that we may approach your suppliers if necessary. All costs which we incur as a result of the negligent failure to make notification or negligent delayed notification shall be borne by you.
- 4.3 If you are in delay in delivery, then we shall be entitled to the statutory claims.
- We are then also entitled, after the fruitless expiry of a reasonable additional period set by us, at our option to continue to demand delivery/performance, to declare withdrawal from the contract with or without damages or to obtain alternative delivery/performance from a third party and/or to assert damages instead of performance. Our claim to delivery/performance shall only cease to apply when we declare withdrawal in writing or demand damages instead of performance.
- Additional expenses, especially in the event of the necessary covering purchase of goods/services, shall be borne by you.
- 4.4 You may only plead our failure to supply necessary documents which are to be provided by us if you have issued a written reminder for the documents and have not received them within a reasonable period.
- 4.5 Force majeure and industrial disputes shall release the contracting parties from their performance obligations for the duration of the impediment and in the scope of its effect. The contracting parties are obliged in so far as is reasonable to give the necessary information without delay and to adapt their obligations in line with the altered circumstances in good faith.
- We are released from the obligation to accept the ordered delivery/performance in whole or in part and entitled to withdraw from the contract in this respect if the delivery/performance due to the delay caused by force majeure or the industrial dispute – taking account of economic considerations – can no longer be exploited at our plant.
- 4.6 In the case of earlier delivery than agreed, we reserve the right to send back the goods at your expense and risk. If the goods are not sent back in the case of premature delivery, then they shall be stored until the delivery date at our plant at your expense and risk.
- In the event of premature delivery, we reserve the right to make payment only on the agreed due date.
- 4.7 We only accept part deliveries by express written agreement. They are to be denoted as such in the shipping documents. The remaining outstanding volume must also be stated in the documents. Even if we agree to a part delivery, the agreed dates for the overall delivery shall remain applicable, meaning that the delivery/performance shall only be rendered with the complete performance of the contract.
- 4.8 If you are in delay with such deliveries/performance by more than 30 calendar days for which – irrespective of the cause in law – it is not possible to obtain a replacement, then you are obliged upon the first written request to surrender all technical documents which are necessary for reproduction by us or by third parties commissioned by us.
- If industrial property rights to these parts exist, then you shall accordingly conclude with us without delay a licence agreement on customary market terms.
- 4.9 If you alter or switch your production, then you must inform us accordingly without delay. In the case of stoppages of production, you must ensure that the raw and process materials ordered by us are still available for at least one year after the stoppage of production.
- 5.0 Warranty, safety data sheets, notice period for claims, subsequent rectification, new delivery, withdrawal, price reduction, damages, series faults, warranty period, suspension, new start, recourse**
- 5.1 All deliveries/performance must be provided to us free of material and title defects. They must correspond to the agreed quality and comply with the state of the art, the relevant European and German legal stipulations and the regulations and guidelines of authorities, professional and trade associations. The deliveries/performance must also be suitable for the use presupposed in accordance with the contract or, if such a use is not specified, for the customary ordinary purpose.
- All goods must correspond to the latest safety regulations and must at the time of handover be accepted by the relevant test authorities and licensed for use for the intended purpose. The deliveries/performance must especially meet the statutory industrial safety provisions, the requirements of the German Equipment and Product Safety Act, the regulations for the prevention of accidents and the fire safety regulations as well as the statutory environmental provisions.
- You are obliged to hand over the applicable data safety sheets for each delivery along with the delivery. You shall indemnify us against all third-party recourse claims in the case that you do not supply us with the safety data sheets or only supply them belatedly or in a faulty manner. The same shall apply to all later amendments.
- If deviations from these regulations are necessary in an individual case, then you must accordingly obtain our written agreement. Your liability for defects shall not be limited by this agreement.
- If you have reservations concerning the manner of execution desired by us, then you must inform us accordingly in writing without delay.
- 5.2 You undertake to use environmentally friendly products and processes in so far as economically and technically possible with regard to your deliveries/performance and also concerning supplies and ancillary performance by third parties. You shall be liable for the environmental compatibility of the supplied products and for all consequential losses which occur due to the infringement of your statutory disposal obligations.
- 5.3 We shall notify you of obvious defects to the delivery/performance without delay in writing as soon as they are ascertained in accordance with the circumstances of due and orderly business operations, at the latest, however, within 5 working days after receipt of the delivery at our plant. The notice period for claims shall be 3 working days after discovery in the case of latent defects.
- 5.4 Defects to the delivery/performance to which objection is raised during the warranty period, which shall also include the non-achievement of guaranteed data and the lack of guaranteed characteristics, must be eliminated by you after request without delay and free of charge, including all ancillary expenses, at our option by subsequent rectification or replacement of the faulty parts or by the delivery of new articles.
- You shall especially bear all expenses incurred in connection with the ascertainment of the defects and the elimination of the defects, also in so far as they are incurred at our plant, especially examination costs, removal and installation costs, shipment, travelling, labour and material expenses. This shall also apply if the expenses are increased due to the fact that the delivery item was taken to a place other than the place of performance, not, however, if disproportionate costs consequently arise.
- If necessary, you must undertake subsequent rectification work or new deliveries in multi-shift operations or by working overtime or on public holidays if this is necessary due to urgent operational reasons at our plant and can reasonably be expected of you.
- After the second unsuccessful expiry of a reasonable period set by us to effect subsequent rectification or a new delivery, we shall also be entitled to the statutory rights of withdrawal and price reduction. An agreed period for the subsequent performance shall have the same legal effects as a deadline set by us.
- If we are entitled to withdraw from the contract, then this withdrawal, if the non-performance or defective performance is restricted to a specific sepa-

rate part of the performance, can be restricted to this part with the maintenance of the contract in other respects.

After exercising the withdrawal right due to non-performance or performance not rendered in a due and orderly manner as well as in the case of a claim to damages instead of performance, we shall be entitled, if the performance or remaining performance has to be awarded to another party, notwithstanding the statutory rights, to a claim for an advance in a reasonable amount due to the expected costs plus a reasonable security surcharge. In this case, we are only obliged to obtain several quotations if this does not result in considerable time delays or disruptions to the company, production or business operations or if such delays or disruptions are not thus threatened. We shall charge performance by ourselves at customary third-party market prices.

We reserve the assertion of claims for damages in all cases.

5.5 If defects of the same manner occur in the case of more than 5 % of the supplied parts (series faults), we are entitled to reject the complete delivery volume on hand as faulty and also to assert the statutory and contractually agreed claims due to defects for this volume.

5.6 In the case of material defects, we shall also be entitled in the case of contracts of sale, after the unsuccessful expiry of a period set by us for subsequent performance, to the right to take action ourselves and to a claim for an advance in accordance with Article 637 of the German Civil Code.

If you do not meet your obligations resulting from the liability for defects within a reasonable period set by us, then we can take the necessary action ourselves at your expense and risk or can have such action taken by third parties. In urgent cases we can undertake the subsequent rectification ourselves or have it undertaken by a third party following agreement with you. Slight defects can be rectified by us ourselves – by way of performance of our loss reduction obligation – without prior agreement without your obligations arising from the liability for defects thus being restricted. We may then charge you with the necessary expenses. The same shall be applicable if unusually high losses are threatened.

5.7 Unless otherwise expressly agreed, the warranty period shall be three years. This shall also apply in the case of multi-shift operations. It shall commence with the handover of the delivery item to us or to the third party named by us at the place of receipt or use stipulated by us. In the case of equipment, machines, systems and performance, the warranty period shall commence on the acceptance date which is stated in our written acceptance declaration. If acceptance is delayed due to reasons for which you are not responsible, then the warranty period shall be three years after the provision of the delivery item for acceptance. The warranty period for constructions and building materials shall be determined according to the statutory provisions. For spare parts it shall be three years after installation/commissioning and shall end five years after delivery at the latest.

5.8 As long as negotiations on the justification of our complaint are ongoing, the warranty period for the affected system/system parts shall be suspended from the notification of the malfunction until the conclusion of the negotiations.

For repaired parts or performance or such parts or performance supplied as replacements, the warranty period shall start to run anew with the end of the negotiations or, if acceptance is agreed, with acceptance. This shall not, however, apply if a slight defect to a supplied part is eliminated by you at no great cost or time expense by subsequent rectification or substitute delivery.

An application for acceptance is to be made to us in writing if applicable. The period shall, however, under no circumstances end before the expiry of the agreed limitation periods for claims due to defects for the original delivery or performance.

5.9 In the case of a culpable infringement of obligations over and above the supply of faulty goods, e.g. in the case of an obligation to give information or advice, an examination obligation or another protection obligation, we can also demand reparation of the thus incurred consequential losses caused by a defect.

Consequential losses caused by a defect are such losses which we or third parties suffer by the supply of faulty goods to other legal interests than the goods themselves.

5.10 Claims due to the liability for defects shall not arise if the fault is due to the grossly negligent infringement of maintenance, operating and installation instructions, unsuitable or incorrect use, faulty or grossly negligent treatment and natural wear and tear and also improper interference with the delivery item undertaken by us or third parties.

5.11 You shall analyse faulty deliveries to which we have raised objection regarding their causes and shall take measures which prevent such defects occurring again. You shall document the corrective measures and submit these documents to us for inspection on request.

**6.0 Quality assurance, occupational safety and health (OSH) management system, product liability**

6.1 You must undertake quality assurance which is appropriate in terms of type and scope and which corresponds to the state of the art and must furnish corresponding proof to us on request. If we deem it necessary, you shall conclude a corresponding quality assurance agreement with us.

6.2 If you undertake performance for us on building sites or in workshops, you must apply a certified occupational safety and health (OSH) management system. A certified OSH management system is, for example, the Safety Certificate for Contractors (SCC) or similar. The application of the OSH management system must be proved to us. You are obliged to comply with the regulations for safety, protection of health and protection of the environment. You must provide your workers tasked with delivery and execution with the prescribed personal safety equipment (e.g. safety helmets, protective shoes, etc.) in a sufficient quantity and must ensure that it is worn on the building site and/or in workshops. Workers who do not comply with their obligation to wear the safety equipment may be ejected from the building site and/or from workshops.

6.3 By your checks at your plant it is ensured that your deliveries correspond to our technical supply conditions. You undertake to make records of the undertaken tests and to archive all test, measurement and control results for 10 years. We are entitled to inspect these documents at any time and to make copies.

6.4 Unless otherwise agreed, you shall mark the delivery items in such a way that they are permanently recognisable as your products.

6.5 If a claim is made on us due to the infringement of official safety regulations or on account of domestic or foreign product liability regulations or laws due to the faulty nature of our product which is caused by your goods, then we are entitled to demand the reparation of this loss from you if it was caused by the products supplied by you.

This loss shall also cover the costs of a precautionary product recall. We shall inform you of the contents and scope of the product recall which is to be undertaken, provided this is possible and reasonable, and shall give you an opportunity to state your position.

6.6 In addition, you shall maintain insurance with adequate cover against all risks arising from product liability, including the product recall risk, and shall submit the insurance policy to us for inspection on request.

**7.0 Liability**

7.1 Your claims for damages against us, irrespective of the cause in law, are excluded for slight negligence. This exclusion of liability shall not apply to claims for damages which are due to an infringement of fundamental contractual obligations by us. It shall moreover not apply in the event of death, physical injury and damage to health.

7.2 In cases of the slightly negligent infringement of fundamental contractual obligations and gross negligence by simple vicarious agents, damages shall be restricted to the reparation of the foreseeable, typical loss at the time of the conclusion of the contract.

7.3 If our liability is excluded or restricted, then this shall also apply to the personal liability of our employees, representatives and vicarious agents.

**8.0 Hazardous materials**

For materials (substances, preparations) and articles (e.g. goods, parts, technical equipment, uncleaned empty containers) which may present risks for human life and health, for the environment and also for articles on account of their nature, properties or their condition and which must therefore on account of regulations undergo special treatment with regard to packing, transport, storage, handling and waste disposal, you shall send us with the quotation a fully filled in safety data sheet according to Article 14 of the German Hazardous Substances Ordinance and an appropriate accident instruction sheet (transport).

If materials or the legal situation should alter, you shall send us updated data and instruction sheets without being requested to do so.

**9.0 Technical documentation, production resources**

9.1 We reserve title and copyright to the documents which we put at your disposal, such as samples, drawings, guidelines, analysis methods, formulae and suchlike. These documents may only be used for the contractual purposes and may not be duplicated; they must be treated in strict confidence. They may only be made accessible to third parties, e.g. subcontractors and suppliers, after our prior written agreement.

These documents must be sent back to us without being requested to do so when they are no longer required for the execution of the order.

The confidentiality obligation shall also continue to apply after the execution of a purchase order. It shall expire if and in so far as the production knowledge contained in the surrendered documents has become public knowledge.

9.2 Documents provided by us must be checked by you before the start of production/execution with regard to completeness, their internal dimensional coordination and their functional capability for the planned use. All dimensions and details must be checked on site. If corrections should



prove necessary, then we shall undertake such corrections without delay and provide you with new documents.

Any lacking drawings and/or documents must be requested from us without delay in writing.

- 9.3 The production resources provided by us and such resources produced by you according to our details or documents, such as dies, gauges, stencils, models, samples, tools, moulds, welding templates, EDP programs and suchlike, may only be used by you for the execution of our orders. You may not use these production resources for your own purposes and you may not offer them or make them accessible to third parties.

All manner of documents which we require for the planning, use, erection, installation, processing, storage, operation and maintenance (inspection, servicing, repair) of the delivery item must be provided to us by you in due time, in full, without being requested to do so and free of charge.

- 9.4 All drawings must be discussed with us before the start of the planning, workshop and/or building site work. They shall be endorsed.

The endorsement on drawings, calculations and other technical documents shall not limit or cancel your warranty and guarantee obligations with regard to the delivery item.

Unless otherwise expressly agreed, this shall also apply to suggestions and recommendations made by us.

- 9.5 After execution of the delivery/performance or 14 calendar days after acceptance, you must send us the drawings, calculations and other technical documents concerning the delivery item which correspond to the actual execution, namely free of charge in the required number in German (written/paper form) and in the customary German Standard (DIN) form and on data carriers. This shall especially include storage, installation and operating instructions as well as documents for the servicing, maintenance and repair of the delivery item. They must correspond to the existing German/European standards and if applicable to our works standards. They must be able to be copied and be in a customary data format. If the creation of drawings and/or isometric drawings falls within the scope of your delivery, we shall additionally receive these documents in the EDP formats .dwg and .tif.

These documents must be updated accordingly without delay as soon as subsequent alterations to the delivery item have been undertaken.

- 9.6 You are obliged to transfer title to these documents to us for use which is unlimited in terms of time. This shall not affect the intellectual ownership of these documents. This shall also apply to tools, moulds, plates, etc. which were produced by you for the execution of the purchase order.

- 9.7 In the case of installed parts which may be purchased from lists or catalogues, the documents supplied by the manufacturer shall be sufficient in so far as we require them for repairs and/or the acquisition of new parts. These documents must be in German.

- 9.8 These stipulations shall apply accordingly to the know-how made accessible to you.

- 9.9 If the execution deviates from the production documents which we endorsed, then you shall bear all thus resulting losses suffered by us or third parties. This shall also include costs for subsequent examinations, expert opinions, additional calculations, subsequent treatments, substitute deliveries, etc.

## 10.0 Provided components, processing, mixing, tools

- 10.1 All materials and other provided components which we or third parties commissioned by us put at your disposal shall remain our property. They may not be used for purposes other than the contractual purposes. These provided components must be marked as our property during the complete duration of the surrender period, must be stored separately and must be kept in good condition and insured.

- 10.2 You are obliged to inform us without delay if third parties should seize these provided components or if such action is threatened.

- 10.3 All provided materials must be surrendered to us at our first request.

- 10.4 Alterations to provided materials are only permissible after our prior written agreement and only in the permitted scope.

- 10.5 If our goods subject to reservation of title are processed with other articles which do not belong to us, then we shall acquire co-ownership of the new article in the proportion of the value of our article to the other processed articles at the time of processing.

- 10.6 If the article provided by us is inseparably mixed with other articles which do not belong to us, then we shall acquire co-ownership of the new article in the proportion of the value of the goods subject to reservation of title to the other mixed articles at the time of mixing. If the mixing is undertaken in such a manner that the article is to be regarded as your principal article, then it shall be regarded as agreed that you shall assign co-ownership to us on a pro rata basis. You shall hold the sole property or joint property in safekeeping for us.

- 10.7 If tools, equipment, etc. are produced by you or on your behalf, then you shall assign title to the said articles to us without delay when we have paid

for the tools, equipment, etc in full or when they have been fully amortised by us.

## 11.0 Industrial property rights, rights of use and enjoyment

- 11.1 You are not entitled to use our trade names, logos or trademarks for your own benefit or for the benefit of third parties. Without our prior written approval you may not use them either individually or in conjunction with your own trade names, trademarks or logos.

If we do grant approval, then you must comply strictly with the guidelines concerning size, positioning and layout of the trade names, trademarks or logos.

- 11.2 Products which are not part of your standard range and which you have manufactured on the basis of our instructions or according to our drawings or technical specifications may not be offered, sold or supplied to third parties without our prior written agreement.

- 11.3 Products from your standard range may not be offered, sold or supplied by you to third parties or otherwise put on the market if our trade name, trademark or logo is still recognisable on the product. The same shall apply if third parties may presume that the product in question was put on the market by us.

- 11.4 You shall be responsible that all deliveries are free of third-party industrial property rights and especially that third-party patents, licences or other industrial property rights are not infringed by the delivery and use of the delivery items.

In the case of the culpable infringement of this obligation, you shall indemnify us and our customers against third-party claims arising from any infringements of industrial property rights and shall also bear all costs which we incur in this connection, also costs for any prosecution and product recalls. Your indemnification obligation shall also cover all expenses which we necessarily incur in connection with a claim being made on us by third parties.

We are also then entitled, following agreement with you and for a transitional period of 12 months at the most, to obtain the licence to use the delivery items and performance in question from the authorised party at your expense.

- 11.5 With the delivery of a work protected by copyright we shall receive from you a non-exclusive, unrestricted right of use and enjoyment covering all forms of use.

## 12.0 Partial invalidity

If individual parts of these General Purchase Terms should be legally ineffective, then this shall not thus affect the effectiveness of the other provisions.

## 13.0 Assignment of order only after agreement, prohibition of assignment, set-off, right of retention, transfer of contract, alteration of the corporate structure

- 13.1 You are not entitled without our prior written agreement to assign the order or significant parts of the order to third parties. If this agreement is granted, then you shall remain responsible towards us as the joint and several debtor.

- 13.2 You are not entitled without our prior written agreement to assign your claims against us – in whole or in part – or to have them collected by a third party. If extended reservation of title is applicable, then agreement shall be regarded to be given.

If you assign a claim against us without our agreement to a third party, then the assignment shall nevertheless be effective. We may then effect performance at our option with the effect of discharging the obligation to you or to the third party.

- 13.3 You may only effect set-off with undisputed claims or claims which have been recognised by declaratory judgment.

- 13.4 You shall only be entitled to rights of retention if they are based on the same contractual relationship.

- 13.5 You must notify us of every transfer of the contract by act of law and of every alteration of your corporate structure without delay.

## 14.0 Data protection

We shall treat your personal data in accordance with the Federal Data Protection Act.

## 15.0 Contract language, correspondence

The contract language is German. All correspondence and all other documentation and documents must be undertaken in German. This shall also apply to all other documentation, e.g. to advance payment and warranty guarantees/bonds.

If the contracting parties should additionally use another language, then the German wording shall take precedence.

#### **16.0 Cessation of payments, insolvency**

If you cease to make payments, if a temporary insolvency administrator is appointed, if insolvency proceedings are instituted in respect of your assets or if there are bill or cheque protests against you, then we shall be entitled to withdraw from the contract or to terminate the contract with immediate effect without period of notice in whole or in part without this thus giving rise to claims against us.

If the contract is terminated by us, then the performance rendered up to this time shall only be settled at contract prices in so far as it can be used by us in accordance with the intended purpose. The loss incurred by us shall be taken into account when effecting settlement.

#### **17.0 Termination**

If our customer terminates the order awarded to us of its own accord, then we are entitled to terminate the contract concluded with you. Claims for damages, such as due to lost profit, cannot be asserted by you in this case. We shall, however, reimburse you the costs which you have actually incurred and for which you provide evidence to us. As compensation for the reimbursement you shall then transfer title to the paid goods and/or performance to us.

#### **18.0 Place of performance**

Unless otherwise expressly agreed, place of performance for the delivery/performance obligation is the shipping address or place of use desired by us.

For all other obligations of both parties place of performance shall be TGM Kanis Turbinen GmbH, Nuremberg (Germany).

The risk of the accidental loss or of the accidental deterioration shall only pass to us with acceptance or takeover at the place of performance.

#### **19.0 Arbitral tribunal**

All disputes which arise in connection with the contract or concerning its validity shall be finally and bindingly decided according to the Rules of Arbitration of the German Institution for Arbitration (DIS) of 01.01.1992 to the exclusion of recourse to the ordinary courts of law. The arbitral tribunal may also decide in a binding manner on the validity of this arbitration agreement. The seat of the arbitral tribunal shall be Nuremberg (Germany).

#### **20.0 Supplementary law**

By way of supplementation the law of the Federal Republic of Germany shall be applicable to the exclusion of the United Nations Sales Convention (CISG) of 11.04.1980.