General Terms and Conditions of Business

of M&S Combustion Technologies GmbH

Lastly amended 11.2026

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1. General

1.1

All deliveries and other performances (assembly, commissioning, repair, maintenance, services, consulting services, etc.) of M&S Combustion Technologies GmbH shall be based exclusively on these terms and conditions of business; we shall not recognize conflicting terms and conditions of business or terms and conditions of purchase of the customer unless we have given our explicit, written consent to their application. Our terms and conditions of business shall apply even if we execute delivery to the customer unconditionally, despite knowledge of terms and conditions of the customer that conflict with or deviate from our terms and conditions of business. The contract partner in all cases is the respective M&S Company confirming.

1.2

We unrestrictedly reserve all ownership rights and copyright to illustrations, drawings and other documents (hereinafter documents); these must not be made accessible to third parties unless we have given our explicit, written consent to this. Documents belonging to quotations must be returned to us without delay if no order is placed and we request handing over. Sentences 1 and 2 shall apply accordingly for documents of the customer; nevertheless, these may be made accessible to third parties to whom we have admissibly transferred deliveries or other performances.

1.3

We reserve the right to make partial deliveries and partial performances in a reasonable scope.

1.4

We are entitled to make use of other, reliable companies for the fulfilment of our obligations.

1.5

Following the provision of other performances, we shall have an entitlement to signature by the customer for the performances provided by us, in particular to signature of the corresponding time sheets; the necessary forms will be provided by us.

1.6

Should individual provisions of these General Terms and Conditions of Business be invalid, the validity of the other rulings and of the contract itself shall remain unaffected. This shall not apply if insistence on the contract would constitute unreasonable hardship for one of the contracting parties.

1.7

Our company is a member of Creditreform and participates in the DRD payment exchange information system operated by Creditreform. This is a payment experience pool in which participants from various industries enter payment experiences and, in turn, benefit from the entries of the other participants. For this purpose, we pass on to Creditreform information on your payment history shown to us.

2. Content of the contract/conclusion of contract

2.1

In the absence of any written agreement to the contrary, pre-contractual notifications prepared by us such as quotations, cost estimates and descriptions are without engagement.

2.2

Documents belonging to the quotation such as drawings, illustrations, technical data, reference to standards as well as statements in advertising material are not quality statements, assurances of features or guarantees, unless explicitly marked as such in writing.

2.3

In the absence of any written agreement to the contrary, information in catalogues and prospectuses, information sheets, use instructions and other information are not constituent parts of the contract.

2.4

Orders shall only be binding on us if confirmed in writing or delivered by us within two weeks of receipt. The party ordering shall be bound by his order for this period.

3. Prices/terms and conditions of payment

3.1

In the absence of any statement to the contrary in our order confirmation, our selling prices shall apply as exworks (Incoterms 2010) place stated in our quotation or acceptance; if no place of destination is indicated in our quotation/acceptance, the prices shall apply as exworks place of business of the M&S company confirming. Our selling prices are to be understood as excluding packing; this will be invoiced separately. The same shall apply for other performances.

3.2

Invoicing for other performances will be on the basis of an agreed fix price or, if no fixed price has been agreed, on the basis of time and cost in accordance with our service rates applicable at the time of provision of the performance plus incidental costs (travel expenses, replacement parts, etc.). If application of the prices as per the current service rates results in a price increase of 10% or more compared with the prices/service rates agreed at the time of conclusion of the contract, the customer can withdraw from the contract prior to provision of the performance.

3.3

The performances provided for the issuing of a cost quotation can be invoiced to the customer if this has been agreed in writing in the individual case.

3.4

The respective terms and conditions of payment agreed shall apply for all payments. If no separate agreement has been made, all invoices shall be due immediately and payable strictly net cash within 14 days of the date of invoice.

3.5
All payments made to us must be by transfer to an account nominated by us and free of charges for us. Unconditional crediting to our account is authoritative for on-time payment. General Terms and Conditions of Business (Lastly amended 05.2020)

3.6
We shall be entitled to partial payments for partial performances.

3.7
Our prices are exclusive of statutory turnover tax; this will be shown separately on the invoice at the rate applicable on the date of invoicing.

3.8
The acceptance of bills of exchange requires our consent; all corresponding charges and costs, as well as all risks of on-time presentation and protesting, shall be for the account of the customer.

3.9
In the event of default on payment by the customer we shall, subject to the reserve of assertion of farther reaching damages, charge normal bank interest, at least 9 % above the respective base interest rate of the ECB.

3.10
In the event of default on payment and justified doubts concerning the ability to pay or creditworthiness of the customer, we shall – without prejudice to our other rights as per § 321 BGB (German Civil Code) (objection of uncertainty) – be entitled to demand collateral or advance payment for outstanding deliveries or other performances, to withhold the outstanding performances or deliveries and/or to render all claims from the business relation due immediately.

3.11
The customer is only entitled to offset or withhold claims that are undisputed or which have been determined as legally valid.

4. Retention of title

4.1
We shall retain title to the goods sold until such time as full payment of our claims from the business relation with the customer is received. The customer is entitled to dispose over the goods purchased during the ordinary course of business.

4.2
The retention of title shall also cover the products resulting from processing, mixing or joining of our goods at their full value, whereby this shall not result in any obligation on our part. If, given processing, mixing or joining with third-party goods, the ownership rights of the third parties continue to apply, we shall acquire joint ownership in the ratio of the invoice amounts of these processed goods.

4.3
The customer hereby assigns to us henceforth the claims against third parties resulting from the onward sale, in their full amount or in the amount of our joint ownership share (see § 4.2), as collateral. We hereby accept this assignment. The customer is authorized to collect these claims for our account until such time as this authorization is revoked or the customer ceases payments to us. The authorization shall end without the need for revocation if an application is made for insolvency proceedings against the assets of the customer. The customer is not entitled to assign these claims by way of factoring even for the purpose of collecting the claims, unless the factor is simultaneously obliged to make direct payment to us of the counter performance in the amount of our share in the claim for as long as we still have claims against the customer.

4.4
The customer is obliged to treat the goods with care; in particular, he is obliged to insure them at his own expense against fire, water and theft with sufficient cover at replacement value. If maintenance and repair work is necessary, the customer will carry this out in good time at his own expense.

4.5
The customer must notify us immediately by registered letter of access by third parties, e.g. through attachment, to the goods and claims belonging to us.

4.6
The goods and the corresponding claims must not be pledged to third parties or transferred (by way of security) or assigned prior to complete payment of our claims.

4.7
At the request of the customer, we undertake to release the collateral to which we are entitled if the value of our collateral exceeds the claims to be secured by more than 10%. The choice of the collateral to be released shall lie with us.

4.8
Within the scope of the agreed performance characteristics, the customer is entitled to a non-exclusive right of use, not transferable without the corresponding device, to standard software in the agreed devices and in unchanged form. The customer is entitled to prepare two backup copies for data backup. Any extended right of use requires a separate, written agreement. In the event of violation of the rights of use granted to him, the customer shall be liable in full for the resulting damage.

5. Delivery/performance

5.1
Delivery and performance periods are only binding if explicitly confirmed as binding by us.

5.2
Delivery and performance periods shall begin on the date of the order confirmation. In the absence of any agreement to the contrary, the delivery period shall apply as adhered to if the customer has received the notification of availability of the delivered item for dispatch at the agreed time or within the agreed period; with other performances, if a start is made on the other performance within this period.

5.3
Adherence to delivery and performance periods presupposes clarification of all technical matters, in particular on-time receipt of all documents to be provided by the customer, necessary approvals and releases as well as adherence to the agreed payment terms and other obligations of the customer. If the above mentioned preconditions are not met, the deadlines shall be extended by an appropriate amount unless we are responsible for the delay.

5.4
If we are prevented from on-time delivery or performance by official directives or measures, force majeure, mobilization, war, uprising, pandemic, strike, lockout, incorrect or late delivery by suppliers or the occurence of unforeseen hindrances which are outside of our scope of influence or that of our suppliers, the deadline shall be extended by an appropriate period.

5.5
If the hindrances to delivery or performance set out under § 5.4 continue for an inappropriately long time, both contracting parties shall be entitled to withdraw from the contract. The customer shall not be entitled to withdraw until following unsuccessful expiry of an appropriate period of grace, unless a commercial-law fixed-date transaction has been agreed in writing. The customer agrees that the remedy contained in this in this clause 5.5 will be its sole and exclusive remedy.

5.6
In the event of the deadline for delivery or performance being exceeded for reasons for which we are responsible, the customer shall be entitled to withdraw following expiry of an appropriate period of grace. Claims for damages shall be based on the provisions of § 11.

5.7
In the event of the customer causing a delay in delivery or service of the delivered items, or the provision of other performances, we shall be entitled to demand compensation for the damage resulting to us, including any additional expense. Farther-reaching claims or rights are reserved.

5.8
In the event of default on payment by the customer, we shall be entitled to assert a right of withholding to further deliveries or other performances.

6. Obligations to cooperate
If we provide other performances at a place other than our place of business or if our other performances are dependent on preliminary work of the customer or of a company appointed by him, the customer shall carry out or arrange all preparatory work/cooperation measures required for the performance of the work, at his own expense and in such good time that hindrance of us at the start of or during the provision of the other performances is not to be expected. In particular, the customer must provide us with all necessary documents (approvals, plans, etc.) automatically prior to performance of the work. In addition, the customer is obliged to provide necessary articles of daily use, protective devices and any tools required as well as advising essential information.

7. Passing of risk
7.1
In the absence of any agreement to the contrary, exworks (Incoterms 2010) place stated in our quotation or acceptance is also agreed for the passing of risk; if no place of destination is indicated in our quotation/acceptance, ex-works place of business of the M&S company confirming shall apply as agreed. Accordingly, with deliveries, the risk of accidental perishing and of accidental deterioration of the delivered item shall pass to the customer as soon as the customer has received the notification of availability of the delivered item for dispatch at the agreed time or within the agreed period.

7.2
If the delivered item is dispatched at a later time than the agreed delivery date at the request of the customer, the risk of accidental perishing and of accidental deterioration shall pass to the customer with effect from the delivery date originally agreed.

7.3
In the absence of any separate agreement, the risk of accidental perishing and of accidental deterioration of other performances, as a whole and also for independent parts thereof, shall pass to the customer with effect from notification of completion. If trial operation is agreed, the risk shall pass to the customer upon successful completion of the trial operation, at the latest, however, 14 days from receipt of the notification of availability for trial operation.

7.4
In the event of interruption, delay or discontinuation of the other performances or of the trial operation for reasons for which we are not responsible, the risk of accidental perishing and of accidental loss of the other services already provided shall pass to the customer upon receipt of notification of the hindrance.

8. Acceptance
8.1
Acceptance of other performances will only be carried out if this has been agreed in writing. If acceptance has been agreed, we are obliged to notify availability for acceptance.

8.2
If no agreement has been made concerning the precise time of the acceptance, acceptance must be carried out immediately following completion of the performance; with larger projects, within a period of 7 days from receipt of notification of availability for acceptance.

8.3
Acceptance cannot be refused on the basis of defects which do not impair the capacity to function or do so to an immaterial extent only.

8.4
If acceptance is not carried out within a period of 14 days from receipt of the notification of availability for acceptance for reasons for which we are not responsible, acceptance shall apply as having been made upon expiry of this period.

8.5
Acceptance shall also apply as made if the customer has used the item concerned prior to expiry of the period stated in § 8.4.

8.6
If acceptance has been agreed, the passing of risk shall – in deviation from § 7.3 – apply upon acceptance.

8.7
The costs of acceptance shall be for the account of the customer.

8.8
A certificate of completion by an expert assessor as defined by law shall have an equivalent status to acceptance.

9. Liability for material defects

9.1
All information concerning suitability, processing and use of our products, technical advice and other information will be provided to the best of our knowledge; it shall not release the customer from own checks and trials nor from the use or appointment of qualified personnel. We shall only be liable for special use of our products if we have been advised of this in writing in advance and have issued our confirmation.

9.2
Customer's rights with regard to our liability for material defects presuppose that the customer has correctly complied with his obligations to examine the products and to provide a notice of non-conformity to us without undue delay as per § 377 HGB (German Commercial Code).

9.3
Our obligation within the scope of liability for material defects is restricted to repair or replacement delivery (subsequent fulfillment) whereby the choice shall lie with us.

9.4
Claims of the customer based on the expense required for the purpose of subsequent fulfillment, in particular transport, travelling, work and material costs, are excluded in so far as the expense increases due to the fact that the delivered item has been brought to a place other than the agreed delivery place.

9.5
The customer must grant us the necessary time and opportunity for subsequent fulfilment based on reasonably exercised discretion. If subsequent fulfilment fails twice, the customer shall be entitled to the statutory rights concerning liability for material defects; he shall only be entitled to damages subject to the preconditions of these terms and conditions.

9.6
Excepted from liability for material defects are, in particular, defects caused following the passing of risk by the customer or by third parties appointed by him, through incorrect transport, incorrect storage, unsuitable building ground, incorrect installation, incorrect assembly, incorrect use, incorrect connection, incorrect or non-intended operation, excessive strain, unforeseen operating conditions, in particular, but not restricted to, non-manageable natural events (e.g. earthquake, storm), or electrochemical or electrical influences, or as a result of normal wear and tear. In addition, all liability for material defects shall be excluded in the event of deterioration or perishing of the goods delivered by us following the passing of risk, unless the material defect causing deterioration or perishing was already present prior to the passing of risk.

9.7
Claims based on liability for material defects shall also be excluded if operating, installation or maintenance instructions are not observed, if changes or modifications are made to the delivered item or if non-approved replacement parts or expendable materials are used.

9.8
Goods which are the subject of complaint must only be returned with our explicit consent. In such cases, the customer must choose correct packing that is also suitable for transport.

9.9
Parts replaced in fulfillment of the obligations from liability for material defects shall become our property following removal.

9.10
We shall be liable for repairs or replacement deliveries in the same scope as for the original delivered item and, indeed, up until expiry of the period of limitation for material defects applicable for the original delivered item or performance.

9.11
The period of limitation for material defects to new delivered items and other performances is twelve months from the date of the passing of risk, unless we have caused the defect intentionally or longer liability on our part is mandatory under the law.

9.12
Used items will be supplied by us subject to exclusion of all liability for material defects, unless an agreement to the contrary has been made.

9.13
In the absence of any ruling to the contrary in § 11, the customer shall not be entitled to farther-reaching claims or to claims other than those regulated in this § 9.

10. Industrial property rights and copyright/legal defects

10.1
In the absence of any written agreement to the contrary, we are only obliged to make delivery free from industrial property rights and copyright of third parties in the country of the place of delivery. If use of the delivered item results in violation of industrial property rights or copyright of third parties in the country of the place of delivery, we shall, at our own discretion and at our own expense, obtain a right of use for the customer, or modify the delivered item in a manner that is reasonable for the customer and such that the violation of protected privileges no longer applies, or replace the delivered item. The period of limitation corresponds to that set out in § 9.11 for material defects.

10.2
If the subsequent fulfillment described in § 10.1 is not possible at economically appropriate conditions or within an appropriate time, the customer shall be entitled to the statutory rights of withdrawal or to reduction in the selling price.

10.3
Our above mentioned obligations shall only apply if the customer informs us immediately and in writing of the claims asserted by the third parties, if the customer supports us to an appropriate extent in our defense against the claims asserted or enables performance of the subsequent fulfillment by us as per § 10.1 does not acknowledge a violation and grants us the right to take all defense measures and to negotiate regarding composition agreements.

10.4
Claims of the customer based on liability for legal defects are excluded if he is responsible for the violation of industrial property rights and copyright of third parties, in particular if any such violation is caused by special requirements of the customer, by application not foreseeable by us or by the customer making arbitrary alterations to the delivery or using it together with products not supplied by us, thus causing the violation of rights.

10.5
In the absence of any ruling to the contrary in § 11, the customer shall not be entitled to farther-reaching claims or to claims other than those regulated in this § 10.

11. Damages

11.1
Claims of the customer for damages, irrespective of their legal ground, in particular as a result of violation of duties from the obligation, and from tortious act, are excluded in so far as this is legally admissible.

11.2
Excepted from this are: - damages from injury to life, limb or health based on a violation of obligations for which we are responsible, and - other damages based on intentional or grossly negligent violation of obligations on our part.

11.3
The limitation of liability in § 11.1 shall likewise not apply in the event of violation of an obligation whose fulfillment makes correct performance of the contract possible at all, whose violation endangers achievement of the purpose of the contract and/or in adherence to which the customer can trust (fundamental obligations under the contract). However, in cases of slight negligence we shall be liable only up to the amount of the typical and foreseeable standard damage under the contract. In the event of violation of any other obligations, we shall not be liable in cases of slight negligence.

11.4
Any liability as a result of fraudulent concealment of a defect, the assumption of a guarantee or of a procurement risk, under the product liability law and under other mandatory legal regulations shall remain unaffected.

11.5
Violations of obligations by our legal representatives or vicarious agents shall have the same status as a violation of obligations by us.

11.6
We shall only be liable for the restoration of data as defined above if the customer has carried out the appropriate and normal procedures for data backup and, when so doing, has also taken care to ensure that reconstruction of the data and programs is possible at reasonable expense and effort.

12. Extended lien

12.1
With regard to claims from an order whose contractual fundament is a work or performance, we are entitled to a contractual lien to the items coming into our possession as a result of the order.

12.2
We are also entitled to assert the contractual lien for claims from previous work, other performances and deliveries if these claims are related to the subject matter of the order. The contractual lien shall only apply concerning other claims if these are undisputed or a legally binding title exists and the customer is the owner of the subject matter of the order.

13. Place of performance, place of jurisdiction and applicable law, termination

13.1
Place of performance for deliveries and other performances is our place of business Hamburg.

13.2
If the customer is a businessman, a juristic person under public law or a public-law special fund, the place of business of the company confirming (see § 1.1) is hereby agreed as exclusive place of jurisdiction. Nevertheless, the latter is entitled to take legal action against the customer at the court in whose district the customer has his place of business.

13.3
If the customer has his place of business in non-EU member state or a non – EFTA member state (EFTA member states are Iceland, Norway, Switzerland and Liechtenstein), then § 13.2 shall not apply, but all disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (ICC) by three arbitrators appointed in accordance with the said rules. The place of the arbitration procedure is our respective place of business/Germany. The applicable substantive law is the Law of the Federal Republic of Germany, subject to exclusion of the conflict of law's provisions of private international law and of the United Nations Convention on Contracts for the International Sale of Goods (CISG). The language of the arbitration procedure is German.

13.4
All contracts concluded with us concerning deliveries and other performances shall be governed exclusively by the Law of the Federal Republic of Germany, subject to exclusion of the conflict of law's provisions of private international law and of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

13.5
We shall be entitled to terminate a contract by a written notice with immediate effect if the customer becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under any applicable laws) has a similar effect to any of these acts or events.

14. Authoritative version
In cases of doubt, the German version of these General Terms and Conditions of Business shall be authoritative.

15. Employee Protection Clause
The parties agree to refrain from any attempts to poach employees of the other party. Further-more, when hiring employees of the other party who have been terminated, they shall observe a protection period of at least 1 (one) year. If the Client is not also the end customer, it shall include a corresponding protection clause in its contracts with its customers; otherwise, it shall be liable in the customer's place.
In the event of a breach of the personnel protection clause, the aggrieved party shall be entitled to damages in the amount of the expenses incurred by the aggrieved party until the position is successfully filled. This includes, in particular, but not exclusively or exhaustively, the direct costs of filling the vacancy, training and onboarding costs, and temporary replacement staff.
This personnel protection clause also applies in the event of an attempted or accidental circumvention through the use of subsidiaries, recruitment consultants, etc.