



## GENERAL TERMS AND CONDITIONS OF SALE

### 1. Scope of application

- 1.1 These General Terms and Conditions of Sale shall be deemed a constituent part of any sale or proposed sale by MIRATECH GmbH ("Seller") to commercial customers ("Purchaser"). Commercial customers within the meaning of the preceding sentence are entrepreneurs (section 14 of the German Civil Code (*Bürgerliches Gesetzbuch*, BGB)), legal entities under public law and special funds under public law.
- 1.2 These General Terms and Conditions of Sale shall in particular apply to contracts for the sale and/or delivery of products, equipment, services and/or parts relating thereto (referred to hereinafter in this document as the "Products"). Unless agreed otherwise, these General Terms and Conditions of Sale shall apply in the version in force at the time the Purchaser's order is placed.
- 1.3 These General Terms and Conditions of Sale shall apply exclusively. Seller will only accept general terms and conditions of Purchaser that contradict or deviate from these General Terms and Conditions of Sale if Seller has expressly agreed to them. This consent requirement shall apply in all cases, for example even if Seller carries out the delivery to Purchaser unconditionally in the knowledge of Purchaser's general terms and conditions.

### 2. Conclusion of contract

- 2.1 Offers made by Seller shall be subject to change and non-binding. This shall also apply if Seller has provided Purchaser with catalogs, technical documentation, other product descriptions or documents.
- 2.2 Any order placed by Buyer shall be deemed a binding offer to conclude a contract. A contract of sale shall only come into existence after Seller has confirmed the order in writing. Unless otherwise stated in the order, Seller shall be entitled to accept the offer to conclude a contract within 30 days of receipt by Seller. Electronic transmission of the confirmation shall be deemed to satisfy the requirement that confirmation be in writing.

### 3. Prices, invoicing and payment

- 3.1 Unless agreed otherwise, the prices quoted by Seller are net prices.
- 3.2 The terms and conditions for invoicing and payment shall be as stated in the purchase order or any other agreement between Seller and Purchaser. Unless agreed otherwise, the agreed purchase price is due and payable within 30 calendar days of the invoice date. However, Seller shall be entitled at any time, also in the context of any ongoing business relationship, to make a delivery in whole or in part only against advance payment. Seller shall declare any such reservation at the latest in the order confirmation. The date of receipt of payment shall be the date on which Seller has the amount owed by Purchaser at its disposal.



3.3 Offsetting against counterclaims of Purchaser or the withholding of payments due to such claims is only permissible insofar as the counterclaims are undisputed or have been legally established by a court of law or arise from the same order under which the delivery in question was made.

#### **4. Delivery, deadlines, force majeure**

4.1 Unless agreed otherwise, the Products are delivered EXW MIRATECH GmbH Sinntal, Germany (Incoterms 2020). The Seller will notify the Purchaser when the Products are ready to ship. If the Purchaser fails to collect the Products within 2 weeks of the notification (if not otherwise stated in the notification), the Purchaser is in default of acceptance. For the avoidance of doubt: Once the Purchaser is in default of acceptance the risk passes to the Purchaser.

4.2 Delivery dates and completion dates, which may be agreed as binding or non-binding, shall be stated in writing. Deadlines and dates for deliveries and performance quoted by Seller shall always be deemed as non-binding, unless a fixed deadline or date has been expressly committed to or agreed.

4.3 Force majeure or other unforeseeable events affecting Seller or its suppliers (e.g. war, riots, public unrest, fires, floods, significantly adverse weather conditions at Seller's site or outside its production facilities, strikes or other industrial action, action by military or civil authorities, including government regulations, orders, prioritizations or rules, acts of Purchaser, embargoes, shortages of transportation, accidents or delays in transportation) which temporarily prevent Seller, through no fault of its own, from delivering the purchased Product on the agreed date or within the agreed period, shall modify the dates and deadlines set forth in para1 of this Section by the duration of the disruption in performance caused by such circumstances. Insofar as such events make it significantly more difficult or impossible for Seller to deliver or perform and the hindrance is not only of a temporary nature, Seller shall be entitled to withdraw from the contract. Insofar as the customer cannot reasonably be expected to accept the delivery or performance as a result of the delay, it may withdraw from the contract by means of written declaration without undue delay to Seller.

#### **5. Retention of title**

5.1 Seller shall retain title to the sold Products until full payment of all current and future claims of Seller arising under the contract and any ongoing business relationship (secured claims).

5.2 The Products subject to retention of title may not be pledged or transferred by way of security to third parties until full payment of the secured claims. Purchaser shall notify Seller in writing without undue delay if any application for the commencement of insolvency proceedings is filed or the Products belonging to Seller are seized (e.g. attached) by third parties.

5.3 In the event of any breach of contract by Purchaser, in particular in the event of non-payment of the purchase price due, Seller shall be entitled to withdraw from the contract in accordance with the applicable statutory provisions or to demand surrender of the Products on the basis of retention of title. The demand for surrender does not at the same time include the declaration of withdrawal; Seller is rather entitled to demand only the surrender of the Products and to reserve the right of withdrawal. If Purchaser does not pay the purchase price due, Seller may only assert these rights



if Seller has previously set Purchaser an appropriate deadline for payment without success or if setting a deadline is not required according to the applicable statutory provisions

## 6. Statutory Warranty

6.1 The warranty period is one year from delivery unless provided otherwise below for certain Product groups. Insofar as acceptance is required, the warranty period shall commence upon acceptance. This period shall not apply to any claims for damages of the customer resulting from injury to life, limb or health or from intentional or grossly negligent breaches of duty by Seller or its agents, which in each case become statute-barred in accordance with the applicable statutory provisions.

6.2 The following different warranty periods shall apply to the following Products:

**Gas Turbine Catalyst Elements** shall be free from defects in material and workmanship, unless other terms are agreed in the purchase contract, for a period of thirty-six (36) months from the date on which the Product is commissioned or forty (40) months from delivery, whichever shall first occur. Gas turbine catalysts are individual custom-made products, the project-specific nature of which is specified in the proposal on which the purchase contract is based;

**SCR Products** shall be free from defects in material and workmanship, unless expressly agreed otherwise, for a period of twenty-four (24) months from the date on which the Product is placed in operation or twenty-six (26) months from delivery, whichever shall first occur;

**Passive Diesel Particulate Filter Products** shall be free of defects in material and workmanship for a period of eight thousand (8,000) hours of operation but in any event for a period of twenty-four (24) months from delivery;

**Active Diesel Particulate Filter Products** included with AT-IV shall be free from defects in material and workmanship for a period of two thousand six hundred (2,600) hours of operation but in any event for a period of twelve (12) months from delivery ;

**Silencer Only Products** shall be free of defects in material and workmanship for a period of twelve (12) months from the date on which the Silencer Only Product is placed in operation but in any event eighteen (18) months from delivery ;

**Vaporphase Products** shall be free of defects in material and workmanship for a period of twelve (12) months from the date on which the Product is placed in operation but in any event eighteen (18) months from delivery ;

**Replacement Parts** for use on previously installed Products shall be free from defects in material and workmanship for a period of twelve (12) months from the date on which they are placed in operation but in any event eighteen (18) months from delivery.

6.3 The Products must be carefully inspected without undue delay after delivery to Purchaser or to the third party designated by Purchaser. With respect to obvious defects or other defects that would have been apparent upon careful inspection without undue delay, they shall be deemed accepted by Purchaser if Seller does not receive written notification of defects within seven working days after delivery. With regard to other defects, the Products shall be deemed to have been accepted by Purchaser if the notification of defects is not received by Seller within seven working days after the time at which the defect became apparent; however, if the defect was



already apparent at an earlier time during normal use, this earlier time shall be decisive for the commencement of the defect notification period.

- 6.4 In the event of material defects in the Products delivered, Seller shall first be obliged and entitled to repair the Products or to make a replacement delivery at its discretion within a reasonable period of time. If the rectification of the defect has failed or if a reasonable period to be set by the customer for rectification of the defect has expired without result or is not required according to the applicable statutory provisions, the customer may withdraw from the purchase contract or reduce the purchase price.
- 6.5 If a defect is due to fault of the part of Seller, the customer may claim damages under the terms set out in Section 9.
- 6.6 In the event of defects in components from other manufacturers which Seller cannot remedy for licensing or factual reasons, Seller shall, at its discretion, assert its warranty claims against the manufacturers and suppliers for the account of Purchaser or assign them to Purchaser. In the event of such defects, warranty claims against Seller shall only exist subject to the other requirements and in accordance with these General Terms and Conditions of Sale if the legal enforcement of the aforementioned claims against the manufacturer and supplier was unsuccessful or is futile, e.g. due to insolvency. For the duration of the legal dispute, the statute of limitations for the relevant warranty claims of Purchaser against Seller shall be suspended.

## 7. Special warranties on compliance with emission levels

7.1 With regard to the achievement with emission levels, the following special warranties apply to the following Products subject to the requirements of Section 7.2:

- For the following Products, Seller warrants, subject to the conditions set out in Section 7.2, achievement of the emission levels agreed in the purchase contract for **12 months** from passage of risk:

**MEC & MECE Catalyst Elements** (excluding specialty catalysts) for Reciprocating Engine applications

**KAME Catalyst Elements** (excluding specialty catalyst) for Reciprocating Engine applications

### **Specialty Catalyst Elements**

- For the following Products, Seller warrants, subject to the conditions set out in Section 7.2, achievement of the emission levels agreed in the purchase contract for **24 months** from passage of risk:

**MEC2 Catalyst Elements** (excluding specialty catalysts) for Reciprocating Engine applications



- For the following Products, Seller warrants, subject to the conditions set out in Section 7.2, compliance with the emission levels agreed in the purchase contract for **36 months** from passage of risk:

**MECB & MECEB Catalyst Elements** (excluding specialty catalysts) for Reciprocating Engine applications

7.2 Throughout the specified term in each case in Section 7.1, the Products shall achieve the emission levels set out above, provided that the following conditions are met:

- a. The Products are operated and maintained at all times in accordance with Seller's written instructions (including but not limited to Seller's Installation, Operation and Maintenance Manual);
  - b. the Purchaser's equipment to which the Products are connected is operated and maintained at all times in accordance with all manufacturer's or Seller's instructions and guidelines;
  - c. the Purchaser's equipment, during operation, shall never exceed the raw emission rate set forth in the purchase contract;
  - d. the Purchaser's equipment to which the Products are connected shall be operated within the temperature limits stated in the purchase contract;
  - e. in the Purchaser's equipment to which the Products are connected the Exhaust flow rate as agreed in the purchase contract may not be exceeded at any time during its operation;
  - f. Purchaser will operate the equipment to which the Products are connected so that the engine emissions and temperatures comply with the specifications agreed in the purchase contract; and
- the NO<sub>x</sub>, CO, VOCNMNEHC and O<sub>2</sub> values and the PM<sub>2.5</sub> value will not fluctuate more than 2% from the values stated in the purchase contract; and
  - the exhaust flow rate will not fluctuate more than 2% from the value agreed in the purchase contact; and
  - the exhaust temperature into the catalyst will not fluctuate more than 5°C from the value agreed in the purchase contract;
- g. The following applies to catalyst applications in gas turbine, HRSG, and industrial boiler systems:
    - Seller requires that the exhaust gas velocity and concentration distribution at the entrance plane of the Catalyst be  $\pm 15\%$  RMS of the average and that less than 15% of the points measured are  $\pm 15\%$  of the average. Measurement methods shall be in accordance with EPA Test Methods #1 and #2, unless expressly agreed otherwise between the parties.



- Seller requires that the exhaust gas temperature distribution at the entrance plane of the Catalyst be  $\pm 15^{\circ}\text{C}$ .
- Measurement locations shall be in accordance with EPA Test Methods #1 and #2 unless expressly agreed otherwise between the parties.

h. Diesel Particulate Filter Products shall be operated and maintained at all times in accordance with Seller's written instructions including the following instructions and guidelines:

- for Passive Diesel Particulate Filter Products – the most recent version of the MIRATECH “Guidelines for the Successful Operation of Diesel Particulate Filters”; or
- for Active Diesel Particulate Filter Components included with AT-IV the most recent version of the AT-IV Operations and Maintenance Manual.
- In-field particulate matter (PM) testing with the use of a MIRATECH DPF should be performed with a certified and calibrated opacity meter (e.g. the Red Mountain Smoke Check 1667). The engine should be tested at idle after an initial warm-up period. Samples should be taken at the atmospheric outlet of the exhaust below 5%.

7.3 If the requirements set out in Section 7.2 above are met and the Product fails to achieve the output performance specified in the purchase contract within the period specified in Section 7.1, Purchaser shall be entitled to have the Product repaired. If this fails, Purchase can withdraw from the purchase contract or reduce the purchase price appropriately.

7.4 Purchaser is required to notify the Seller in writing of specific defects and provide Seller with complete documentation relating to the defect in question. Purchaser must provide evidence of its equipment's compliance with the conditions specified in Section 7.2. The emission levels and the temperatures and flow rates of Purchaser's equipment and the emission levels of the Products shall be tested at Purchaser's expense, in accordance with mutually agreed test procedures and protocols which shall be in accordance with accepted industry practice.

In doing so, Purchaser shall operate the equipment at its own expense so that Seller can make the necessary modifications and adjustments to the Products. If the equipment is operated by third parties, Purchaser shall ensure at its own expense that they commission the equipment and that Seller can make the necessary modifications and adjustments to the Products.

## **8. Services, Acceptance**

8.1 If acceptance of the Seller's performance is provided for by law or by contract, the Purchaser is obliged to accept the performance rendered in accordance with the contract, unless acceptance is precluded due to the type of the work. Acceptance may not be refused due to insignificant defects.



- 8.2 However, acceptance shall be deemed to have taken place if Purchaser fails to accept the performed services within a reasonable period determined by Seller, although Purchaser is obliged to do so.

Insofar as Seller performs repair or maintenance work for Purchaser, claims for defects shall become statute-barred within one year. The limitation period shall commence upon acceptance. This period shall not apply to claims for damages of Purchaser arising from injury to life, limb or health or from intentional or grossly negligent breaches of duty by Seller or its agents, which shall each be time-barred in accordance with the applicable statutory provisions.

## **9. Other liability of Seller**

- 9.1 Unless provided otherwise in these General Terms and Conditions of Sale including the following provisions, Seller shall be liable for the breach of contractual and non-contractual obligations in accordance with the applicable statutory provisions.

- 9.2 Seller shall be liable for damage – irrespective of the legal grounds – in the event of intent and gross negligence. In the event of slight negligence, Seller shall only be liable for

a) damage resulting from injury to life, limb or health,

b) damage resulting from a breach of any material contractual obligation (obligation the fulfilment of which is required for the proper performance of the contract and on compliance with which the contracting party usually relies and may rely); in this case, however, Seller's liability shall be limited to compensation for foreseeable, normally occurring damage.

- 9.3 The limitations of liability resulting from Section 9.2 shall also apply in the event of breaches of duty by or for the benefit of persons for whose fault Seller is responsible in accordance with the applicable statutory provisions. They shall not apply if Seller has fraudulently concealed a defect or has given a guaranty for the quality of the Products and shall not apply either to claims of Buyer under the German Product Liability Act (Produkthaftungsgesetz, ProdHG).

- 9.4 For the avoidance of doubt: According to the applicable statutory provisions, Purchaser bears the burden of presentation and proof for all circumstances on which any claim for damages may be based.

## **10. Cancellation of contract by Purchaser**

- 10.1 In the event of non-acceptance, Seller may exercise its statutory rights. Seller may claim from Purchaser a cancellation fee of 35% of the purchase price as compensation for lost profit, unless the Products concerned were custom-made for Purchaser.

- 10.2 If the cancellation of the contract concerns Products custom-made on behalf of Purchaser, the cancellation fee shall be based on the progress of the production process, the stages of which are set out in the following table.



Progress of Seller's production process	% of sales price, not including shipping costs
As of conclusion of contract	20%
Seller places orders with suppliers	75%
As of completion of Product ordered by Purchaser	100%

- 10.3 The cancellation fee pursuant to Section 10.1 or 10.2 shall be set higher or lower or shall be waived entirely if Seller proves higher damage or Purchaser proves that lower damage or no damage at all has been incurred.
- 10.4 If Seller claims the cancellation fee, this shall replace Seller's claims for damages actually incurred as a result of the cancellation of the contract.

**11. Applicable law, jurisdiction**

- 11.1 These General Terms and Conditions of Sale and the contractual relationship between Seller and Purchaser shall be governed by the laws of the Federal Republic of Germany. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.
- 11.2 If Purchaser is a businessperson, a legal entity under public law or a special fund under public law, or if its general place of jurisdiction and venue is not in the Federal Republic of Germany, the place of jurisdiction and venue for any disputes arising from the business relationship between Seller and Purchaser shall be, at Seller's option, Frankfurt or where Purchaser's registered office is located.