General business conditions and terms of INDOP, projektiranje, proizvodnja in trženje industrijske opreme, Slovenia, for CHP systems (heat and power cogeneration units)

Applies to:

1. Persons who carry out a craft or a self-employed professional activity (entrepreneurs) at the time of conclusion of this contract
2. Legal persons governed by public law or possessing specific assets governed by public law.

I. Validity

(1)
Our services and offers shall be carried out exclusively on the basis of these Terms and Conditions of Business. These terms and conditions shall also apply for our future services or offers, despite the fact that no additional contract shall be concluded for such services and offers.
(2)
Business terms and conditions of our contracting partners shall not be taken into account, although their validity shall not bi disputed in specific cases. Even if a contracting partner should refer to a document containing business terms and conditions of such partner, this shall not imply our consent with such terms and conditions.

II. Offer

(1)
Our offers shall not be binding. Any contracts and other arrangements (including any additional agreements) as well as statements given by our agents/representatives, shall be deemed legally binding solely upon our written confirmation.
(2)
Any data regarding goods or services (for example, weight, dimensions, utility values, loads, tolerances and technical data, or other data regarding services) and any visual information (plans and pictures, for example) made by us, shall be deemed binding solely upon explicit written agreement.
(3)
We reserve the right to make technical changes, particularly with regard to individual orders. We shall not be obliged to implement such changes on product already delivered.
We reserve the right of ownership and copyright and property rights on all pictures, calculations, drawings and diagrams, drafts, descriptions of software and other documents. The contracting authority may reproduce the above forms or hand them over to a third party solely upon receiving our written confirmation for doing so. Upon request the above-mentioned forms shall be immediately returned to us.
(4)
Quality and durability warranty on delivered goods shall be valid only if confirmed in written form.

III. Pricing

(1)
Prices quoted shall be understood to include packaging of the products. These prices – unless expressly stated in the offer – shall not include costs (EXW Šoštanj Incoterms 2010) for transport from the manufacturer factory in Šoštanj/Slovenia, value-added tax, costs for unloading, mounting, assembly, connection, installation, starting up or training.
The delivery shall be made based on an order, at the risk and expense of the customer.

(2)
For orders where no prices have been agreed upon, the prices according to the valid price list applicable on the day of delivery shall apply.
Additional or special services shall be charged separately.
Partial delivery shall be charged separately unless expressly provided otherwise.
(3)
We reserve the right to make an appropriate harmonization of prices if the entry prices of materials and staff costs change before the date of delivery. This shall apply only for delivery periods longer than 4 months and for price harmonization's not exceeding 5%. In the case of higher tariffs, a new harmonization of prices shall be required. In case the new agreement is not confirmed, we are entitled to withdraw from the contract within 14 days with a written notice.

IV. Payment, delay in payment and offsetting

(1)
If payment terms have not been agreed upon at the time of conclusion of the contract, the payment terms shall be carried out as follows:

- 40% upon order
- 60% upon receiving the goods

(2)
The contracting partner may offset only uncontested or statutory requirements; the same shall apply to liens.
(3)
We are not obliged to accept bills of exchange and cheques. Credits notes for bills of exchange and cheques shall be issued by determining the value on the day when we the equivalent is at our disposal.
(4)
In the case of late payment, statutory default interest shall be charged. Making a claim for further injury shall not be excluded. Due to non-compliance of payment conditions, failure to cash bills of exchange and cheques, withholding of payments or circumstances that reduce the creditworthiness or the ability to pay of the customer, all receivables shall become immediately due. We shall also be entitled to dispatch the goods only upon the payment of the advance or, when longer deadlines are set, to withdraw from the contract and claim damages for the services.
(5)
In general, the following provisions of point IX shall apply to customer's claims for damages.

V. Reservation of title

(1)
Reservation of title as set in the following clauses, shall serve as an insurance for all existing and future claims of our customers in respect to the supply of heat and power cogeneration units, including the balance of receivables arising from the current-account basis of the respective supply.
(2)
The goods delivered to our customer shall remain our property until the full payment of all secured claims. Goods as well the goods replacing them under this clause and being covered by a reservation of title, shall hereinafter be referred to as reserved goods.
(3)
Our contracting partner shall hold the reserved goods free of charge in our behalf.

(4)
Our contracting partner shall have the right to recycle the reserved goods after the expiry of the deadline (paragraph 9) or to remake and hand them over to the ordinary course of trade. Liens and transfers shall be prohibited.
(5)
If our contracting partner should remake the reserved goods, it is agreed that the remaking shall take place in our name and on our behalf as the manufacturer (yet without any obligations to us) and that we shall obtain a direct ownership right, or – in case the goods being remade has several owners or the value of the goods remade is greater than the value of the reserved goods – we shall obtain the co-ownership (a shareholding) of the newly-created goods. In the event that such a case of ownership shall not arise, our contracting partner shall transfer its future property or, as in the above-mentioned relationship, its co-ownership of the newly-created goods to us. If the reserved goods are united or inextricably mixed with other goods and the other goods represent the principal goods, we shall transfer a co-ownership of the uniform goods referred to in Clause 1 to our customer insofar as the principal goods shall belong to us.
(6)
In case of further disposal of the reserved goods, our contracting partner shall as of now transfer to us any claims arising against the purchaser and – in case of co-ownership of the reserved goods, our contractual partner shall transfer to us the share corresponding to its co-ownership share. The same shall apply to other claims that take the place of the reserved goods or otherwise arise in relation to the reserved goods such as, for example, insurance claims or claims arising out of a tort or delict in regard to loss or destruction. Our customer shall hereby be authorized to recover claims in its own name and assign them to us, until revocation of such authorization. Such authorization for recovery of claims can be revoked only in case of encashment.
(7)
If a third party interfere with the reserved goods, particularly by seizure, our contracting partner shall immediately alert such third party of our ownership and shall inform us about this so as to allow us to enforce our ownership rights. If a third party is not in a position to pay court or extra-judicial costs arising in connection to such proceedings, our contracting partner shall be deemed responsible.
(8)
The reserved goods and items or claims that replace them shall be released upon request according to our choice, insofar as their real value exceeds the value of the secured claims by more than 10%.
(9)
If, due to the behavior of our customer, especially in the event of a payment delay, we should withdraw from the contract (an example of encashment), we shall be entitled to claim back the reserved goods and, by ourselves or through an authorized person, to obtain direct ownership, regardless of where the goods are located. Our contracting partner shall be obligated to hand over the reserved goods to us. In order to exercise our rights, the contracting partner shall further be obliged to provide the necessary information and to hand over any documentation.

VI. Delivery, delivery deadlines, risk transfer

(1)
(a) Delivery shall be made from the location of the manufacturer's factory in Šoštanj/Slovenia. From there on, the contracting partner shall assume the full risk.
(b) Delivery shall mean to include the preparation of goods at the factory of the manufacturer in Šoštanj/Slovenia for the takeover by the customer.
(c) Once a CHP unit has been dispatched, the handover shall be deemed completed.
In principle the take-up and delivery periods shall begin to run only after clarifying the technical data and sales details relevant for the manufacturer and after paying the advance.
(d) The risk on the customer shall arise as soon as the goods have left the factory of the manufacturer in Šoštanj/Slovenia. If the dispatch or delivery is delayed as a result of a circumstance caused by our customer, the risk shall pass to the contracting partner, as from the day that the goods were ready for dispatch from the factory of the manufacturer in Šoštanj/Slovenia and that our contracting partner has also been informed thereof.
(e) Storage costs after the transfer of risk shall be borne by the contracting partner. In the case of storage at our site, the daily storage costs shall be 0,10% of the amount of invoice for the goods being stored. We reserve the right to enforce and prove any further or minor storage costs.
(f) We shall insure goods only on the express request of our contracting partner and on his costs against theft, breakage, damage during transport, fire and water, or other risks that can be insured.
(2)
If a technical acceptance is carried out in accordance with national regulations, the handover shall be carried out handing the CE certificate of the manufacturer over to the customer.
(3)
(a) The deadlines set by us and the dates of goods or service delivery shall only serve as an approximate estimate of the delivery date, unless otherwise agreed by setting a fixed deadline or a fixed date. In case we should exceptionally arrange also about the dispatch of goods, the deadlines and terms relating to us shall refer to the moment of delivery to the freight forwarder, carrier or third parties who are ordered to carry out the transport.
(b) Due to force majeure, we shall be entitled to a delay in delivery for the duration of the period required for the elimination of the consequences of the accident and a re-preparation of the goods for delivery. This shall apply also the case if such events occur during an already incurred delayed. The force majeure shall mean any currency, trade-policy and other state measures, strikes, lock-outs, disruptions in operation for which we are not to be blamed for (e.g. fire, machine or rolling fracture, lack of raw materials or energy), traffic barriers, delay in import/customs procedure and any other circumstances, which – without being caused by us – should substantially aggravate or disrupt the delivery. In this regard it shall be irrelevant whether these circumstances arise on our side, at the manufacturer's factory or with the previous supplier. If, on the basis of the aforementioned events, the execution of the contract shall become unacceptable to one of the contracting parties, especially if the execution of the contract shall be delayed for one of the parties in relation to the essential parts of the contract for more than 6 months, such party shall be allowed to terminate the contract.
(c) Our delivery shall depend on the correct and timely supply of our own, unless our own supply was incorrect or delayed due to our fault.
(d) In the event of a prolongation or suspension of the delivery period, the customer shall not be able to claim damages in this respect.
We shall only be able to refer to these circumstances upon immediate informing of the customer thereof.
(6)
(a) Delay may be called as such only in the event there is a delay in delivery and we receive a letter of formal notice. If we are late with a service our liability for damages shall be limited to contractual damages. In this case the provisions of point IX of these General Terms and Conditions of Business shall apply.

VII. Guarantees, actual errors, review and claim obligations

(1)
Goods shall be supplied without any factory and material defects. Complaints for defects shall not exist on the basis of a non-essential deviation from the agreed characteristics or non-essential disruptions in use.
(2)
(a) Any deficiencies shall be reported promptly in writing and shall be deemed ineligible if we are not informed thereof by our contracting partner within 5 working days of the goods being accepted (in accordance with point VI 1c). Shortcomings, which, even with careful examination, could not be observed, shall be reported immediately or no later than 5 working days after the discovery.
(b) After carrying out an agreed acceptance of goods by the customer, the making of claims for faults that could have been determined by the agreed takeover method shall be excluded.

(3)
(a) If a fault is observed on the delivered goods that was present at the time of risk transfer, we shall improve or repair the fault at our choice free of charge within a specified period by supplying a flawless part (additional delivery).
If the customer should refuse this option or can if the fault was caused by changes or repairs made on the goods, we shall not cover the costs.
The following shall apply:
For a proper fulfilment of the contract and a proper use the CHP unit has to be the installed on location and started up appropriately. Checking if the installation was carried out in compliance to INDOP technical documentation shall be carried out at the start-up by qualified professionals of the INDOP company or from INDOP authorized person. Otherwise, it shall be suspected that the deviations have occurred due to improper use. In such case, we shall not be deemed responsible for the fault. In case INDOP/from INDOP authorized person do not provide the start-up of the CHP unit, INDOP shall bear no responsibility for faults/liability to any kind of damage/compensation deriving from CHP unit installation, assembly, commission, carrying out the start-up neither to buyer nor end-user or any other.
Furthermore, the following shall apply:
The use of the CHP unit in accordance with the contract shall require professional handling, in particular professional maintenance in accordance with the maintenance plan. Otherwise, it shall be suspected that the deviations have occurred due to improper use. In such case, we shall not be deemed responsible for the fault.
NOTE:
Guarantee and conditions to cover guarantee claims from customers are judged based on guarantee conditions and guarantee statement, defined in a separate document titled “Warranty conditions”.
(4)
If the improvement has not been successful after two attempts or is not carried out within the period specified by the customer, we may reduce the purchase price for our contracting partner or withdraw from the contract.
(5)
(a) If necessary, the unit which was subject to for the complaint shall be returned to the factory of the manufacturer in Šoštanj/Slovenia. In case of a justified complaint, we shall refund the shipping costs. This, however, shall not apply if costs increase due to the item being located at different place than the destination.
(b) In the event of an unjustified complaint, we shall reserve the right to charge the customer for the costs of transport and packaging and for the time used for testing.
(6)
Claims being made after the reimbursement of costs for subsequent delivery or repairs, arising from the withdrawal from the contract, travel, labor and material costs, shall be excluded if the increase of costs is the result of the CHP unit being installed in location with a difficult access.
(7)
Damage resulting from errors in the design, assembly, installation, fitting or connection of a CHP unit by a third party, shall not constitute grounds for claims of defects against us. Our duty shall not be to verify the services provided by third parties.
Also, damage resulting from incorrect or inadequate handling, operation, servicing, or the use of materials that may not be used (spare parts, wear parts, operating materials, oils, etc.) shall not constitute grounds for complaint. This shall apply also to overload, damage caused by corrosion, inadequate chemical, electro-chemical or electrical influences, and in the event that the maintenance plan has not been adequately met by a professional company responsible within the warranty period.
(8)
Deviations from the degree of effect of the CHP unit or the economic return that is below the expected one, depend on countless technical and conceptual influences in a particular case and on the actual circumstances on the premises. We have no influence over these, therefore such deviations shall not constitute factual errors.
Data on the degree of effect shall be subject to a tolerance of up to 5% due to deviations in measurements, fluctuating framework conditions and fluctuations in the fuel content. In units for heat and power cogeneration it is possible to achieve the efficiency of up to 90%, depending on the primary energy. The amount of heat we use or how it can be used in a particular case shall be dependent on the technical designs of the entire system.
It should be noted that the value of the economic return using the units for heat and power cogeneration shall depend on the operation and use of the devices in each particular case. For this reason, the economic return that can be achieved shall not be the subject of this contract. This shall apply particularly for tax benefits. Hereby we expressly emphasize that we shall not carry the risks of use of a CHP unit; such a risk lies on our contracting partner or the operator of the CHP unit.
(9)
The complaints made due to faults, except for the cases listed under guarantee, shall be intended only for our contracting partner. Such complaints shall not be possible to revoke.
(10)
For defects in the elements of other manufacturers that cannot be removed for reasons of licensing rights or for actual reasons, we shall at our choice enforce our guarantee claims against manufacturers and suppliers at the expense of our contracting partner, or assign these claims to the customer. Guarantee claims against us shall exist for such faults under other assumptions and in accordance with the criterion of these General Conditions and Terms of Business, only if the judicial enforcement of the aforementioned claims against the manufacturer and the supplier has been unsuccessful or shall not be successful, for example due to insolvency. For the duration of the legal dispute, the limitation period for guarantee claims made by of our contracting partner against us shall not begin to run.
(11)
(a)
The limitation period for the elimination of faults shall be 12 months starting from the date of the acceptance of goods (referring to point VI 1(c), page 2). Clause 1 shall not apply in cases of gross negligence, intent, physical injury or a breakdown of health, and in a malicious concealment of fault and responsibility.
(b) The purchase of used goods shall be excluded from all warranties on factual errors.
(c) Subsequent improvements and replacement supplies shall not extend the warranty period. For serviced parts, the warranty period shall be 12 months, calculated from the date of purchase of goods by the customer or the date of the preparation of goods at the factory in Šoštanj/Slovenia.
(d) The warranty for the heat and power cogeneration unit shall not be extended by replacement of parts, components or the complete apparatus. The replaced parts shall become our property.
(12)
None of the above clauses are intended to change the legal burden of proof.

VIII. Protected rights

(a) When using our goods, our contracting partner should take into account all existing trademark rights (especially patents), our property rights and copyrights. Our protected or used trademarks may be used in connection with products manufactured by our contracting partner solely with our special written consent. For all information received by our contracting partner within the framework of our applied technical and other counselling, we shall reserve all trademark rights. Prior to providing this information to third parties (including related companies of our contracting partner), our prior written consent shall be required.
(b) For all of the advertising purposes of our contracting partner on business relations, our prior express consent shall be required.
(c) We hold the right of ownership and copyright and property rights on all drawings, calculations, plans and diagrams, drafts, descriptions of software and other documents and ancillary assets. Our contracting partner may reproduce or distribute these to third parties solely on the basis of our written permission. Upon our request these should be returned to us immediately.

IX. Liability and compensation due to fault
(1)

Damages for breaches of contractual and non-contractual obligations arising out of a criminal offence we shall exercise only in the following cases:

- upon intentional or grossly negligent acts
- upon deliberate or negligent endangerment of life, body or health
- upon malicious concealment of faults or assuming a guarantee of quality

(2)
Insofar as we are liable for damages with a reason, this liability shall be limited to the damage that was foreseen at the conclusion of the contract as a possible consequence of a breach of contract or should have been foreseen under due care. Apart from that, indirect damage and consequential damage resulting from faults on the CHP unit shall be recoverable only insofar as such damage is likely to occur when the CHP unit has been for intended purpose.
The essential contractual obligations shall therefore be understood as the obligations that give the contract its character and which the contracting partner can trust; we are talking about the essential rights and obligations that are a prerequisite for fulfilling the contract and are indispensable for achieving the contractual purpose, i.e. timely delivery of CHP units without significant errors and the obligations of counselling, protection and care that enable our contracting partner to use the CHP unit in accordance with the contract, or that are aimed to protect the body or the life of the staff of our contracting partner or to protect its property from any substantial material damage.
(3)
Any further requests shall be excluded.
(4)
Insofar as our responsibility is excluded or limited, this shall also apply to employees, workers, representatives, agents and assistants.

XI. Final provisions
(1)
Any disputes arising out of business cooperation between the seller and the contracting authority shall be settled at the choice of the contracting authority and shall be referred to the competent court in Ljubljana or to a court situated at the seat of our contracting partner. Any lawsuit against us shall fall within the exclusive jurisdiction of the court in Ljubljana. The mandatory rules of the law on exclusive legal jurisdiction shall remain unchanged.
(2)
The cooperation between us and our contracting partner shall be subject only to the law of the Republic of Slovenia.
(3)
Should the contract or these General Terms and Conditions of Business contain any legal holes, these legal gaps shall be subject to the established legally effective arrangements agreed by the contracting partners on the basis of economic purposes and the purpose of these General Terms and Conditions of Business, if they were aware of such legal gaps.

Warning:

Business mail, printed using data processing devices (e. g. confirmation of orders, invoices, credit notes, reminders) shall be deemed legally binding even without a signature.

We hereby inform our contracting partner we store that information on the contractual relationship according to the GDPR (General Data Protection Regulation) and Slovenian Data Protection Act (ZVOP-2) for the purpose of data processing. We reserve the right to transfer information to third parties (e.g. insurance companies) should this be necessary for the fulfilment of the contract.

08/2018