



Power. Passion. Partnership.

Terms and Conditions of Purchase for Machinery, Equipment and Installation Services

I. General

1. Unless otherwise agreed in writing by the Rolls-Royce Power Systems Group company concluding the agreement (named in the footer hereof) (hereinafter referred to as "We", "Us" or "Our") and the contractor (hereinafter referred to as the "Contractor"), these Terms and Conditions of Purchase for Machinery, Equipment and Installation Services shall apply to the purchase of machinery, equipment and installation services (hereinafter collectively referred to as the "Machine(ry)") and other services required in connection therewith, such as installation work (delivery of Machinery and provision of other services hereinafter also referred to as "services"). These Terms and Conditions of Purchase for Machinery, Equipment and Installation Services shall apply exclusively, even if We accept goods/services without reservation, despite being aware of terms of the Contractor which are inconsistent or which deviate from these Terms and Conditions of Purchase for Machinery, Equipment and Installation Services.
2. These Terms and Conditions of Purchase, as amended from time to time, shall be an integral part of all future orders placed by Us. They shall also apply to follow-up orders whether or not We make express reference to said Terms and Conditions again.
3. References to the application of statutory provisions are made solely for purposes of clarification. Statutory provisions shall apply regardless of whether any clarification is made to that effect, unless they have been directly amended or expressly excluded in these Terms and Conditions or in the relevant agreement.
4. Our General Specifications for Deliveries, which are available for download on Our website (https://www.mtu-online.com/fileadmin/fm-dam/mtu-global/downloads/E-570_Allgemeine_Anlieferungsvorschriften_englisch.pdf) shall also be an integral part of these Terms and Conditions of Purchase.

II. Formation of contract

1. We are bound by written orders only.
2. The Contractor shall confirm acceptance of Our order in writing without undue delay (using the order confirmation attached to the order form if available) unless We waive this requirement. If the Contractor's order confirmation deviates from Our order, We will only be bound by the order if We have consented to the deviation in writing. The acceptance of goods/services or payment for same shall not constitute consent.
3. If the Contractor fails to accept the order within 14 days, We may revoke the order.
4. Agreements for goods/services and any amendments or supplements thereto must be executed in writing. No oral ancillary agreements exist.

III. Modifications

1. We may, to the extent reasonable for the Contractor, request modifications to the design and execution of the goods/services. The consequences of any modifications, particularly any additional or reduced costs and the impact on delivery/performance dates, shall be the subject of a reasonable, mutually agreed arrangement.
2. The Contractor may modify its goods/services from a previous order of the same type or from a specification in the current order, provided the changes are for the purpose of improvement and We have given Our written consent. The Contractor is responsible for ensuring that any modified goods/services are also fit and proper for the intended use stipulated by Us.

IV. Drawings and sketches

1. If We approve any drawings or sketches of the Contractor, this shall be understood as a mere courtesy on Our part which is in no way binding on Us nor does it release the Contractor from its duty to comply with and satisfy all requirements mandated by law or agreed by contract.

2. CAD and Office data shall be delivered in a form compatible with the systems We currently employ.

V. Labeling requirements

1. The Contractor shall quote the order number and item or material number in the order confirmation (where an order confirmation is agreed) and in all other written correspondence.
2. Each consignment shall be delivered with one delivery note enclosed with the shipping documents and one delivery note affixed to the package. In addition to the aforementioned information, the delivery notes shall include the date of dispatch, the type of packaging, a description of the goods, the quantity and weight of the consignment (gross and net weight) as well as the delivery address (site and unloading point). Invoices shall not constitute delivery notes. Details are stipulated in the General Specifications for Deliveries.
3. In addition to the order number and item or material number, invoices must include a goods description, the quantity, the price per unit and number and date of the delivery note. Any value added tax included in the price must be shown as a separate item. Invoices may relate to no more than one order.
4. The Contractor shall bear any costs incurred as a result of failure to comply with this provision.

VI. Scope, execution, confidentiality

1. Unless agreed otherwise, the Contractor shall deliver a complete Machine containing all parts necessary to ensure its proper operation in conformance with the agreed, implicitly required or customary qualities even where the individual parts required therefor have not been specified. The Contractor shall be responsible for verifying the information provided by Us. Machine components and parts must be designed and arranged such that they can be serviced, inspected and replaced quickly and efficiently. The service life of parts subject to wear and tear must be as long as possible.
2. We shall provide water and electricity in the available voltages free of charge at the installation site within a radius of up to 100 meters. Electricity may be used for heating building site accommodations as the situation permits; otherwise electrical power may not be used for heating purposes.
3. The Contractor shall install, maintain and later remove the necessary supply lines and connections in accordance with the technical regulations at its own expense.
4. The scope of performance shall include the provision of all the machinery, equipment, scaffolding, hoisting equipment, building site accommodations, etc., required to execute the order. Insofar as We provide said items in the given case, the Contractor shall be liable for the item and use thereof.
5. Components that We provide to the Contractor (such as parts of the automated system, tools, clamping and suction devices, etc.) (hereinafter "Components") shall remain Our property. Said Components shall be labeled as Our property and stored separately from other objects so that it is clear at all times that they are Our property. They may only be used as intended. Processing or altering Components and assembling or installing Components in machinery to form a product as a whole shall be performed on Our behalf. It is agreed that We shall have a co-ownership interest in the product as a whole equivalent to the value of the Components in relation to the value of the product as a whole. The foregoing shall also apply where one of the other components of the product constitutes the main component. In this respect, the Contractor shall hold custody of the product as a whole or the Components on Our behalf.
6. If additional wage labor (added hourly wage) becomes necessary, this may only be performed on the express instruction of Our local construction site manager. The Contractor shall keep time sheets on the forms We provide and submit these to Our local construction

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site manager daily for countersigning; such time sheets shall indicate only the number of hours.

- Any and all commercial and/or technical information which is not in the public domain and to which the Contractor becomes privy in the course of the business relationship shall constitute trade secrets of Ours and must therefore be treated as confidential. If trade secrets are disclosed in the individual case, this only being permitted with Our written consent, the Contractor shall similarly impose the obligations under this clause on the relevant third party.

VII. Freight and packaging

- In the absence of any specific terms, the supplier or Contractor shall choose the most economic form of transportation and packaging. The packaging must be appropriate in view of the nature of the consigned goods, the means of transport and the route so as to ensure that it is able to withstand all the demands of transportation and warehousing. Details are stipulated in the General Specifications for Deliveries.
- Any costs We incur as a result of the failure to comply with delivery, shipping and packaging requirements shall be borne by the Contractor.

VIII. Delivery/performance dates

- Agreed dates and periods are binding. The date on which the goods arrive at the stated delivery address shall be controlling for determining compliance with delivery dates/periods. The relevant statutory provisions shall apply if delivery/performance dates are not complied with. We may also partially rescind the agreement in respect of the goods/services not provided in due time. For the purposes of determining whether a default in performance exists, it is irrelevant whether the Contractor receives its own supplies on time.
- In the event of default, We may charge a contractual penalty (*Vertragsstrafe*) of 0.5%, but no more than 5%, of the order value for each week or part thereof by which the agreed delivery/performance date is exceeded. Contractual penalties may be claimed up until final payment. We reserve the right to asset claims for any further loss or damage.
- Partial delivery/performance shall be rendered if specifically agreed, but is not otherwise permitted. If partial or successive delivery/performance is agreed, We may, to the extent reasonable, postpone the dates and volume of delivery/performance.
- The Contractor shall notify Us in writing without undue delay of foreseeable delays in the provision of goods or services and advise Us of the anticipated duration of any such delay.
- Where delays are attributable to *force majeure*, the Contractor shall provide evidence of the existence of *force majeure*. The Contractor shall, at its own expense, do everything in its power to perform the agreement on time, despite the existence of *force majeure*. If it is highly likely that a delay will continue for more than one month, particularly because the Contractor notifies Us that it will not be able to deliver any earlier than that, We may (partially) rescind the agreement.
- We may postpone the agreed dates for the delivery/performance of goods/services by the Contractor by up to six months if the anticipated need for the goods/services is deferred as a result of strikes or other disruptions to Our operations. Any such postponement shall not give rise to any claims on the part of the Contractor. The foregoing shall not affect the right of rescission under clause XVI.
- To the extent reasonable in the individual case, We will accept early delivery/performance. However, the agreed periods for payment shall still commence on the previously agreed delivery/performance date or subsequent invoice date. The Contractor shall bear any warehousing costs We incur as a result of taking delivery early.

IX. Prices

The agreed prices are fixed prices net of statutory VAT and include all incidental costs incurred up to the agreed unloading point (with the exception of value added tax at the applicable statutory rate). Where it has been agreed that a consignment shall be dispatched at Our risk, the prices shall not include any transport insurance or insurance against damage, as We will cover these risks and hereby waive any such insurance. If the Contractor reduces its prices, the possibility of a price reduction for goods/services not yet provided shall be discussed.

X. Payment

- Unless otherwise agreed, payment shall be due and payable in full (net) within 60 days of receiving the goods/services and the invoice.
- We may render payment in the form of Our choice, particularly including payment by check. The date of payment shall be the date on which the payment was sent. Cash on delivery arrangements are not permitted. We shall not be deemed in default of payment unless We have already received a written default notice.
- We may pay in euros or offset an amount in euros in order to satisfy claims denominated in a currency other than euros. The relevant exchange rate shall be the exchange rate applicable in the place of payment at the time of payment.
- We have recourse to the statutory rights of set-off and rights to withhold performance. If a party becomes insolvent pursuant to § 94 of the German Insolvency Code (*Insolvenzordnung*, "InsO"), it is agreed that the accrued claims of the other party shall fall due upon the commencement of insolvency proceedings. If a court orders the institution of provisional insolvency proceedings, the claims shall fall due when the court order is issued.
- Payments remitted by Us may not be construed as an acknowledgement on Our part that the Machinery is conforming.
- We have the right to reject any invoices or delivery documents which are late, incorrect or incomplete. If a legitimate rejection on Our part causes a delay in processing in the normal course of business, the payment periods specified in clause X.1. shall be extended for the period of any such delay.

XI. Risk of loss

- All information as to the place of destination of the Machinery is based on Incoterms 2010. The place of destination shall also be the place of performance.
- For delivery-only orders, the risk of performance and payment shall pass in accordance with the agreed terms of delivery, or alternatively upon receipt of the goods at the place of performance. For orders involving delivery for installation or assembly and for orders involving other services, the risk shall pass upon acceptance at the place of installation/performance.
- If the goods or services are subject to acceptance following delivery, risk shall pass upon such acceptance. Acceptance shall otherwise be governed by the statutory provisions on contracts for work and services (*Werkvertrag*). If We fail to timely accept the goods or services, delivery or acceptance shall be deemed effected.

XII. Grant of license, third-party rights

- If in the course of performing the agreement, the Contractor generates work products that are copyright protected, We shall have an exclusive, transferable, perpetual, worldwide license to use any such work products in their original or modified form as We see fit and without restriction as to the type of such use (specifically, to reproduce or have reproduced or to disseminate) and to grant sublicenses to third parties for any and all types of use at Our sole discretion.

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2. Where the Contractor's performance also includes the delivery of standard software or developing and delivering individual software, We shall be granted a license therein as specified below:

- a) With regard to standard software, We shall be granted an irrevocable, non-exclusive, transferable, perpetual, worldwide license therein; the grant of license shall cover all known types of use and include the right to adapt, reproduce, modify and enhance said software and grant non-exclusive sublicenses therein to third parties.
- b) With regard to individual software programs or parts thereof and any other work products developed for Us and to the extent not subject to any restriction set out in the paragraphs below, We shall be granted an irrevocable, exclusive, perpetual, worldwide license therein; the grant of license shall cover all known types of use and include the right to adapt, reproduce, modify and enhance said software/work products and grant non-exclusive sublicenses therein to third parties.
- c) Where We are unable to acquire a license pursuant to the paragraph above due to the fact that the software/work products include programs or other work products which are encumbered by the rights of third parties, the scope of Our license shall be stipulated by contract.
- d) The Contractor may continue to use standard programs, program modules, tools and know-how it has contributed to the development of the work products in order to perform assignments from third parties as well. The Contractor shall not be permitted to reproduce, adapt or otherwise use, in whole or in part, the work products and solutions developed for Us.
- e) The Contractor may not publish, even in part, any work products created for Us without Our written consent.

3. The Contractor shall indemnify Us against any and all claims arising from the infringement of intellectual property rights, copyright or other rights asserted by third parties as a result of the use of the delivered goods/services or parts thereof.

XIII. Preliminary acceptance, proof of performance and acceptance

1. We reserve the right to conduct a preliminary acceptance test at the Contractor's factory. Such preliminary acceptance test is a gesture of goodwill on Our part to inspect the deliverables while still in production. It merely serves to bring to the Contractor's attention prior to delivery and acceptance any defects We believe exist or any failure to meet specifications. The preliminary acceptance test does not purport to be complete. In particular it does not replace formal acceptance of the deliverable, nor does it constitute partial acceptance. The Contractor shall schedule the date for the preliminary acceptance test so as to ensure that conforming delivery can be made on the contractually agreed delivery date. The Contractor shall take all necessary precautions to ensure that the preliminary acceptance test can be conducted promptly and successfully. Should a further preliminary acceptance test be required for reasons for which the Contractor is responsible, the Contractor shall bear the costs We incur in the amount of EUR 750 per day and employee as well as costs for travel (travel time, mode of transport, overnight accommodation), expenses and other incidental expenses. We shall determine the number of persons involved in any further preliminary acceptance test.
2. To the extent that joint acceptance has been agreed, this shall be conducted at the location stipulated by Us. The Contractor must request in writing that a date be set for acceptance. Acceptance shall be effected without undue delay and, in the case of Machinery that requires a prior trial operation, within a period of four weeks at the earliest and three months at the latest after the start of the trial operation as requested by Us. Where possible, the Machinery may also be used for production during the trial operation. The material costs incurred in connection with acceptance shall be borne by the Contractor. As far as the personnel costs incurred in connection

with acceptance are concerned, We shall bear the costs of Our personnel and the Contractor shall bear the costs of its personnel.

3. If the acceptance test indicates that the Machinery does not conform to contractual specifications, the Contractor shall remedy the non-conforming tender and, at the latest within a reasonable period to be set by Us based on the circumstances in the specific case, request that a second acceptance test be performed. The Contractor shall bear all costs arising as a result of having to repeat the acceptance test.
4. If the defects set out in the acceptance report are not successfully remedied within a reasonable period after acceptance testing, We reserve the right to claim a contractual penalty of 0.5% of the contract value for each week or part thereof after that period expires, but not more than 5% of the contract value. Contractual penalties may be claimed up until final payment. We reserve the right to assert claims for any further loss or damage.
5. If defects are discovered that do not affect the Machinery's performance and function or the health and safety of the employees, it may be accepted subject to the proviso that such defects be remedied without undue delay. In that case, a reasonable amount of the remaining payment shall be withheld until the defects are remedied. Acceptance shall in any case be predicated on the Machinery complying with the 9th Regulation to the Product Safety Act (Machinery Regulation) (*9. Verordnung zum Produktsicherheitsgesetz (Maschinenverordnung)*) as amended from time to time.
6. Successful acceptance shall be confirmed to the Contractor in Our acceptance report.

XIV. Liability for defects

1. Unless otherwise provided below, Our rights in the event of defects in title or defects in quality of the Machinery (including in the form of incorrect or short deliveries, improper assembly or faulty instructions for assembly, operation or use) or other breaches of duty by the Contractor shall be governed by statute.
2. Statutory provisions stipulate that the Contractor has a duty to deliver the Machinery free of defects in quality and defects in title and with the agreed quality and features when the risk of loss passes to Us.
3. Those product descriptions, drawings, specifications, quality standards and other descriptions approved or accepted by Us, which form the subject matter of the relevant agreement by virtue of having been designated or referred to in the order or which were incorporated into the agreement in the same manner as these Terms and Conditions of Purchase shall in particular be deemed to stipulate agreed quality and features. In this regard, it is irrelevant whether the product descriptions, drawings, specifications or quality standards stem from Us, the Contractor, the manufacturer or any other third party.
4. To the extent not otherwise agreed in writing in the individual case, the agreed quality and features shall also be deemed to include that the Machinery is new, of standard commercial quality, not used, not recycled or made of recycled material and that it is fit for the particular purpose specified in the order. To the extent no such purpose is specified, the parties agree that the Machinery must be of merchantable quality.
5. Contrary to § 442 (1) sentence 2 BGB, We shall have recourse to the full range of statutory claims based on defects even if We were unaware of the defect upon entering into the agreement as a result of gross negligence.
6. To the extent not otherwise agreed in writing (e.g., as part of quality standards), the statutory provisions (§§ 377, 381 of the German Commercial Code (*Handelsgesetzbuch*, "HGB")) shall apply to the merchant's duty to inspect the goods and report defects subject to the following stipulation: Our duty of inspection shall be limited to those defects which are apparent upon visual inspection of



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incoming goods, including the delivery documentation, and upon a random sampling quality inspection (e.g., damage during transport, incorrect or short delivery). No duty of inspection shall arise insofar as the Machinery is subject to acceptance. Otherwise, it will depend on the extent to which an inspection is feasible in the ordinary course of business, taking into account the circumstances in the individual case. The foregoing shall not affect Our duty to report defects in the case of subsequently discovered defects. In any case, the Contractor shall waive the defense of delayed notification of defects.

7. If the Contractor fails to satisfy its obligation to cure performance (*Nacherfüllung*), which at Our option may take the form of remedying the defect (repair) or delivering conforming goods (replacement), within a reasonable period to be set by Us, We may remedy the defect Ourselves and claim reimbursement of the expenses incurred in connection therewith or request a corresponding advance from the Contractor. No time period need be set if the Contractor fails to cure performance or if such cure would be unreasonable for Us (e.g., because of some special urgency, risk to operational safety, or risk of a disproportionately high level of loss or damage); in such case, the Contractor must be notified without undue delay, or sooner, if possible.
8. The Contractor shall remedy any defects in title, specifically liens and reservations of title in the Machinery not later than 30 days from the date on which they are asserted, provided such defects in title did not arise as a result of Our failure to satisfy an acknowledged payment obligation under the respective order.
9. In effecting cure, the Contractor shall also conduct any necessary inspections of the Machinery and – where necessary – arrange for shipping and replacement of the defective parts or Machinery at its own expense.
10. In effecting cure, the Contractor shall, at Our request and at its own expense, conduct any and all tests necessary to verify that the Contractor's performance is conforming to contract as required hereunder.
11. Otherwise, in the case of any defects in title or defects in quality, We have a statutory right to claim a reduction in the contract price or to rescind the agreement. We furthermore have a statutory right to claim compensatory damages and reimbursement of expenses.
12. Where the deliverable constitutes a service or other performance not related to the delivery or manufacture of goods, the Contractor warrants that the manner and scope of performance shall reflect that of a prudent merchant in compliance with the highest standards and methods customary in the industry.
13. Our acceptance or approval of any samples or specimens presented may not be construed as a waiver of any warranty claims on Our part.
14. The Contractor shall be liable for any defects in title, including the infringement of third party proprietary rights, irrespective of whether We knew of any such defects, and shall indemnify Us against any potential third party claims. The foregoing shall not apply if Our drawings, samples or other specifications infringe proprietary rights.
15. The Contractor shall remedy all defects arising and reported during the limitations period for claims based on defects. The limitations period for claims based on a specific defect shall be tolled when We report the defect in writing, and shall remain tolled until the defect is remedied. However, any such tolling shall end three months after the receipt of a written notice stating that the defect has been remedied or does not exist.
16. Unless otherwise agreed, claims based on defects shall lapse when the statutory limitations period expires. The limitations period shall commence anew for exchanged or replaced parts.

XIV. Product recall/ product liability

1. Where an authority or government agency with the power to order a recall of the delivered goods has notified Us or the Contractor in writing that, or We or the Contractor may have reason to assume that, the delivered goods:
 - a) pose a potential safety risk or could create or cause dangerous situations, including the risk of serious injury or death;
 - b) have a fault, defect or are otherwise of impaired quality;
 - c) do not comply with statutory or other applicable requirements and standards; and
 - d) to the extent deemed advisable or necessary on these grounds, the delivered goods concerned must be recalled and/or repaired;We and the Contractor will immediately apprise one another of the situation and of the underlying facts and circumstances.
2. Except in cases where a recall is unavoidable because it has been ordered by the competent authority or government agency, We are entitled to decide whether a recall of the delivered goods concerned ("Recall") is appropriate.
3. If a Recall is necessary pursuant to statutory provisions, or where We decide that a Recall is appropriate, the Contractor will promptly develop a plan or plans for implementing corrective measures ("Plans for Corrective Measures"), which will include, among other things, all measures that are necessary and required pursuant to the statutory provisions or other requirements and standards applicable in the specific case. The Contractor will present the Plans for Corrective Measures to Us for Our review and approval prior to their implementation.
4. We and the Contractor will work together and jointly ensure that the Plans for Corrective Measures are reasonable and acceptable to both parties before their implementation.
5. We may at any time Ourselves undertake any corrective measures and, if applicable, send information to the competent authorities and government agencies involved. In such cases, the Contractor shall cooperate with Us accordingly and offer its full support.
6. Where it is established that the Recall was caused by a fault, defect or other quality impairment or failure to comply with (in particular) quality standards or statutory or other applicable requirements and provisions for which the Contractor must accept responsibility, the Contractor will, at its own expense, and depending on Our election, either carry out all of the repairs and adjustments necessary as part of the Recall, or reasonably compensate Us for all costs incurred as a result of or in connection with Us carrying out the repairs and adjustments Ourselves. The foregoing does not apply if the Contractor can clear itself of responsibility.
7. In any case, the Contractor shall reasonably compensate Us for all costs We incur in connection with the Recall. These costs particularly include all costs for or due to examinations of the delivered goods concerned, repairing or, where repair is not possible, replacing delivered products, packaging and shipping of recalled delivered products, identifying and notifying affected customers and, to the extent necessary, notifying the public and the media.
8. In connection with its liability for damage under clauses XII and XIV, the Contractor shall also reimburse any expenses in accordance with § 683 and § 670 BGB or § 830, § 840 and § 426 BGB arising out of or in connection with any Recall implemented by Us. The foregoing in no way affects any other statutory claims.
9. Each party will consult the other before notifications relating to potential safety concerns associated with the relevant products are released to the public, the media or authorities and government agencies. However, there shall be no obligation to consult if prior consultation would prevent timely notification of such safety concerns under the relevant statutory provisions.

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10. Where the Contractor is liable for loss or damage caused by its goods/services, it shall, on first demand, indemnify Us against damages claims brought by third parties, provided the cause of the loss or damage is within its sphere of organization and control and the Contractor itself is liable as against third parties.
11. In this context, the Contractor shall also reimburse any expenses pursuant to § 683, § 670 BGB arising out of or in connection with any Recall conducted by Us, unless such claim already exists under § 830, § 840 BGB in conjunction with § 426, § 254 BGB. If, as a result of an error caused by the Contractor, third parties sue Us on product liability grounds or We are required under the applicable laws governing the relationship between Us and Our customers to recall products or label them with warnings, the Contractor shall indemnify Us against all third party claims and bear all of the resulting costs.

XV. Insurance

1. The Contractor shall take out and maintain for the term of contractual performance plus a period of 10 years following delivery of the Machinery or satisfaction of all performance obligations hereunder insurance from reputable and solvent insurers (i.e., insurers with a minimum rating of A-VII or A (S&P)) at its own expense, including, without limitation:
 - a) business/product liability insurance with minimum coverage of EUR 5 million per claim;
 - b) property insurance covering all tangible assets owned, leased or otherwise used by the Contractor in connection with contractual performance and for all tangible assets of Ours held in the Contractor's custody.
2. All the insurance policies specified in this clause must be structured such that
 - a) in each case the coverage is not subject to additional conditions and exists even in the event both parties are liable;
 - b) no deductible is agreed;
 - c) We and Our affiliates as well as their governing bodies, managing directors, other agents and employees are named as additional beneficiaries or payees in the event of loss; and
 - d) a waiver of recourse in favor of the aforementioned parties is stipulated in the event of any loss or damage covered by the insurance policies set out in this clause.
3. Where an insurance policy provides for the payment of a deductible or where claims are asserted against Us for payment of a deductible, the Contractor shall in any case be liable for satisfaction thereof or We may request that the Contractor compensate or indemnify us accordingly.
4. Upon request, the Contractor shall submit to Us the insurance certificate(s) as proof of the terms stipulated in this clause XV. nos. 1./2.
5. We are under no obligation to verify that the insurance policies and corresponding insurance coverage meet the aforementioned requirements.
6. If We accept an insurance certificate despite the fact that the aforementioned requirements have not been met, this shall not constitute any implicit waiver of compliance with the Contractor's obligations to obtain and maintain insurance coverage as set out above.

XVI. Rescission, termination

1. Without prejudice to any other claims, We have recourse to the full range of statutory rights of rescission and termination.
2. We may in particular rescind the contract, either in whole or in part, if Our requirements are reduced as a result of an event of *force majeure*, industrial disputes, interruptions to operations for which We are not responsible, riots and unrest, regulatory action or unavoidable events, or

3. We are further entitled to terminate agreements stipulating a statutory right of termination with immediate effect if:
 - a) the Contractor is responsible for the breach of a material contractual obligation;
 - b) the Contractor discontinues its operations or threatens to do so; or
 - c) an application to institute insolvency proceedings is filed against the Contractor, or We receive a written credit report indicating that the Contractor is not creditworthy.
4. We may, on two weeks' notice, terminate continuing obligations at any time even where none of the aforementioned grounds exist.
5. If We exercise a right of termination to which We are entitled by contract or by law, the goods/services provided up to that point shall be billed at the contractually stipulated prices only to the extent that We can use them as intended. Goods/services shall be billed in accordance with the agreement and shall take into account any compensation payable to Us for loss or damage as well as any contractual penalty owed.

XVII. Subcontractors

The Contractor must obtain Our prior written consent before engaging or changing subcontractors or using third parties or temporary staff, unless such staff performs incidental functions. The Contractor shall otherwise impose the same obligations on any subcontractors as those it has assumed in its relationship with Us. The Contractor shall furthermore be liable for the negligence of its subcontractors/suppliers as it would be for its own negligence.

XIX. Assignment of claims

The assignment of claims under the agreement is subject to Our written approval.

XXI. Data protection

1. We may store, transmit, modify and delete personal data about the Contractor in accordance with the provisions of the Federal Data Protection Act (*Bundesdatenschutzgesetz*, "BDSG"), provided this is necessary in connection with executing the agreement.
2. For purposes of performing the agreement, the Contractor may only use those persons who have undertaken vis-à-vis the Contractor to maintain data confidentiality in accordance with the BDSG. It shall ensure that all those persons it entrusts with processing or executing the agreement comply with the provisions of the BDSG.
3. The Contractor shall ensure the measures for safeguarding data required under the BDSG are in place and shall provide Us with the information and documentation required under the BDSG for processing control purposes upon Our request.

XXII. Declaration of origin

To the extent that a declaration of origin is necessary in order to obtain tariff preferences, the Contractor shall provide such declaration in a timely manner in the correct and complete form and using the prescribed wording, with the exact goods description matching that of Our own, and including the item number, if available.

XXIII. Origin of goods and preferences

1. Proof of preferential origin

In order to obtain preferential customs treatment, a Contractor whose registered office is located in a country which has a preferential agreement with the EU (see www.zoll.de) must submit a valid declaration of origin or a movement certificate to the extent this is possible, whereby the exact description of the goods must be made using Our own description of goods and, where available, Our part number.

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The Contractor is hereby advised it may be held liable for any loss or damage incurred as a result of an improperly issued declaration of origin or movement certificate.

2. Suppliers' declaration

A Contractor whose registered office is located within the EU must, to the extent this is possible, submit a valid long-term supplier's declaration in accordance with Regulation (EC) 1207/2001 as proof of preferential originating status of the goods to be delivered by it (see www.zoll.de), whereby the exact description of the goods must be made using Our own description of goods and, where available, Our part number.

The Contractor is hereby advised it may be held liable for any loss or damage incurred as a result of an improperly issued suppliers' declaration.

3. Country of origin

The Contractor must state the country of origin on the invoice for each item or material number.

XXIV. Work in the factory area, accident prevention, emissions containment, emissions damage, fire protection REACH Regulation

1. Work to be performed in Our factory area may not obstruct Our operations or third parties any more than absolutely necessary.
2. The work schedule must be coordinated in good time with Our technical contact person.
3. Before the installation and/or assembly work begins, the Contractor shall accept the installation site with all foundations, connections, stakeouts, etc. important to it and verify their correctness.
4. When performing the work, the Contractor shall be subject to a special duty of care with respect to environmentally hazardous substances. If the Contractor releases, discovers, or suspects the presence of hazardous substances while performing the work, it shall notify Us without undue delay. The Contractor shall notify Us in writing without undue delay if it has any occupational health and safety or environmental concerns in relation to the manner of execution requested by Us.
5. During the construction phase, Our local construction site manager shall have the right of instruction on the construction site. Instructions from other departments of Ours may only be followed after consultation with the construction site manager.
6. The Contractor shall staff the installation site with a competent and experienced supervisor who has been granted the requisite authority. The supervisor may only be replaced subject to Our consent.
7. The Contractor shall submit to the local construction site manager a list with the names of the workers it intends to employ in the factory area. The list must be kept up to date at all times. Upon request, the Contractor shall submit documentation showing that all such employees are covered by social security as prescribed by law. We may deny the Contractor's employees entry to Our factory area for good cause.
8. The Contractor shall ensure that its employees follow Our instructions on maintaining order and safety and are subject to the usual control procedures.
9. All objects brought onto Our factory premises are subject to factory inspection. Prior to delivery and removal, a written list of all objects must be submitted to Our technical contact person for sign-off and deposited with him. The Contractor and its subcontractors must clearly and permanently label their tools and equipment as well as the installation equipment with their name or the company logo. Transport vehicles shall only be dispatched during normal working hours.
10. The Contractor shall comply with all laws, rules and regulations relating to occupational health and safety, environmental protection, the transport of hazardous goods and fire safety,

including the leaflets of employers' liability insurance associations and the association of property insurers (*Verband der Sachversicherer*), insofar as they are relevant to delivery of the goods/services.

11. The Contractor shall contact Our specialists for occupational health and safety, environmental protection and fire safety for information concerning existing requirements, accident prevention, environmental protection and fire safety regulations at the place of performance. The measures to be taken shall be coordinated with the aforementioned specialists in each case.
12. The Contractor shall ensure that all its employees conduct themselves in an environmentally responsible and (fire-)safety-conscious manner.
13. Fire safety requirements of the factory/ plant fire department or the fire safety officer must be met in any case. If work on or in the vicinity of installations where there is risk of fire or explosion such as oil tanks, cable installations, etc. cannot be avoided, such work may only be carried out with the approval of the responsible plant manager. To the extent not otherwise agreed, the Contractor shall post a trained fire guard. Subsequent checks must be performed after the work has been completed, including for dismantling and scrapping.
14. The Contractor shall indemnify Us and those persons we entrust with implementing or monitoring accident prevention, environmental protection, plant security, fire safety, dangerous goods regulations and with construction site management against any and all claims directed against Us or the aforementioned persons for loss or damage arising due to a violation of the regulations to be complied with by the Contractor in connection with the delivery of the goods/services. The foregoing shall also apply to claims for loss or damage caused by work performed on facilities of third parties (e.g., supply and waste disposal lines); the Contractor shall obtain detailed information about any such facilities of third parties from the competent authorities before commencing work. If loss or damage occurs, the Contractor shall notify Us and any other competent authorities.
15.
 - a) When making deliveries to Us, the Contractor undertakes as a material contractual obligation to comply with all rules and regulations and to take all action necessary under the REACH Regulation (EC Regulation No. 1907/2006) as applicable on the date of delivery.
 - b) If the Contractor's registered office is located outside the European Union and the Contractor itself is not an importer of the delivered goods, the Contractor shall, as a material contractual obligation, provide Us with all information necessary for any notification, registration or maintenance of the authorization as specified in the REACH Regulation as applicable at the time of delivery, and shall otherwise reasonably assist Us in connection with any notification, registration or maintenance of the authorization. In particular, where the products to be delivered contain one or more substances in a concentration of more than 0.1% weight by weight (w/w), and such substances meet the criteria laid down in Article 57 of the REACH Regulation and have been identified in accordance with Article 59(1) of the REACH Regulation, the Contractor shall provide sufficient information to ensure their safe use and, if applicable, to allow a notification to be filed with the ECHA.
 - c) If the Contractor breaches the aforementioned obligations, We may claim damages and rescind the agreement. The Contractor shall otherwise, on first demand, indemnify Us against all third party claims arising as a result of the Contractor's breach of the aforementioned obligations. The claim for damages/ indemnification shall also cover all of Our expenses such as, in particular, legal defense and administrative costs and all costs associated with any necessary replacement products. If the



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Terms and Conditions of Purchase for Machinery, Equipment and Installation Services

Contractor's registered office is located outside the European Union and the Contractor is unable to notify, register or maintain the authorization for its delivered goods or is unable to do so on reasonable terms, We may rescind the agreement without being liable for damages.

XXV. Compliance with applicable laws

1. In discharging its contractual performance obligations as stipulated hereunder, the Contractor shall at all times observe and act in compliance with:
 - a. all applicable laws, including primary and secondary EU/EC Community law and all national and international, governmental, regional, local, customary law or other statutes, directives, regulations, treaties or conventions as well as any additional protocols; and
 - b. all industry standards, including upholding a standard of due care which may reasonably be expected of an experienced Contractor in that industry under comparable circumstances.
2. Where reference is made in these Terms and Conditions for the Purchase of Machinery, Equipment and Installation Services to (a) the term "**hazardous materials**", this shall mean all those substances or materials declared or identified as such, all substances or materials which are hazardous to health or toxic, pesticides or hazardous goods as well as any other substances or any other materials which may be classified as a potential health or environmental hazard under applicable law or (b) the term "**countries of use or transport**", this shall mean all those territories and countries in which, according to the information We have provided to the Contractor or to the Contractor's knowledge, the Machinery or goods are to be used or deployed or through which said Machinery or goods are expected or known to be transported.
3. We have a right to inspect all the Contractor's documents and may reasonably inspect the Contractor's facilities, which in particular serve to ensure the Contractor's compliance with applicable laws and other provisions and industry standards in accordance with clause XXIV and XXV. The Contractor shall provide Us its full support in this regard.
4. At Our request, the Contractor shall also duly and properly furnish Us with all certificates and proof or any other documents to the extent required by law.

XXVI. EU "New Approach and Global Approach" / Machinery Directive

1. The Contractor shall ensure that the Machinery complies with the requirements of the EU "New Approach and Global Approach" Directives and harmonized standards, including all provisions transposed accordingly into national law by the member states. The Contractor shall transmit the associated records and documentation to Us and the respective supervisory authorities and accepts all liability under such Directives and Standards.
2. In particular, the Contractor will affix the CE mark to and deliver operating instructions for machinery falling within the ambit of the 9th Regulation to the Product Safety Act (Machinery Regulation) and electrical equipment falling under the Low Voltage Directive. The Contractor shall furnish Us with the declaration of conformity and operating instructions in text form. Incomplete Machinery shall be delivered to Us with a declaration of incorporation and detailed assembly/operating instructions which take into account the requirements of the Machinery Regulation.

government officials or persons with similar public functions), or demand, accept or accept a promise of same (regardless of whether for personal benefit or for the benefit of another person) with the intention of unlawfully influencing a business relationship, or where there is a risk of jeopardizing the business partner's professional independence.

3. Furthermore, the Contractor shall not, either passively or actively, directly or indirectly, commit an act or omission which could, in particular, result in criminal prosecution for the granting of an advantage, bribery, fraud, breach of fiduciary duty, competition law violations or insolvency offenses.
4. Please refer to the principles and expectations as to integrity and reliability contained in the Rolls-Royce Power Systems Supplier Guideline (or available at <http://www.mtu-online.com/mtu/purchasing/downloads/>).
5. The Contractor will endeavor to convey these principles in an appropriate manner to its employees and direct suppliers and to encourage compliance with such principles to the best of its ability.
6. We reserve the right to conduct, subject to prior notice and consideration of trade secrets, compliance audits of the Contractor or, if applicable, of its subcontractors. The Contractor will keep appropriate documentation for this purpose.
7. If the Contractor is at fault for any substantial or recurrent breach of these obligations, We may, to the extent reasonable, rescind or terminate all agreements with the Contractor without notice and break off the business relationship and claim damages. We may also rescind or terminate, without notice, and claim damages if and to the extent that, despite setting a reasonable period for action, compliance audits have not been permitted, a compliance audit was not conducted satisfactorily, or the Contractor has failed to take measures imposed by Us to remedy breaches of duty.

XXVIII. Severability

Should any provision of these Terms and Conditions for Machinery, Equipment and Installation Services be or become invalid, in whole or in part, this shall not affect the validity of the remaining terms hereof. If an invalid clause or part thereof cannot be replaced by reference to suppletive law, We and the Contractor shall replace the invalid term or the invalid part thereof with a term that most closely reflects both parties' interests as manifested in these Terms and Conditions of Purchase.

XXIX. Place of performance, jurisdiction, governing law

1. Unless otherwise provided in the order, the place of performance shall be the location of Our registered office.
2. Where the Contractor is a merchant (*Kaufmann*), the courts where Our registered office is located shall have jurisdiction over all disputes arising under this agreement. However, We may also file suit against the Contractor in the courts in its country of domicile.
3. All legal dealings between Us and the Contractor are governed by the laws of the Federal Republic of Germany, subject to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

Last updated: April 2019

XXVII. Compliance

1. The Contractor shall comply with all applicable laws and regulations of the relevant jurisdiction(s), particularly those relating to anti-corruption, export control, antitrust and competition.
2. The Contractor warrants that neither the Contractor nor any of its employees shall offer, give, condone or promise benefits of a tangible or intangible nature to other persons (particularly