



Power. Passion. Partnership.

Terms and Conditions for Installation, Maintenance, Repair and other Services

I. General Provisions

1. All inspection, maintenance, repair, modification, modernization, assembly and installation services, supervision of operations, execution of investigations, etc. within and outside MTU factories/product-support centers is subject to these Terms and Conditions.
2. Related verbal agreements, subsequent amendments, acceptance of the customer's terms and conditions as well as any warranties are invalid unless confirmed in writing by MTU. The customer bears the risk of misunderstandings resulting from orders or instructions sent by telegram, telefax or telephone.

II. Estimates and Conclusion of Contract

1. Estimates and quotations are binding only if given in writing and explicitly stated as binding. MTU is then bound to this estimate for a period of six months from the date of the estimate. If more effort is required than estimated, the total of the binding estimate may be exceeded by up to 15% without notification. The cost for special services and deliveries required for the estimate (e.g. disassembly) is to be borne by the customer even if the work designated in the estimate is not performed, or if it is performed in another way.
2. The agreement will be deemed to be concluded by and on the written confirmation of the order by MTU. Unless the customer objects without delay to any deviations from the order, such written confirmation shall be the only and entire agreement. Any alteration or amendment to the agreement will not be binding on MTU unless MTU has confirmed it in writing.
3. MTU reserves the right to modify and/or modernize the installed/repaired item as long as it – particularly the installation interfaces – is not essentially altered.
4. The assignment of any rights and obligations of the customer arising from the contract to any third party requires the previous written consent of MTU.
5. MTU is entitled to perform test and trial runs, as well as to have them performed by the customer.

III. Prices and Terms of Payment

1. The customer is to make a reasonable down payment on the estimated costs before the departure of MTU personnel from their starting point or before the work is started at MTU's facilities.
2. Accounts will be rendered on the basis of the costs ascertained at the prices valid at the time of service or delivery. Payment is to be made without discount or any other deduction within 14 days of receipt of the final invoice.
3. Costs for travel, accommodation and board for personnel, as well as costs for packing, insurance, customs duty, etc., including consular certificates and certificates of origin are to be borne by the customer.
4. For deliveries and services within the Federal Republic of Germany, the customer is to pay the sales tax in force on the day the related delivery is made or related service is performed.
5. Debts shall only be liquidated if payment is made to MTU or to persons having written authorization from MTU for collection. Bank charges and expenses for letters of credit are to be borne by the customer. No interest will be paid on down payments. Payment by bill of exchange will be subject to the approval of MTU. Checks and bills of exchange will be accepted only subject to col-

lection. The customer will be charged with taxes and other expenses as incurred.

6. The customer is only entitled to set off debts against claims of MTU or shall have any right of retention if the customer's counterclaim is uncontested or legally enforceable.
7. If payment is effected later than agreed, MTU may charge – without prejudice to any further legal or contractual rights – interest in the amount of 8%, or 3% above the official Euribor rate of the European Central Bank. The Euribor rate upon which interest is based is to apply for a period of one month; it will be replaced by the Euribor interest rate officially announced on the first day of each subsequent interest period.
8. Account statements will be regarded as accepted unless they are disputed in writing within two weeks after receipt.

IV. Customer's Assistance

1. Work performed outside of MTU's facilities (factory or service center) can be started only when any preliminary work which is to be performed by the customer has been completed. The customer will – at his own risk and expense and notwithstanding the duration of such work – perform particularly the following preliminary work and services:
 - a) Provide the number of skilled and unskilled workers as considered necessary by MTU.
 - b) Prepare and carry out all excavation, foundation, building, insulation and scaffolding work, including the supply of building materials required for such work. This work includes the levelling and strengthening of approach roads and the installation site at ground level; the customer must furthermore ensure that the foundations are completely dry and set, that all other building work including wall and ceiling plasterwork has been completely finished, and that doors and windows have been installed.
 - c) Provide equipment necessary for installation and other work such as workbenches, tools, implements and hoisting devices as well as the necessary related equipment and materials such as scaffolding, ladders, etc.
 - d) Supply and dispose of (as applicable) fuel, lubricants and similar materials, water, heat, compressed air, electric power and lighting, including the necessary connection to the place of installation/assembly.
 - e) Provide and supervise sufficiently large, suitable, dry and lockable facilities for the storage of machine parts, materials and tools, as well as suitable working premises, sanitary facilities and area(s) for work breaks of MTU personnel.
 - f) Repairs to buildings after installation.
2. Such preliminary work and other services are also to be provided by the customer upon request of MTU personnel.
3. If the customer cannot provide the necessary tools, implements, etc., either himself or through third parties, MTU is willing – within reasonable limits – to rent such equipment to the customer. The delivery, use and return thereof will be made at the customer's risk and expense. The rent will be calculated from the day of dispatch until the day of return. If the equipment provided by MTU is returned damaged or is not returned, the customer is to provide compensation.
4. The customer will take all measures necessary for the protection of persons and objects at the work site and shall inform MTU with

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A Rolls-Royce Power Systems Company

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adequate advance notice of any safety regulations in force and to be observed at the site.

V. Working Conditions

1. Work will not be carried out on unhealthy or dangerous ground or under unacceptable conditions. The customer will call MTU's attention to special dangers which could arise during the work.
2. The customer will take all precautions necessary and required by law for the prevention of accidents.
3. The customer will make available reasonable eating and medical facilities for the MTU personnel near their place of work. In case of accident or illness of said personnel requiring medical assistance or hospital treatment, the customer will arrange at his own expense for immediate necessary medical assistance and/or hospitalization and will provide any necessary medication, irrespective of the accident or illness occurring during work hours or off duty. MTU will reimburse the customer for any expenses paid by the customer, providing that the customer was not also responsible for the accident or illness, and that the customer's insurance does not cover such expenses. The customer will promptly arrange for transport of a patient to his home country if transport is medically possible and if MTU or the patient requests such transport.
4. If requested by MTU personnel, the customer will provide at his own expense an interpreter during work hours.

VI. Work Stoppage

1. If work is to be performed under unacceptable conditions or must be interrupted for some reason for which MTU is not responsible,
 - a) the customer can order MTU to withdraw his personnel,
 - b) MTU can withdraw its personnel if the interruption lasts excessively long or if important reasons (e.g. danger of war, political unrest or other critical conditions) justify the withdrawal. In such cases, the customer is to bear the travel expenses in both directions.
2. If the work is delayed or interrupted for some reason for which MTU is not responsible, the customer is to bear those expenses which were incurred, primarily the cost of waiting personnel and for storage. These expenses are not covered by the amount stated in Article II.1., that amount by which the estimate submitted to the customer may be exceeded.
3. If the interruption for which MTU is not responsible continues for a longer period, MTU may terminate the contract. In such event, MTU is entitled to the payment which had been agreed upon. Costs which are saved as a result of contract termination will be taken into consideration in the invoice.

VII. Permits and Licenses

All entry, exit, work and other permits, as well as import and export licenses for items ordered or required, are to be obtained by the customer. In addition, the customer is to provide all necessary assistance for personnel entering or leaving the country. The costs for such permits and licenses are to be borne by the customer.

VIII. Performance and Shipment

1. The agreement is to be considered fulfilled when the work agreed upon – or which is necessary in MTU's judgement – is completed.

The work is to be considered as accepted when the installed/repaired item is turned over to the customer.

2. If a specific date for completion has been exceeded by a considerable period, the customer has the right to demand completion by a reasonable extension deadline. If the work is not completed upon expiration of the extension deadline, the customer can revoke the agreement in writing. MTU is to be compensated for that portion of the work which has been performed.
3. If the customer does not comply in time with his obligations under an agreement, or in case of stoppage of work caused by the customer, or due to causes beyond MTU's reasonable control (e.g. Force Majeure, strike and/or lockout, other disturbances within MTU's facilities and delays on the part of MTU's suppliers), the periods and dates agreed upon will be shifted accordingly. MTU will notify the customer of such events without delay. MTU may withdraw from an agreement without becoming liable for damages in consequence thereof.
4. When work is performed at MTU's facilities, the customer will be notified of readiness to ship.
5. The customer is to bear the risk of any deterioration or loss of installed/repaired items from the moment loading is started at MTU's facilities. If the installed/repaired items are ready for shipment and if shipment is delayed due to circumstances beyond MTU's control, such risk shall pass to the customer upon receipt of notification of readiness for shipment of the installed/repaired items. This stipulation shall also apply to partial deliveries.
6. Any packing material will be charged at cost prices. In case of inland shipment, crates, transportation cradles, etc. may be returned carriage prepaid to MTU, whereupon the customer will be credited with one half the price charged, if such crates, transportation cradles, etc. are in good condition and pallets, etc. remain the property of MTU. The customer will handle such equipment with due care and will return it to MTU carriage prepaid.
7. If advised to do so before the goods are packed, MTU will obtain insurance on behalf and at the expense of the customer for land, sea or air transport.

IX. Lien and Setoff

1. MTU has a right of retention and a lien on any items received in connection with an order, and a lien can also be asserted for debts arising from previous work and/or deliveries and for other debts in connection with the business relationship. A right of retention and a lien are deemed agreed upon in the event that any item owned by the customer comes into MTU's possession at a later date, if MTU is still entitled to payment out of the business relationship.
2. If MTU wishes to make use of the right to sell any item in which MTU has a possessory lien, it will be sufficient for MTU to give warning of the intended sale by sending a written notice to the customer's last known address.
3. MTU will be entitled to set off its claims against claims of the customer on MTU Argentina S.A., MTU Australia Pty. Ltd., MTU do Brasil, MTU Italia S.r.L., MTU Asia Pte. Ltd., MTU Motor Turbin Sanayi ve Ticaret A.S. Türkiye and Daimler AG. The same applies to setting claims of the aforesaid companies on the customer against his claims on MTU. If bankruptcy or settlement proceedings are instituted against the customer, such setoff will also be effected in cases defined by Article 95 of the Bankruptcy Act.

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X. Warranty

1. MTU warrants to the customer that the work performed and/or goods supplied is/are free from defects for a period of six months from the date the engine is put into/returned to service, at the latest however, twelve months after notification of readiness for shipment or conclusion of the work on site.
2. This warranty will not apply
 - a) if deficiencies or damage were caused by any of the following: normal wear, incorrect handling, storage or installation, inadequate corrosion protection, the use of force, chemical, electrical or other damaging influences;
 - b) if the repaired/installed item is modified by the installation or mounting of parts not supplied by MTU, unless the customer can prove to MTU's satisfaction that the deficiency did not result from such modification;
 - c) if the customer does not comply with MTU's instructions for operation, maintenance and/or fluids and lubricants;
 - d) if the installed/repaired item has been used for purposes other than those agreed upon;
 - e) if the installed/repaired item has been used under unusual conditions of which MTU had not been informed in writing when the order was placed.
3. The warranty provisions of MTU as provided under this Article (X) presuppose that the customer has fulfilled his contractual obligations and that MTU is notified of any defect or deficiency without delay in writing, indicating the respective serial number of the deficient equipment.
4. If MTU acknowledges a deficiency under this warranty, the following stipulations apply:
 - a) Any deficiency or defective component parts which – despite proper handling – suffer consequential damage will, at MTU's discretion, be repaired at the expense of MTU, either at the respective MTU factory or in a workshop named by MTU, or at the operating site, or they will be replaced.
 - b) If it would be unreasonable to have any such defect corrected by MTU or by an MTU-authorized workshop, proper correction of the deficiency may, subject to prior approval by MTU, be carried out by the purchaser or a third party. In such cases, MTU will reimburse such costs as would have been incurred by MTU if it had corrected the deficiency itself.
 - c) If a repair is performed at the factory or by a workshop authorized by MTU, MTU will reimburse the customer for the shipping charges for the deficient part(s) by least-expensive method, which shipping charges the customer must initially pay. This also applies if parts are replaced and MTU requires that the deficient part(s) be sent to MTU.
 - d) If a deficiency is corrected on site, any personnel and/or equipment required by MTU personnel are to be provided by the customer free of charge.
 - e) MTU will bear the cost of shipment for repaired or replaced parts via least-expensive method. Furthermore, MTU will bear the reasonable cost of removing and installing parts from the installed/ repaired item, in the amount that such costs would have been incurred for removal/installation of such parts at the MTU factory. In no event will MTU bear the cost of removing or installing the complete engine, etc., nor other incidental expenses.

f) Parts which are replaced become the property of MTU.

5. If a customer complaint is not covered by warranty, the customer is to take back any parts or the installed/repaired item itself without delay, and is to bear the cost of shipping in both directions, as well as any additional expenses incurred in clarification of the complaint.
6. The customer will have a right to terminate the contract or reduce the purchase price only if MTU fails to correct the deficiency. This is the case if MTU has been given repeated opportunities to correct a deficiency but has been unsuccessful. MTU is not obliged to replace the complete deficient item.
7. In case of a deficiency concerning a part of the installed/repaired item which was not manufactured by MTU itself, the warranty is limited to the assignment of any rights to claim against the supplier of such parts.
8. Any parts which have been repaired or replaced will be warranted until the original warranty period for the respective installed/repaired item expires, and will otherwise be treated subject to the provisions of Article X hereof.
9. Any warranty of fitness for purpose will apply only if explicitly confirmed in writing. If no such confirmation is given, the provisions above apply accordingly.

XI. Liability

1. The following limitations apply to the liability of MTU and the personal liability of its employees and other persons fulfilling its obligations; these limitations apply irrespective of any legal grounds (of contractual or non-contractual nature – for example, collateral negligence, negligence in contracting, consultancy liability, tort):
 - a) For gross or culpable negligence, MTU will not be liable for any amount exceeding 500,000 Euros per claim.
 - b) In the event of culpable negligence, MTU will not be liable to the customer for compensation which can be obtained through the customer's insurance (e.g., insurance for machines, assembly, natural forces, interruption of operation or transport), nor will loss of use or profit be compensated.
2. The customer is obligated to advise MTU in writing without delay of any damage or loss to be borne by MTU, or to have MTU assess such loss/damage.

XII. Place of Performance

The place of performance for both contractual parties is Magdeburg, Germany.

XIII. Legal Venue

1. The place of jurisdiction for all current and future claims resulting from the business relationship is Friedrichshafen, Germany.
2. MTU is also authorized to sue the customer at courts locally responsible for him.
3. The applicable laws are those of the Federal Republic of Germany.

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