

# General Terms and Conditions of Skyline Turbine Services B.V.



**skyline**  
turbine services bv.

Poeldijk, November , 2013 (Rev. 0)

## 1. Applicability and Validity:

Any repairs, modification, manufacture and/or sale of replacement parts and /or other customer support services (hereinafter referred to as “the Work”) rendered by Skyline Turbine Services b.v. (hereinafter referred to as “STS”) of the Customer’s equipment or any part thereof (hereinafter referred to as “the Equipment”) shall be made or supplied in accordance with these General Terms and Conditions.

These General Terms and Conditions together with the quotes of STS, if any, shall constitute the complete agreement between STS and Customer resulting from the acceptance of the quotation of STS or of an order from the Customer. This agreement shall supersede any other agreement or representation, verbal or in writing with respect to the subject matter.. These General Terms and Conditions shall be valid in all respects and any purported additional or different terms contained in the Customer’s order or response to quotation or any other document shall be deemed objected to by STS without the need of further notice and shall not be effective or binding unless agreed to in writing by STS.

The Customer’s assent to the General Terms and Conditions set forth herein shall be conclusively presumed from the Customer’s failure to object thereto in writing as well as any direction from the Customer to STS to proceed with the order or the Customer’s acceptance of all or parts of the products or services ordered. General or special terms and conditions stipulated by the Customer shall be valid only if and to the extent they have been accepted by STS in writing.

STS shall have the right to subcontract any or all work covered by the agreement. Any assignment of the agreement or any rights hereunder by the Customer without the prior written assent of STS shall be void.

Should any provision herein prove to be invalid or not enforceable by a competent court, such invalidity or non-enforceability shall not affect the validity of the remaining Terms and Conditions. STS and the Customer shall use their best efforts to agree on a provision that has commercially and legally the most similar effect as the invalid or unenforceable provision.

## 2. Performance of Work

STS shall perform the Work in accordance with the Terms and Conditions set forth herein, and in any other documents which refer to the Work and are signed by both STS and the Customer (hereinafter together referred to as the ‘Contract’). The performance of the Work will take place only upon receipt of a formal purchase order by STS along with the execution of the agreed advanced payment by the Customer, if any. The agreed delivery time shall only start when the immediate previous conditions are met.

## 3. Price

Prices are stated in Euro’s and are exclusive of VAT unless otherwise agreed upon in writing between STS and the Customer. The price stated on STS’s Proposal or Confirmation of Order is net without any deductions whatsoever. All additional costs, including but not limited to: charges of freight, carriage, insurance, customs duties, fees for export, transit, import and such other permits and certifications as may be required, any federal, state or local property, license, privileges, sales, use, excise, gross receipts or other like taxes which may now or hereafter be applicable, shall be borne by the Customer. If charges for packing, freight, carriage, insurance, customs duties or other additional costs are separately stated and included in the price on STS’s Proposal or Confirmation of Order STS reserves the right to adjust its price, should the costs on which such additional charges are based be modified. In addition, an appropriate price adjustment shall apply in case the work completion date and/or shipping date has been subsequently extended due to any reasons stated in Article 5 hereinafter. STS reserves the right to correct all typographical or clerical errors, which may be present in its quotation.

## 4. Customers obligations

The Customer shall take all necessary and reasonable measures to support STS in the execution of the Contract. At the request of STS, the Customer will expeditiously provide STS all information regarding the Equipment or part thereof, such as but not limited to operational data, log sheets, quality on lubricants, fuel, steam, cooling water etc. The Customer shall (a) immediately notify STS of any contamination that may exist in any part of its facility or on the Equipment where the work may or is being performed where such contamination may be due to any hazardous material, including but not limited to asbestos containing parts, insulation or gaskets or nuclear radiation. The Customer shall (b) be obliged, at its own expense, to decontaminate its facility or parts of the

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Equipment to be repaired or replaced hereunder, which may be contaminated due to any hazardous material. The contamination shall be reduced or eliminated to a level in which the facility is safe to occupy and/or such parts may be handled and/or shipped in a safe manner and in accordance with all applicable laws and regulations and industry accepted standards without special licensing from any Government Regulatory Authority.

Notwithstanding anything contained in this Contract to the contrary, until said decontamination or radioactive environment has been reduced to a safe, legal and industry accepted standard for occupancy by STS's personnel without the need for special protective clothing, STS shall be under no obligation to remove, disassemble, repair, reassemble or reinstall or provide any other service to such Equipment.

## 5. Work Completion / Shipping

The dates specified for the Work completion and/or shipping on STS's Proposal or Confirmation of Order are "the best estimate" and are based upon prompt receipt of necessary parts, material, replacement part(s) and information. These dates shall be reasonably extended for a minimum time period equalling the length of delay if; (a) information required by STS from the Customer to execute the order is not received in a timely manner or if changes are made which delay Work completion and/or shipping as agreed upon by STS and Customer; (b) STS is not able to complete or ship the Work by reason of hindrances which, despite due care, STS cannot avoid (inclusive of those occurring in the field service of its major suppliers or third parties), such as Force Majeure event as defined in Article 12 hereof; delayed or deficient delivery of manufactured products, the need to scrap important components due to defective casting, official or other measures of whatever kind, transport difficulties; inability to obtain necessary labour or materials from usual sources or (c) if the Customer or a third party is behind schedule with work which it has to carry out or late in fulfilling its contractual obligations (including, but not limited to, failure by the Customer to observe terms of payment).

Notwithstanding anything contained herein to the contrary, STS shall not be liable for any loss or damage to the Customer resulting from any delay in delivery, whether due to non-conformance as mentioned above or otherwise.

## 6. Termination

### 6.1 STS Default

In the event that STS fails to comply with a material obligation in connection with the performance of the Work ("STS's Default), the Customer shall give STS written notice of STS's Default, specifying its nature and stating that the Customer intends to terminate the Contract. If STS fails to remedy the STS's Default or fails to offer a reasonable plan to cure STS's Default within a reasonable time after the receipt of said notification, but not more than fifteen (15) days after the Customer's written notification, the Customer may terminate the Contract.

### 6.2 Customer's Default

In the event the Customer fails to comply with a material obligation in connection with the Contract, including but not limited to the Customer's failure to comply with Article 4 above, or if the Customer fails to fulfil its payment obligations (hereinafter collectively referred to as "the Customer's Default"), STS shall give the Customer written notice of the Customer's Default, specifying its nature and stating that STS intends to interrupt the Work or to terminate the Contract. If the Customer fails to remedy the Customer's Default within a reasonable time after the receipt of said notification, including the failure of the payment of STS's invoice not later than fifteen (15) days after STS's reminder, STS may interrupt the Work or forthwith terminate the Contract.

### 6.3 Payments

6.3.1 In the event the Contract is terminated by STS due to the Customer's Default, the Customer shall pay to STS:

- a. The agreed prices for the portion of the Work completed
- b. The costs and expenses incurred by STS directly connected with the Work in addition to that in a. above under the Contract prior to the date of termination.
- c. Such other costs and expenses, including any cancellation charges under subcontracts, as STS may incur in connection with such termination.

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6.3.2 In the event the Contract is terminated by the Customer due to STS's Default, STS shall be entitled to payments under (a) and (b) above only.

## 7. Title and Risk of Loss or Damage

The title and right of possession to the Equipment repaired or to be repaired remains with the Customer, subject to applicable lien rights of STS. The Customer agrees that STS shall retain a security interest in the goods sold or repaired hereunder to secure any portion of the price not paid when due, and will, on request execute a security agreement in such form as is required by STS which may be filed with appropriate local and state authorities. The ownership of the replacement part(s) shall be transferred to the Customer after STS has received full payment in accordance with the Contract. Risk of loss of or damage to the replacement part(s) and/or repaired Equipment shall pass from STS to Customer upon delivery of such replacement part(s) and/or repaired Equipment EXW (Ex Works) as per Incoterms 2010 at STS's facility, regardless of whether title has passed to or already rests with the Customer, transport is arranged or supervised by STS, or erect on or start-up is carried out under the direction or supervision of STS. If the delivery of the replacement part(s) and/or repaired Equipment is delayed at the request of the Customer, due to other reasons beyond STS's reasonable control, the risk of loss on said replacement part(s) and/or repaired Equipment shall pass to the Customer at the time of the original anticipated date of delivery of the replacement part(s) and/or repaired Equipment at EXW (Ex Works) as per INCOTERMS 2010 as STS's facility. From this time forward the replacement part(s) and/or repaired Equipment shall be stored and insured for the account of and risk of the Customer. All scrap, if any resulting from the manufacture of products shall remain the property of STS.

## 8. Warranty

8.1 STS's warrants that the Work will be performed in a workmanlike and professional manner and will be as described in the Contract. STS warranty period for the Work performed shall be twelve (12) months from Commissioning date or eighteen (18) months from ready for shipment date or 8.000 Equivalent Operating Hours, whichever occurs first. STS shall complete fulfilment of all its liabilities under this warranty, if within the warranty period (given prompt written notice by the Customer), after STS's inspection of goods to determine if failed goods have a warrantable defect, correct at its expense and at its option by reworking, repair or replacement of any non-conforming part which shall appear under proper storage, installation, maintenance or use of the replaced part(s) and/or services performed. Customer shall bear all transport costs and taxes / duties for shipment of parts or goods.

No Work furnished by STS shall be deemed to be defective by reason of normal wear and tear, failure to resist erosive or corrosive action of any fluid or gas, the Customer's failure to properly store, install, operate or maintain the Work in accordance with good industry practices or specific recommendations of STS or the Official Equipment Manufacturers' recommended practices, or the Customer's failure to provide complete and accurate information to STS concerning the operational application of the Work. The Customer shall make the replacement part(s) available for correction.

The warranty contained in this Article will terminate immediately, if customer fails to take the appropriate steps to mitigate damages and notify STS in writing of its obligations to remedy such defect, within 24 hours after discovery of defect. In addition, all warrantees are terminated immediately if a third party is employed by Customer to solve any issues on work executed by STS. Correction of non-conformities in the manner and for the period of time provided above shall constitute fulfilment of all liabilities of STS to the Customer with respect to such Equipment. STS shall not be liable for costs of removal, reinstallation, or gaining access. The re-performance, repair or replacement of the Work or spare or replacement parts by STS under the provisions of the Warranty section of this Contract shall constitute STS's sole obligation and the Customer's sole and exclusive remedy for all claims of defects regarding the work.

The warranty shall not apply to (I) Consumable goods; (II) normal maintenance, service or adjustments; (III) the removal or installation of any unwarranted parts; (IV) any equipment which has been repaired or altered unless such repair or alteration is performed by STS; (V) effects of corrosion, erosion or wear and tear of Goods and parts, or failure occasioned by operation or any condition of service which is more severe than that specified by STS.

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8.2 STS shall not be liable for any loss or damage arising from any failure by it to discover or repair latent or inherent defects in the design of the Equipment. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY ARE HEREBY DISCLAIMED. STS MAKES NO OTHER WARRANTY OR REPRESENTATION OF ANY KIND WITH RESPECT TO THE EQUIPMENT OR SERVICES OTHER THAN AS SPECIFIED IN THIS SECTION 8.

## 9. Inspection and Testing

If inspection and testing are performed by the Customer to demonstrate the ability of the replacement part(s) and/or repaired Equipment to operate under the Contract conditions and to fulfil the warranties herein set forth, the Customer is to make all preparations and incur all expenses incidental to said inspection and testing. STS will have the right of representation at said inspection and testing but will make no charge for the expense of such representation unless otherwise mentioned in STS's Proposal or Confirmation of Order or as may be otherwise agreed upon in writing by STS and the Customer. The Customer's failure to make such inspection and testing shall be deemed to be a waiver of the Customer's right of inspection and testing.

## 10. Confidentiality

In connection with the Contract, STS and Customer (as to information disclosed, the Disclosing Party) may each provide the other Party (as to information received, the Receiving Party) with Confidential Information. Confidential Information shall not include information which

- (i) is or becomes generally available to the public other than as a result of disclosure by the Receiving Party, its representatives or its affiliates, or
- (ii) is or becomes available to the Receiving Party or its representatives or affiliates on a non-confidential basis from a source other than the Disclosing Party when such source is not, to the best of the Receiving Party's knowledge, subject to a confidentiality obligation to the Disclosing Party, or
- (iii) has been or is subsequently independently developed by the Receiving Party, its representatives or affiliates, without reference to the Confidential Information, or (iv) is required to be disclosed by order of a competent court or government agency

The Receiving Party agrees, except as otherwise required by law,

- (i) to use the Confidential Information only in connection with the performance of the Contract or installation, operation, maintenance and use of the Scope of Supply sold hereunder, and
- (ii) to take reasonable measures to prevent disclosure of the Confidential Information, except to its employees for the purpose of performance of the Contract, or installation, operation, maintenance or use of the Scope of Supply sold hereunder. Further, if disclosure of Confidential Information to a third party is required, the Receiving Party agrees to use its best efforts to require proprietary or confidential treatment of the information by such third party.

## 11. Limitation of Liability

In no event shall STS be liable to the Customer for any loss of profits or interruption of production, loss of opportunity or business, any indirect, punitive, special, incidental or consequential damage in connection with this Contract, or claims by the Customer's client for such damages, whether such liability is based on contract, tort (including negligence), statute or any other basis of legal liability. STS's liability with respect to any contract or sale or anything done in connection therewith, whether such liability is based on any contract, indemnity, tort (including negligence), warranty, strict liability or otherwise, shall under no circumstances exceed the Contract value of the Work actually paid by Customer, upon which such liability is based. All such liability shall terminate upon the expiration of the warranty period, if not sooner terminated. The remedies of the Customer set forth in the Contract are exclusive and in lieu of any other right or remedy.

## 12. Force Majeure

A Party shall not be deemed in default of the Contract, nor shall it hold the other Party responsible for, any cessation, interruption or delay in the performance of its obligations (excluding payment obligations) due to earthquake, flood,

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fire, storm, natural disaster, act of God, (threat of) war, terrorism, armed conflict, labor strike, lockout, boycott or other similar events beyond the reasonable control of the Party, provided that the Party relying upon this provision:

- i. gives prompt written notice thereof, and
- ii. takes all steps reasonably necessary to mitigate the effects of the force majeure event.

If a force majeure event extends for a period in excess of 30 days in the aggregate, either Party may immediately terminate this Contract upon written notice.

## 13. Insurance

STS shall take out and maintain the insurance policy appropriate for the Work to be performed in conformity with the liability limits as stated above. Upon Customer's request, STS shall provide the insurance certificate to the Customer.

## 14. Disputes

All disputes arising in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said rules. The arbitration shall be conducted in the English language.

The seat of the proceedings shall be The Hague, Netherlands.

## 15. Applicable Law

This contract shall be governed by the law of The Netherlands.

