

1 Scope of application

- 1.1 Unless expressly and in writing different agreements have been made these Terms and Conditions apply - also for future service contracts - for our repairs, maintenance, commissioning and other support services including installations, upgrades / conversions / retrofit (hereinafter generally: Services).
- 1.2 Terms and Conditions of the customer shall not apply, even if we do not expressly contradict their application. Our Terms and Conditions apply exclusively even if we perform – without objection - our services in the knowledge of conflicting, inconsistent or deviating Terms and Conditions of our Customer.
- 1.3 These Terms and Conditions apply exclusively with respect to merchants in the sense of § 14 BGB.
- 1.4 Our service staff and our service technicians are not authorized to make verbal agreements.

2 Conclusion of contract / services

- 2.1 Unless otherwise agreed, our service offers are subject to change. The order given by our Customer will only be binding on us if we have confirmed it in writing or accepted it conclusively by conducting the services or rendering invoices.
- 2.2 We undertake the state of the art execution of the agreed services, in particular repairs, commissioning, maintenance, retrofits / upgrades and installations.
 - 2.2.1 “Repair” is the performance of the work to restore a functionality which we deem necessary based on your information as Customer or after examination of the firing plant respectively burner/boilers or other object of service or which has been identified as required in course of the services.
 - 2.2.2 “Commissioning” is the act of operating, testing and adjusting a system of unit for the first time after installation or after the execution of repairs or checking the operational readiness and to the extent this not secured the act of establishing it. The examination of the correct operative condition, the correct assembly and functioning of individual parts does not belong to commissioning.
 - 2.2.3 “Maintenance and services” are activities aiming at preventive maintenance, such as inspections (in particular with respect to settings) and preservation of the main functions of the service object respectively the firing plant as well as the repair of minor damage in the context of natural wear and tear (maintenance). Cleaning and greasing services require a separate supplementary agreement.

- 2.2.4 “Retrofits / upgrades” are modifications of existing firing plants by exchange of individual parts/units/components with the aim to improve or restore the performance results also with respect to emissions.
- 2.2.5 “Assembly” is the joining of individual units, parts and components with the aim to achieve a functioning plant or to reach the intended target.
- 2.3 Depending on the agreed scope of contract the individual services are subject to the contractual agreements. With respect to service and maintenance, our services include in particular
- Functional tests,
 - Test of settings, and adjustments,
 - Repair of minor damage in the context of normal wear and tear (maintenance).
- 2.4 We are entitled to perform our services through third parties engaged by us.
- 2.5 We perform our service - also in case of warranty claims - in countries or areas only which are not subject to travel warnings of the German Foreign Office and/or in which the political and security situation does not create a personal risk to our service technicians in performing the services. The burden of proof is upon you. If during the performance of the services the security situation deteriorates in a way which may justify in our reasonable discretion a possible danger to our service personnel, we are entitled at any time, to withdraw our services without any cause of action on your part.
- 2.6 In principle our service technicians are instructed to perform services on a SAACKE plant and/or SAACKE item of supply only and to utilize SAACKE original spare parts only. Should during the performance of the services the necessity arise to adjust or otherwise modify the plants or parts of other suppliers and/or manufacturers our liability and warranty obligation is limited to cases of gross negligence or willful misconduct, as well as personal injury claims and claims under statutory product liability provisions.

3 Remuneration

- 3.1 All costs and expenses incurred in connection with our services as well as travel and accommodation expenses - if applicable - plus administration fee are to be borne by you as our client in accordance with the contractual agreements. In the absence of any agreement as to the hourly rates, daily allowances, overtime payments and other administration flat fees, our pricelist valid at the time of conclusion of the contract is deemed agreed as the usual remuneration. These our service charges are payable by you, irrespectively whether or not you are able to pass on these costs and expenses to any third party. We do not accept to invoice any third party who is not our contractual partner.
- 3.2 The time our service technicians have been assigned to you (travel and service time including setup time) will be charged for according to the current price list in consideration of the qualification of the employee. If you organize the travel and / or accommodation the ac-

commodation has to be arranged in a hotel with at least European three-star quality. Air travel has to be booked with a reputable airline which should belong to one of the international networks (e. g. Star Alliance, OneWorld, etc.); for travel by train at least 2nd class is appropriate.

Any waiting periods at the place of service will be charged as service time. In case we perform services aboard of seagoing ships we charge for at least 12 hours per day even if this time is due to adverse weather conditions or any other reason not to be used for the actual service.

For actual service times outside normal working hours surcharges at the applicable hourly rates will be charged according to the pricelist valid at the time of conclusion of the contract.

- 3.3 The calculation of travel time and travel expenses is for the outward journey based on the way from the factory or branch office the respective service technician is assigned to to the site of service and from there back to his office.
- 3.4 You are obliged to confirm the actual service time used on the installation report respectively on the timesheets as a daily routine. Confirmed service hours are relevant. The proof to the contrary is not admissible.
- 3.5 The daily allowance for our activities at home and abroad are stated on our current pricelist for services or will be charged according to the specific written agreement with you.
- 3.6 Required materials will be billed separately. If we use in service or repair small parts such as screws, o-rings, washers, cleaners and lubricants, etc., we are entitled to simplify the billing by charging a small parts flat fee.
- 3.7 Shipping costs (packaging, transport and insurance) are to be borne by you. We are entitled to charge a shipping flat fee.
- 3.8 Our prices are to be understood plus VAT. If you assert that our services are VAT exempted you have to prove the respective provisions of tax law and you have to advise your VAT IdentNo. If your information is incorrect or defective you have to indemnify us with respect to resulting tax claims.

4 Conditions of Payment

- 4.1 Our invoices are due and payable immediately after our services have been finalized and invoiced without deduction.
- 4.2 If there are open and overdue invoices from the business relationship with you or with affiliated companies such as, but not limited to, single-ship companies under an identical com-

mercial management ("Managing Owner"), we are entitled to interrupt services commenced, withhold our services entirely and/or to demand payment in advance.

- 4.3 In case of default we are entitled to charge interest at a rate of 8 pct. above the basic interest rate p. a. notwithstanding our right to claim any higher actual damages.
- 4.4 Your right to set-off is limited to claims which are undisputed or finally adjudicated by the competed court of law. This applies to any right of retention mutatis mutandis.
- 4.5 In case of shipping of goods repaired we reserve our right to ask for cash upon delivery.

5 Prices offered

- 5.1 Our offers are only made on an hourly basis and on the basis of an agreed hourly rate or based on the hourly rates contained in our price list for Services. If an offer contains a possible final price, this is indicative only and not the contractual basis. We will notify you immediately, if due to the specific condition of a firing plant or the service object and / or the particular circumstances on-site more extensive repair work turns out to be necessary or if the local circumstances require extended service or installation times. Until your decision, whether the services are performed to the extent necessary, we will continue our services in your presumed interests and charge our services accordingly, even if you subsequently opt for a discontinuation of services.
- 5.2 Any estimate of costs or amounts mentioned in our offer as anticipated costs of service are for guidance only which have been calculated upon the information provided by you . Without knowledge of the condition of the specific firing plant or service object respectively the specific circumstances on-site we are unable to guarantee or warrant the correctness of prices.
- 5.3 The plant manager respectively the ship`s command is authorized to receive any notices from our service technicians on extended service times or on increase of anticipated costs of service.

6 Repair, service and installation times

- 6.1 The performance of our services ordered by you will be commenced within reasonable time. If not a binding date has been agreed explicitly the dates for the finalization of the services are without commitment. Services and repair on-site will be performed within reasonable time and in consideration of a sensible travel planning for our service technicians.
- 6.2 If the performance of our obligations is delayed or impeded by circumstances which are despite reasonable diligence unavoidable, in particular force majeure, strikes, lockouts, operational stoppages, material and energy shortages, incorrect or not timely supply despite

careful selection of the supplier, the period for the performance of the repair or services is extended by the duration of the impediment. If a party proves that such an extension is unreasonable, it shall be entitled to withdraw from the contract if not yet performed whereby claims for damages are excluded. Further claims shall be not admissible.

- 6.3 We are entitled to interrupt an ongoing service if the service personnel assigned to that service is urgently needed otherwise (e.g. for acute, immediately to be rectified breakdowns or business interruption at another customer) and if the immediate provision of service for you is not required. The resulting additional costs will be borne by us to the exclusion of compensation claims on your part due to the suspension. We will limit the suspension to the reasonable minimum necessary.
- 6.4 Can the Services for reasons attributable to your area of responsibility not or not completely be performed we are entitled to withdraw from the contract if in spite of setting an adequate additional term the service cannot be continued.
- 6.5 If we are entrusted with Service and these services cannot be provided because
- a) the fault or defect cannot be detected despite the application of generally recognised standards of good practice , or
 - b) spare parts required cannot be procured ,

You are nevertheless obliged to reimburse the costs incurred by us, unless the impossibility of the service falls into our own area of responsibility.

- 6.6 If you prove that the default in the performance of our services caused loss and/or damage our liability is limited in case of negligence to an indemnity of 2 % of the total remuneration for our services per completed week of default but in no case more than 5 % of the total remuneration of our services. Further claims are excluded unless gross negligence ,wilful misconduct or personal injuries can be proven.

7 Transport, insurance and transfer of risk

- 7.1 Unless we receive other special instructions, we choose dispatch and shipping method for the return of repaired equipment and aggregates in our discretion. We ship, even when using our own means of transport on your account and risk as per ex works ("EXW") terms. The packing necessary for shipping the goods will be charged at cost.
- 7.2 We insure the goods at your cost against the usual risks of transport from house to house. Any damage during transport must be notified immediately after receipt of the goods to the transport companies in charge. If we use our own means of transport notice has to be given to us without delay in writing.
- 7.3 The risk of damage to or loss of the shipped item(s) passes to you as soon as the item has left our works or has been handed over to the collecting carrier.

8 Cooperation of the customer

- 8.1 The combustion plant or Service object will be made available – freely accessible – for the provision of the repair or other services. In case of work-at-site repairs it will be made available at the agreed date also. You have to advise our service personnel unsolicited on any problems and specialities with respect to the combustion plant or service object to be attended to. You shall ensure that the service personnel has free and unhindered access.
- 8.2 If the conditions allow you have to provide free of charge electricity, water, compressed air and other utilities, telephone, social rooms, washing facilities, changing rooms and laundry facilities, and similar facilities for the use by our service personnel free of charge. If available and necessary you provide appropriate assistance also by the provision of auxiliary staff, such as locksmiths, ship engineers, electricians, etc., to allow for a rapid performance of the services. On board of ships our service personnel is to be accommodated in one-or two-bed cabins with usual crewmember facilities and to be catered for with the regular food on board without any additional costs for us.
- 8.3 Any special safety or rules of behaviour in your plant or on board of ships that we need to consider when carrying out the services have to be notified to us and our service personnel and explained in detail before starting the repair or service. If special instructions or training or even examinations take considerable time we reserve our right to charge for the time used as well as for expenses.
- 8.4. You have to provide us with dry and lockable rooms or lockers in order to protect tools and spare parts - if necessary - against illegal access or manipulation.
- 8.5 We are not responsible for services you provide in the context of support and cooperation. You are solely responsible for any personnel or material assigned or provided by you.

9 Acceptance of work

- 9.1 After completion of the on-site services respectively after receipt of an item which we repaired in one of our facilities you are obliged to declare acceptance of the services respectively repair immediately and confirm that services/ repair have been properly performed. You are not entitled to refuse acceptance because of minor defects which do not affect the operation of the combustion unit or other object of service or repair.
- 9.2 Acceptance is deemed effected if you use the combustion unit or the object of service for its intended purpose.

10 Warranty

- 10.1 If you prove that our repair or other services have been poorly or incorrectly performed we remedy our repairs or services and/or replace or make good the defective materials.

You are obliged to support our efforts to keep the costs of repair as low as possible especially if it comes to work on board of vessels or in remote locations. In these cases you are going to provide assistance by your own staff – if appropriate also with a cost contribution from our side – and in case the object to be repaired is not needed you will dismantle the device and send it to our workshop against reimbursement of the costs involved. In any case, you are prepared to find an amicable solution which takes reasonably account of the mutual interests.

- 10.2 In the event our attempt to carry out the repair works or to make good the services fails you are entitled to a price reduction or to a rescission of the repair or service contract.

- 10.3 If there is a defect to the combustion plant, or to any other service object which has not been caused by faulty repair or improper service, especially but not exclusively by normal natural wear and tear, improper handling or other third-party influences, our warranty obligations are not affected.

- 10.4 If you intend to lodge a warranty claims, you have to notify us the defects immediately after discovery and to do everything to mitigate the damage caused by the defect. If you fail to notify us immediately any right to a warranty claim is extinguished.

- 10.5 The limitation period for warranty claims is 12 months. This provision shall not apply where the law according to sections 438 paragraph 1 No. 2, 438 paragraph 3 and section 634 a paragraph 1 item. 2 BGB provides for longer mandatory applicable limitation periods. It does also not apply for liability claims for injuries or damage to health as well as liability claims based on intentional or grossly negligent breach of obligations.

The recommencement of the limitation period is excluded, except in cases of intent or gross negligence.

- 10.6 If the analysis of a complaint proves that the warranty claim is not justified we are entitled to charge for our activities in examining the complaint as per our current price list.

11 Limitation of Liability

- 11.1 If through our fault or omission, improper performance of service, advices given prior to concluding the contract or thereafter or breach of collateral obligations a combustion unit or other service object cannot be used as contractually intended the paragraphs 10, 11.2, 11.3. and 11.4 apply mutatis mutandis under explicit exclusion of any further claims.
- 11.2 For damages that are not caused to the repaired object itself, in particular consequential loss of any kind we are liable only – based on legal grounds whatsoever - for
- intent;
 - gross negligence;
 - culpable injury to life, body and health;
 - defects that we fraudulently concealed or absence of which we have guaranteed;
 - product liability.
- 11.3 In the event of culpable violation of essential contractual obligations (contractual duty the violation of which endangers the purpose of the contract), we are also liable for simple negligence, but limited to the contract-typical, reasonably foreseeable amount.
- 11.4 Other Claims than mentioned in para.11.1 to 11.3 are explicitly excluded.

12 Extended lien

If the service is performed in one of our workshops we have a contractual lien on any item which came into our possession in connection with the performance of the contract. The contractual lien can also be exercised for claims out of and in connection with past services provided the item in question had been involved.

13 Retention of title

- 13.1 Unless built-in (replacement) parts have become integral parts of the service object, we own the (replacement) parts until settlement of all your liabilities arising from the business relationship with us has been made in full.
- 13.2 Should a combination, mixture or other use of a (replacement) part take place this is done for us as producer but without any obligation for us. If we lose the title in the goods and parts by combining the parts with others, by a mixture with other parts or by processing the parts supplied, it is being agreed that we become (co-)owner of parts newly created in a value relation of the parts supplied by us to the other parts our parts are combined, mixed or are processed with. You are keeping custody of the parts we (co-) own free of charge for us.



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- 13.3 If you sell or otherwise dispose of the goods, spare parts or other delivery items which are in our (co-) ownership you herewith assign all your rights and claims and receivables out of and in connection with that transaction to us in the invoice amount of our parts supplied as security. Upon request you are obliged to let us have a written deed of assignment.
- 13.4 You are not allowed to pledge or transfer title not even as security of our parts supplied. In case the parts are attached, seized or otherwise detained by any third party you must notify us immediately.

14 Final Provisions

- 14.1 Please note that we store personal data obtained in our business relationship with you and this data to transmit and share related business with us.
- 14.2 Subsidiary agreements, amendments and additions of completed service contracts must be in writing. Verbal agreements on the cancellation in writing are null and void.
- 14.3 Place of jurisdiction is Bremen. However, we are entitled to take you at your place in court against.
- 14.4 German law applies excluding the UN Sales Convention (CISG) and the referral rules of German private international law.
- 14.5 Should individual provisions of these GTC become wholly or partially invalid, this shall not affect the validity of the remaining clauses or remaining parts of the clause.