

# ~~TURBO POLAND LTD SP. Z O.O.~~

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## GENERAL TERMS AND CONDITIONS

### 1 Scope and applicability

#### 1.1 Terminology- Definitions

"Buyer" means the person/firm / company who has requests the Goods and/ or Services identified in an Order and accepts a quotation given by the Seller for the supply of the Goods and/or Services or whose order for the Goods and/or services is accepted by the Seller.

"Seller" means 'Turbo Poland Ltd sp. z o.o.' seated in Poland , hereinafter called "TURBO POLAND" or the Seller

"Conditions" mean- the standard terms and conditions set out herein and any special terms and conditions agreed in writing between the Buyer and the Seller .

"Contract" means any specific contract for supply of the Goods and/or Services agreed in writing between the Buyer and TURBO POLAND and / or a confirmed purchase /supply order confirmed by the Buyer.

"Goods" means Goods defined in the contract/order to be supplied to the Buyer by TURBO POLAND ;

"Services " mean the services defined in the contract/order and agreed in writing to be supplied by the Seller

"Parties" mean the Buyer and the Seller jointly and a Party shall mean either of them.

1.2 These General Terms and Conditions described herein shall govern any and all relations between TURBO POLAND and the Buyer, to the exclusion of any other terms and conditions . Variations to these terms of any Contract will only be effective if agreed in writing.

1.3 Orders from the Buyer shall be only binding after a written order acknowledgment has been issued and only on the conditions indicated in the order acknowledgment.

### 2 Delivery Terms and Liability

2.1 Delivery of the Goods/Services shall be made within normal working hours in accordance with the terms of the order. The delivery times accepted by TURBO POLAND are given in good faith but are an estimate/approximate only; and the delivery of the Goods is made "Ex Works" in accordance with Incoterms 2000, but the delivery price is exclusive of packing and transportation costs, which will be charged extra and exclusive of levies, taxes where applicable.

Goods may be delivered in instalments which shall be invoiced and paid separately unless otherwise agreed by the TURBO POLAND .

Default by TURBO POLAND howsoever caused, in respect of one or more instalments shall not entitle the Buyer to terminate the relevant Contract as a whole nor entitle the Buyer to treat the related instalments as a whole repudiated.

2.2 In case where the Buyer fails to provide instructions, consents or authorizations required to allow the Goods to be delivered, or the Buyer refuses or fails to accept delivery of any Goods ready for delivery or delivered ,

then the risk in the Goods shall be transferred immediately to the Buyer, delivery of the Goods shall be deemed to have taken place and TURBO POLAND may store these Goods and charge the Buyer accordingly for all incurred related costs and expenses inclusive of insurance and storage expenses and may be allowed to sell these Goods after 1 month after such failure or refusal and deduct any monies payable to TURBO POLAND by the Buyer from the sale proceeds and charge the Buyer for any shortfall below the Contract price.

2.3 All information, instruction, drawings, designs, specifications relating to the ordered Goods and/or Service used and/or supplied to the Buyer remain the exclusive property of TURBO POLAND.

2.4 All Goods should be viewed and examined upon delivery to the Buyer. No liability for shortages in, non-delivery, damage to the Goods shall be addressed to TURBO POLAND unless the same is notified in writing by the Buyer to TURBO POLAND within 1 week of the actual date of delivery along with case specific details. After the expiration of this period, the goods are considered irrevocably and unconditionally accepted by the Buyer. Subject to such notice being provided TURBO POLAND shall, (upon satisfaction regarding Goods not been delivered and the cause thereof being beyond the reasonable control of TURBO POLAND) at its sole discretion, either arrange for delivery at the soonest reasonably possible or provide credit to the Buyer for such Goods and this shall be the Buyer's only remedy and in lieu of all other rights and remedies which might otherwise be available to the Buyer.

2.5 In case where delivery of the Goods or part of the Goods was delayed and this delay was caused by proven negligence of TURBO POLAND and if the Buyer has suffered a loss caused by such delay, the Buyer shall be entitled to proved liquidated damages for delay which shall not exceed 0,5% of the contract price of the delayed part of the Goods concerned per each full week of delay (considering a grace period of 10 days). These liquidated damages for delay shall be limited to maximum 2.5 % of the contract price of the delayed Goods. These liquidated damages shall be the Buyer's sole and exclusive measure of damages and remedy with respect to the failure to achieve the contractual delivery time for the Goods.

### **3. Performance**

3.1 Services shall be provided and all relevant goods delivered in accordance with the instructions of the Buyer, who has the obligation to monitor the work's progress at his own account and under his own responsibility. The Buyer undertakes to convey to TURBO POLAND any and all information and data which TURBO POLAND considers relevant to the performance of its duties under the Contract, at the latter's first request. The Buyer shall inform TURBO POLAND of the location, of the nature and of all relevant instructions regarding the vessel, the handling of the ship's cargo and operations, of the goods held at the site and convey any and all additional information which the client deems relevant to the performance of these duties.

The Buyer shall bear sole responsibility for any and all damage and/or loss resulting from failure to disclose such relevant information or from the false, incomplete belated or inaccurate information. The completion of the work (and/or the delivery of the Goods as the case may be) is deemed acceptance by the Buyer of the work.

3.2 TURBO POLAND shall under no circumstances accept responsibility for the security of the work premises, the Vessel or its cargo. The Buyer remains responsible for all property, tools, equipment *et cetera*, inclusive of property of TURBO POLAND, placed for whatever reason or purpose on board the Vessel or on other work premises and the Buyer shall never acquire title or property to such tools, equipment or objects. With regard to all equipment (either Naval, mechanical, electronic, hoisting equipment, etc.) used during tests, trials and quality controls of the works performed, these shall remain the Buyer's sole responsibility and all tests are to be carried out at the Buyer's risk and expense.

3.3 The Buyer shall be responsible for arranging inspection of the Goods at delivery on his own risk and expense. TURBO POLAND have no liability for any claim in respect of any defect in the Goods which would have been

apparent on inspection and/or which is detected and/or made after shipment, or in respect of any damage occasioned during transit.

3.4 Unless otherwise stated in writing by TURBO POLAND , the Buyer shall be responsible for obtaining any import licences and complying with all regulations governing the admission of the goods into the country of destination and for payment of all customs duties, port dues and other charges.

3.5 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.

3.6 TURBO POLAND shall have no liability whatsoever on collection of the Goods by the Buyer or its servants or agents.

3.7 TURBO POLAND shall not be liable for damage and or loss resulting from the use of cranes, machinery and/or any other equipment and facilities, property of the Buyer or of a third party, used in the performance of the Contract works; Same applies where crane operators are used for assistance during performance of works.

3.8 TURBO POLAND reserves its right to either agree to or decline to additional duties in regard of the contract work as well as in regard to the delivery of additional goods.

#### **4. Limitation of Liability**

4.1 TURBO POLAND shall not be liable to the Buyer or to third parties , in contract, tort, law or otherwise howsoever and whatever the cause thereof, (i) for any loss of profit, hire, business contracts, revenues or anticipated savings, or (ii) for damage to the Buyer's reputation or goodwill, or (iii) for any loss resulting from and/or connected with any claim made by any third party , or (iv) for any special, indirect or consequential loss or damage of any nature whatsoever.

4.2 In line with the provisions of article 3 above, TURBO POLAND shall incur no liability in the event of damage to the vessel and/or loss of ship cargo or goods or personal property occurred on or near the premises where the work and/or services under the contract are performed, nor in the event of personal injury or accidents involving private persons or goods and chattels. In addition, TURBO POLAND shall decline all liability and/or responsibility in the event of damage to or loss of parts or equipment entrusted to TURBO POLAND or used by the latter for performing services under the Contract.

4.3 The Buyer has the obligation to hold TURBO POLAND harmless from and against any and all claims for damages from third parties and all actions brought against TURBO POLAND in connection with damage or loss resulting from the matters of the contractual services (e.g. related to the Vessel, or any part thereof or goods provided or supplied by the Buyer to TURBO POLAND)

4.4 Delivery terms for goods and matters of liability as defined in article 2 of the present document. Furthermore, TURBO POLAND declines any and all liability for delays in the performance of contracted work. Delivery dates and/or completion times as stated from time to time are purely indicative and in no way binding. Delays in the performance of services shall in no way entitle the Buyer to rescind or cause the termination by order of the court or otherwise of the contract, to claim a deduction or compensation or suspend payment.

4.5 Any apparent flaws and defects in the Goods supplied or the works performed by TURBO POLAND and non-conformities in respect of the specifications of the order shall be nullified and made good by the Buyer's acceptance of the Goods; completion of the contract work and/or tender of delivery of the Goods are deemed full and final acceptance by the Buyer of such work and/or Goods.

4.6 The warranty applying in the event of hidden flaws or defects in the goods supplied by TURBO POLAND or the services provided by TURBO POLAND shall only apply to the extent and under certain specific circumstances described hereafter.

Any and all hidden flaws or defects allegedly affecting the Goods supplied or the services provided by TURBO POLAND must be brought to TURBO POLAND's attention in writing within latest 48 hours of their discovery, with reference to the hidden flaws or defects. Legal action aimed at obtaining the benefit of the warranty shall only be entertained if instituted within 3 months reckoning from the completion of the contract work or the delivery of the Goods as per the order, it being understood that the time limits as stated above are final and shall not be stayed by such negotiations as may be conducted, as the case may be, in view of a settlement or resolution of the dispute.

TURBO POLAND's obligations under the warranty in respect of hidden flaws or defects allegedly affecting the Goods supplied or the Services provided will in no case extend beyond the replacement of the defective goods or materials.

Not covered by the warranty as may apply in respect of the quality of the Goods, and/or services provided: the dismantling of the faulty goods, the carriage or shipment costs of the flawed and/or replacement goods, the assembly or fitting of the replacement goods and any additional, proximate or consequential damage or loss suffered by the client or third parties (such as, but not limited to: downtime or delays, demurrage, etc..).

As far as goods supplied by TURBO POLAND are concerned, any such warranty as may cover hidden flaws or defects will only apply to new and unused goods delivered ex-factory by the manufacturer/ builder; TURBO POLAND's obligations under its own warranty shall never exceed the manufacturer or builder's guarantees and commitments.

Under any and all circumstances no warranty is provided for defects caused by:

- Deterioration from normal use; wear and tear ;improper use; absence of, or improper maintenance; Installation, assembly, modification of the Goods , change of repairs by the Buyer or a third party.

4.7 Without prejudice to any of the above conditions in this article 4, TURBO POLAND's total liability for each Order in contract, tort, law or otherwise arising by reason of or in connection with the Contract shall be limited to the price of that Order.

Any liability as may be incurred, regardless of its cause or origin, shall at any rate be limited to the amount invoiced to the Buyer in consideration of the Services performed or Goods supplied in respect of which TURBO POLAND's liability is called upon; under no circumstances can TURBO POLAND be held liable for an amount in excess of the cover extended by its professional liability insurer.

## **5 Price and payments**

5.1 The price to be paid for the services or goods provided is the amount stated in the invoice; the price as stated is exclusive of VAT (unless otherwise stated). The prices indicated are based on delivery "ex works", that is exclusive of freight, packing, insurance, levies, taxes etc. Quoted prices/discounts are only valid in case full quantity will be ordered (payment terms are only valid in case all outstanding invoices are paid). Validity of quotes as stated case by case.

The price of the Goods and/or the contract work as the case may be shall be paid in full latest upon TURBO POLAND's delivery of the Goods or completion of the work, unless the parties have agreed to different terms of payment.

5.2 Without prejudice to any varying arrangements made part of these General Terms and Conditions, TURBO POLAND's invoices can only be validly challenged within a period of 8 calendar days following on the invoice date. All complaints must contain a detailed description of the reason or reasons why the invoice is challenged and shall be forwarded to TURBO POLAND by registered letter only. If any sum payable under the Contract is not paid when due then without prejudice to TURBO POLAND's other rights under these Conditions, such sum shall bear interest from the due date until payment is made in full, both before and after any judgment, at 8% per

annum over the rate of the main refinancing facility of the European Central Bank in force on the due date of payment.

## **6 Termination**

6.1 TURBO POLAND may terminate the Contract without any liability to the Buyer or its servants, agents and third parties by giving a notice to the Buyer at any time if the Buyer:

- 1) breaches any material term of this Contract
- 2) fails to remedy ( if it is remediable ) that breach within 14 calendar days after receipt of notice in writing of the breach,
- 3) makes any voluntary arrangement with its creditors or becomes bankrupt or becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction);
- 4) or an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or the Buyer ceases, or threatens to cease, to carry on business; or any similar or analogous event occurs in any jurisdiction; or the Seller reasonably apprehends that any of the foregoing events is about to occur in relation to the Buyer and notifies the Buyer in writing.
- 5) fails to pay any amount due under this Contract on the due date for payment, with immediate effect by giving written notice to the Buyer if the.
- 6) fails to supply to TURBO POLAND all necessary information, instruction, drawings, designs, specifications relating to the ordered Goods and/or Services.

6.1 Without limiting its other rights or remedies, TURBO POLAND shall have the right to suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Buyer and TURBO POLAND if the Buyer :

- 1) fails to make payment for any amount due under the Contract and/or Order on the due date for payment ,

## **7 Consequences of Termination**

On termination of a Contract for any reason :

7.1 The Buyer shall immediately pay to the TURBO POLAND all of the TURBO POLAND's outstanding unpaid invoices and interest,

7.2 In respect of Services supplied but for which no invoice has yet been submitted, TURBO POLAND shall submit an invoice, which shall be payable by the Buyer immediately on receipt;

7.3 The accrued rights and remedies of TURBO POLAND's as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry,

7.4 The conditions which expressly or by implication have effect after termination shall continue in full force and effect.

## **8 Force Majeure**

8.1 In case of Act of God, labour disputes, civil commotion, governmental or official actions or any other events and/or circumstances which was unforeseeable or outside the reasonable control of the Party affected, the Parties shall be temporarily relieved from their obligations during the period of time such events continue and to the extent their liabilities are affected. The afore-stated shall also be applicable to TURBO POLAND if a sub-supplier of TURBO POLAND is affected by such event and/or in case the Party concerned is already in default.

8.2 The Parties are committed to give each other the necessary information which may reasonably be expected without delay, and to adjust their obligations in good faith to the changed circumstances.

8.3 If the circumstances of the *force majeure* affect the performance of any part of the Contract and / or the Order Turbo Poland may delay , suspend or terminate performance of the Contract or any part thereof. TURBO POLAND shall be released from any liability whatsoever for any loss or damage arising in any way out of such a delay and/or suspension and/or termination of the Contract or any part thereof.

## **9 Disputes and Applicable Law**

9.1 In the event of any question and/or any dispute between the Parties, the Polish common courts of Gdansk region shall have sole jurisdiction and be competent to hear and adjudicate any claims. Polish law shall be applicable .

9.2 All Quotations made by TURBO POLAND and all Order Confirmations concluded with TURBO POLAND, the supplements thereto or extra work and all disputes arising there from shall be governed by Polish law, the applicability of the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 11 April 1980) being excluded.

## **10 Retention of Title**

Unless TURBO POLAND has been paid in full in advance, the Goods will be considered as having delivered by TURBO POLAND retaining the ownership until full payment has been effected by the Buyer under all contracts between TURBO POLAND and the Buyer. If the Buyer does not pay when due, TURBO POLAND is entitled to take back the Goods without a court judgment in accordance with the applicable law

This retention of title shall also extend to any goods and materials covered by this clause and processed, transformed, made part of or incorporated into other products.

However, the risks pertaining to such goods shall pass onto the Buyer as of the moment of the delivery on quay or on site, or at any other venue stipulated in the contract. As of that instant, the client shall be fully responsible for the goods and consequently be liable in the event of loss, deterioration *et cetera*.... of such goods, regardless of the cause or origin of same.

## **11 Confidentiality**

11.1 The Buyer , its employees, agents or subcontractors shall keep in strict confidence the datas/details of the Contract/Order , all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed and/or known to the Buyer , and any other confidential information concerning the TURBO POLAND business or its products or its services which the Buyer may obtain.

11.2 The Buyer shall restrict disclosure of such confidential materials to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Buyer's obligations under the Contract/Order , and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Buyer.