

# General Terms and Conditions of Contract

for the purchase of systems, equipment and components  
Version 04/2019



## 1. Area of Application

1.1. The following General Terms and Conditions, as they may be supplemented and/or amended from time to time, applies to all offers, acceptances and agreements to purchase goods and services by TGW Systems, Inc. and any of its affiliates (collectively "TGW"). For purposes of this Agreement, "Supplier" means the party to which a purchase order is sent. From time to time TGW will submit purchase orders to Supplier and by acknowledging and/or fulfilling the purchase order, Supplier is deemed to have accepted these Terms and Conditions in full. These Terms and Conditions, together with all purchase orders, which are incorporated in and made a part hereof, constitute the entire agreement (sometimes collectively referred to as the "Agreement") between the parties with respect to the subject matters hereof and supersedes any previous or contemporaneous oral or written agreements, understandings and discussions regarding such subject matters. This Agreement may be amended or modified only by a written instrument signed by a duly authorized agent of each party.

1.2. *EITHER PARTY MAY USE ITS STANDARD BUSINESS FORMS TO ADMINISTER TRANSACTIONS UNDER THIS AGREEMENT, BUT USE OF SUCH FORMS IS FOR THE PARTIES' CONVENIENCE ONLY AND DOES NOT ALTER THE PROVISIONS OF THE AGREEMENT. ANY PREPRINTED TERMS OR CONDITIONS IN SUCH FORMS ARE NULL, VOID AND OF NO EFFECT. TGW WILL NOT BE BOUND BY, AND SPECIFICALLY OBJECTS TO, ANY PROVISION THAT IS DIFFERENT FROM OR IN ADDITION TO THE PROVISIONS OF THE AGREEMENT (WHETHER PROFFERED BY SUPPLIER VERBALLY OR IN ANY QUOTATION, INVOICE, SHIPPING DOCUMENT, ACCEPTANCE, CONFIRMATION, CORRESPONDENCE OR OTHERWISE), UNLESS SUCH PROVISION IS SPECIFICALLY AGREED TO IN A WRITING SIGNED BY AN AUTHORIZED TGW AGENT.*

## 2. Quote, Purchase Order

2.1. TGW may from time to time solicit quotes from the Supplier. If the Supplier submits a quote, the price must stay firm for the time period identified in the quote. If TGW submits purchase orders for goods identified in the quote, Supplier will deliver the goods to TGW at the price stated in the quote which will be payable as provided herein.

2.2. TGW will not be obligated to purchase the goods identified in the quote unless and until it submits a purchase order covering the goods. Before responding to a quote or fulfilling a purchase order, Supplier will immediately check the request for a quote and TGW purchase orders for apparent errors, ambiguities, incompleteness as well as inappropriateness of the specifications chosen by TGW for the intended use, and immediately inform TGW of the same.

2.3. All quotes of the Supplier shall be binding and given free of charge. Supplier is not entitled to compensation for visits and other pre-contractual services unless TGW has agreed in writing to pay such amount.

2.4. Only written purchase orders (including purchase orders placed via fax and e-mail) or orders placed through an on-line system approved by TGW shall be valid. Agreements made by word of mouth or telephone require written confirmation to be binding for TGW. Our purchase order shall be binding for two weeks.

2.5. TGW may request from time to time a change in the design and construction of the goods and, in such event, the price and delivery schedule will be amended as the parties agree in writing.

2.6. TGW may deliver a delivery schedule to Supplier and, unless rejected within 14 days of receipt, will become binding on the Supplier.

## 3. Supplier Obligations

3.1. The supplier is responsible for the following:

(a) Project Management. Supplier will appoint a dedicated account manager responsible for managing all Work and Deliverables provided by Supplier to TGW under the Agreement (the "Account Manager"). The Account Manager shall be the primary point of contact between TGW and Supplier, and shall be available upon the reasonable request of TGW to meet with TGW in connection with the Work and Deliverables, including to review (i) the provision of Services or delivery of Deliverables under any purchase, and (ii) any personnel issues.

(b) On-Site Work. To the extent Supplier is performing Work on-site at any TGW Facility or TGW customer, Supplier will (i) abide by all TGW's rules, regulations, policies, procedures and guidelines, including without limitation the safety procedures and codes of practice (collectively "Rules"), health, environmental and hazardous material management Rules and Rules prohibiting misconduct, use of physical aggression against persons or

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- property, harassment or theft; and (ii) at TGW's request remove and promptly replace any Supplier personnel performing work who behaves in a manner that is unlawful or inconsistent with any Rule.
- (c) **Workplace Standards.** Supplier will, and will use commercially reasonable efforts to cause any approved subcontractors to comply with the standards on social, environmental and ethical issues followed by TGW.
  - (d) **Hazardous Materials.** If any equipment or work provided hereunder includes hazardous material as defined by applicable local, state or federal law, Supplier represents and warrants that Supplier and its personnel performing work for TGW understand the nature and hazards associated with the handling, transportation and use of those hazardous materials. Prior to bringing or causing hazardous materials to be brought into a facility, Supplier will notify TGW in writing and obtain written approval from TGW. Prior to TGW granting such approval, Supplier must agree in writing to comply with TGW's hazardous materials management requirements. Supplier will promptly provide TGW with material safety data sheets and any other documentation reasonably necessary to enable TGW to comply with applicable laws.
  - (e) **Training.** Supplier will provide training for the use, operation and maintenance of any equipment and software which are included in the Deliverables according to the specific work order. Supplier will provide such training to TGW's personnel at TGW's designated location. TGW will be responsible for any reasonable travel and out-of-pocket expenses (but not travel time) incurred by Supplier personnel for such training if specified in the purchase order.
  - (f) **Documentation.** For each equipment purchase and/or installation, Supplier will deliver to TGW the following: (a) two (2) sets of manuals for the equipment, including appropriate troubleshooting guides, recommended spare part lists and costs, and preventative maintenance programs and schedules; (b) two (2) sets of complete as-built specifications of the equipment; and (c) complete records of all inspections and tests performed on the equipment. The work for any particular purchase order will not be completed until Supplier delivers such documentation to TGW.
  - (g) In case the Supplier performs services in countries with minimum wage requirements, Supplier shall comply with these requirements. The Supplier shall guarantee

the continuous and timely payment of the minimum wage to its employees. In case the Supplier uses a subcontractor to fulfil its contractual obligations, Supplier shall require the subcontractor to comply with the minimum wage requirements as well. The Supplier shall indemnify TGW, upon first request, from any claims, monetary fines, penalties and costs which may result from claims being made against TGW with respect to the relevant minimum wage requirements.

## 4. Prices

- 4.1. The agreed price is a fixed total lump sum-price for the purchase of all goods, satisfactory performance and completion of the work, and performance of all the duties, obligations and responsibilities of Supplier under the Agreement, subject only to additions and deductions as expressly provided in this Agreement. The price includes, without limitation, all deliveries, tariffs, taxes, services, equipment, tools, supervision, transportation, storage, temporary facilities, overhead and profit, documentation and financing costs to be provided in accordance with the agreed conditions.
- 4.2. For approved order extensions and additions the same terms and conditions and price reductions as for the main order will apply.

## 5. Invoicing and payment

- 5.1. All invoices must include the complete purchase order number and the payment milestone completed to date.
- 5.2. The periods allowed for payment shall depend on the respectively agreed payment plan. Payment does not constitute acceptance of the goods and services delivered or identified on the invoice. The Supplier shall not be permitted to assign claims made against TGW to third parties, unless TGW consents to the assignment in writing.
- 5.3. If the Supplier fails to perform a delivery or service as provided in the Agreement, TGW will be entitled to retain the corresponding payment until the Deliverable has been received and the services have been performed according to the Agreement. TGW may set off its payment obligations to Supplier in the amount of claims it has against Supplier.
- 5.4. The last payment will not be released until transmission of a total final invoice at the agreed terms and after fulfilment of all agreed conditions.

## 6. Change request procedure

If, due to a change order submitted by TGW unforeseen circumstances, Supplier is required

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to perform additional or different services, Supplier may not charge for such additional or different services unless the additional charge is approved in writing by TGW.

## 7. Delivery

All deliveries shall be made in accordance with Incoterms® 2010: DDP TGW, at the destination specified in the purchase order.

## 8. Schedule

8.1. All delivery periods and dates shall be binding according to schedule indicated on the purchase order. Acceptance of delayed deliveries shall always be effected under reserve of all claims of TGW. Partial deliveries or deliveries ahead of schedule require a prior written approval by TGW. Early deliveries shall not oblige to early payments. In the event early deliveries result in additional cost to TGW, such cost shall be back charged to Supplier. The receipt of the goods at the receiving office or the location specified by TGW will be decisive for the compliance with the date of delivery or the term of delivery. The acceptance of delayed deliveries shall always be made under the reservation of any possible claims. TGW may from time to time change the required delivery date and Supplier agrees to be bound by the revised delivery and deliver the goods on such revised delivery date without additional charge to TGW unless TGW agrees in writing to such additional charge. Furthermore, TGW may at any time pause performance of the Agreement in its sole discretion at any time and without giving reasons. If the Agreement is paused, the dates and deadlines shall in such a case be revised accordingly. The Supplier will take any necessary measures which enable resumption of work as soon as possible after it has been released again by TGW. In such a case, the Supplier will immediately notify TGW of the corresponding consequences and the resulting direct costs actually incurred by it. The additional direct costs resulting from the pause must be proven by the Supplier and, if reasonable, will be borne by TGW.

8.2. If the Supplier requires documentation in order to complete work and deliver the deliverables as provided in the Agreement, Supplier must give written notice to TGW indicating the documentation that is needed. Upon receipt of the notice from the Supplier, TGW will, within a reasonable time, provide the requisite documentation. Supplier may only be excused from timely delivery if TGW fails to provide the requisite documentation within a reasonable

time after it receives notice from Supplier as provided above. Supplier hereby grants TGW a non-exclusive, worldwide, perpetual, irrevocable, fully paid up license to all Software and documentation associated with it on the equipment on which the Software is delivered and installed or on other equipment approved by Supplier in writing. In addition, TGW may (i) make backup and archival copies of the Software and documentation. Use of the Software in a network environment is authorized hereunder to the extent reasonably necessary for the internal purposes of TGW and its affiliates. TGW will not decompile, reverse engineer, disassemble or otherwise attempt to derive Source Code from the Software except as otherwise permitted hereunder. TGW may sublicense the software to its customers as necessary to fulfill its contractual obligations. TGW may assign its license rights to its customer.

8.3. In the event of changes to the agreed delivery dates that are not caused by the Supplier, the Supplier agrees to properly store the goods on behalf of TGW for a period of up to three months at the expense and risk of the Supplier. The parties may enter into separate arrangements regarding the payment for such goods against a declaration of transfer of ownership and/or bank guarantee etc.

## 9. Liquidated damages

9.1. Subject to Force Majeure, and delays caused by TGW's gross negligence, Supplier will deliver the Equipment and other Deliverables to the Facility by the dates set forth in the applicable Schedule. The parties acknowledge and agree that if Supplier fails to deliver the Deliverables by the agreed upon dates, TGW may suffer substantial damages and the extent of the damages may be difficult to determine at this time. Nonetheless, the parties acknowledge that the amount of liquidated damages set forth below represents a good-faith estimate as to the actual potential damages that TGW would incur as a result of the above-described failure. Therefore, if TGW does not have beneficial use of the Deliverables as indicated on the purchase order, Supplier will pay TGW liquidated damages as follows:

1% of the order value for each seven (7) day period that TGW does not have beneficial use of the deliverables. TGW shall be entitled to retain an amount corresponding to the liquidated damages against all payments otherwise payable to the Supplier. Furthermore, Supplier's failure to deliver the

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deliverables on a timely basis will entitle TGW to terminate this Agreement without any further cost or liability to TGW. In addition to the liquidated damages, TGW will be entitled to all other legal and equitable remedies it may have.

- 9.2. TGW is not required to assert its right to liquidated damages at any particular time and make such claim upon payment of the final invoice. Liquidated damages for intermediate deadlines may be deducted from partial payments.

## 10. Shipping

- 10.1. Every shipment must include a delivery note. The Supplier shall be liable for any damage, expenses, demurrage etc. arising from the non-compliance with this provision. The delivery will not be accepted without the corresponding shipping documents, but deferred at the Supplier's cost and risk. Shipments must be packed properly for the means of transportation used, in particular observing TGW's shipping instructions. If the Supplier fails to observe these instructions, it shall bear all related costs.
- 10.2. Partial deliveries shall only be permitted upon TGW's prior written consent, otherwise TGW shall have the right to refuse acceptance. In any case, partial deliveries shall not be deemed as independent transactions and must be identified as such indicating the total quantity and the quantity of the respective partial delivery.

## 11. Contract documentation

- 11.1. The Supplier must not use any of the specifications, drawings and other technical documents furnished by TGW for any purpose other than the production according to the purchase order and may not copy them or make them available to third parties.
- 11.2. The above-mentioned documents shall remain the exclusive property of TGW and on request shall be returned to TGW together with any extracts or copies made. The processing of materials and the assembly of parts shall be done exclusively for TGW.
- 11.3. Supplier and its representatives agree that it will (i) protect and keep confidential the existence of this Agreement (including, without limitation, all purchase orders), its terms and conditions and any other information obtained from TGW in connection with this Agreement or related to any services that is identified as confidential or proprietary or that, given the nature of such information or the manner of its disclosure, reasonably should be considered confidential or proprietary (including but not

limited to all information relating to TGW's technology, business plans, marketing activities and finances), (ii) will use such information only for the purpose(s) for which it was originally disclosed and in any case only for the purpose of fulfilling its obligations under this Agreement, and (iii) will return all such information to TGW promptly upon the termination of this Agreement or as requested by TGW.

- 11.4. All such information will remain the exclusive property of TGW, and Supplier will have no rights to use such information except as expressly provided herein. Supplier will not use any trade name, trademark, service mark, logo or commercial symbol, or any other intellectual property rights of TGW or any of its affiliates in any manner without prior written authorization of TGW. Supplier will not issue press releases or publicity relating to TGW or this Agreement or reference TGW or its affiliates in any brochures, advertisements, buyer lists or other promotional materials.
- 11.5. Supplier acknowledges that any material breach of this section, would cause irreparable harm for which TGW has no adequate remedies at law. Accordingly, TGW shall be entitled to specific performance or injunctive relief for any such breach.

## 12. Retention money guarantee

Unless otherwise agreed to the contrary for individual projects, payments are subject to retention of 10% of the total amount (retention with final invoice) and may be covered by an abstract bank guarantee to the amount of 10% of the total order value plus statutory value added tax with a term of 2 months beyond the warranty period. The retention money will be withheld during the entire warranty period.

## 13. Completeness clause

The Supplier acknowledges and agrees that its obligation to deliver the goods and services including documentation comprises all parts and services customary within the industry or belonging to the delivery in the context of the purchase order, even if they are not expressly listed in detail. Completeness in particular includes that the purchased components and services comply with the representations and warranties as provided in this Agreement.

## 14. Transfer of risk

Notwithstanding Incoterms® 2010, the transfer of risk to TGW shall occur upon the final acceptance of the system by the TGW's



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end customer.

## 15. Documentation

- 15.1. For each purchase order, the required documentation includes all written documents, drawings and electronically produced and stored files (incl. source code and production drawings) specified in the order and required for the proper and timely completion of all activities in connection with the installation and operation of a system component.
- 15.2. The documentation must be submitted in electronic form and conform to the scope defined in the purchase order documents, including annexes.
- 15.3. In the event of changes in the order, all affected technical documents as well as the documentation must immediately be updated accordingly by the Supplier, so that a final corrected documentation is guaranteed.
- 15.4. In case CE marking, NRTL certification and marking or other certification or marking is required for the deliveries and services, it must clearly and demonstrably comply with all relevant legal requirements (in particular the machine and OSHA directives) and all standards in the latest valid version.
- 15.5. The Supplier must provide any valid preference certificate (certificate of origin etc.) free of charge of the goods in international traffic.

## 16. Acceptance

- 16.1. Acceptance of the Deliverables will be effective upon the final acceptance by TGW's end customer. An exact definition of the acceptance procedure will be prepared in writing during creation of the functional specification based on the product requirements specification. The Supplier must in any case prove all data, performance rates and functions specified in the quote and annexes to the Agreement during the acceptance process, which has to be recorded in an acceptance protocol.
- 16.2. Acceptance will not be deemed to have occurred unless the following conditions have been satisfied:
  - performance of all deliveries and services by the Supplier according to the purchase order;
  - proper and complete delivery of all documents;
  - presentation of a protocol signed by both parties, giving proof of a successful completion of trial operation including certificate of performance for the overall system.

16.3. In case defects are detected which do not have an influence on the system's functionality, acceptance may be effected under the reserve of immediate correction of these defects. If the pending points are not fulfilled within the given period of time, the confirmation of acceptance shall be deemed as not given with retroactive effect.

16.4. If during the acceptance process the system appears not to have been manufactured according to the required specifications, and/or the required performance has not been achieved, the Supplier must correct the deficiencies within a period of grace to be agreed upon. In case the agreed to performance is again not achieved during the repeated acceptance process, in particular the guaranteed performance data are not proven, the Agreement shall be deemed as not fulfilled.

## 17. Warranty

17.1. The Supplier guarantees that the Deliverables have been designed/performed fully and in accordance with the order specifications or delivery schedule and that the goods are suitable for the intended use; it also guarantees that the design, suitability, manufacturing methods as well as the guaranteed properties conform to the latest state of the art, have been manufactured in compliance with all applicable regulations and contain only new material of suitable and top-class quality and that the Deliverables are free of defects. Furthermore, the Supplier guarantees to achieve and reliably meet all performance values agreed by Agreement. The Supplier has to demonstrably advise TGW of all risks which may typically be expected during the use of the Deliverables. The Supplier assumes responsibility and liability for Deliverables or portions thereof that were supplied by persons other than Supplier.

17.2. Unless otherwise agreed to the contrary, the warranty period shall end 24 months after final acceptance of the overall system and correction of all defects, irrespective of the period of operation. Warranty shall include, but not be limited to, material, personnel and any other costs necessary to remedy the defect. In case of a hidden defect the warranty period shall start to be effective at the moment the defect is identifiable objectively. For goods which are usually kept in their packaging until they are used, defects which do not become visible until the goods are retrieved from their packaging shall be considered as hidden defects.

17.3. TGW shall not be obliged to inspect the goods

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and notify of possible defects (including quality defects). TGW shall at its own option be entitled to request at short notice from the Supplier to remedy all defects detected during the agreed period of warranty at his expense and risk by correction (repair, provision of missing components) and/or replacement, or to claim reduction of price, or demand corrective action, or correct the defects and perform not provided or defective services itself or have them corrected and performed by third parties at the expense and risk of the Supplier in case of effectless reprimand or imminent danger.

- 17.4. In the event of a claim being made against the warranty of title, the burden of proof shall rest with the Supplier during the entire warranty period, to prove that a defect did not exist at the moment of handover.
- 17.5. In case of defects of whatsoever kind, TGW shall in any case be entitled to retain the total outstanding purchase price or works compensation until full correction of defects.
- 17.6. In case of a rectification or replacement of defective parts the warranty period for the respective part shall start again upon successful resumption of operation. Any interruption of operation caused by the Supplier within the warranty period will lead to an corresponding extension of the warranty period.

## 18. Indemnification

- 18.1. For a period of two (2) years after acceptance of the Deliverables, Supplier will defend, indemnify and hold harmless TGW, its affiliates and their respective officers, directors, agents and employees ("TGW Indemnitees") from and against any liabilities, losses, fines, penalties, damages, costs and expenses (including reasonable attorneys' and litigation expenses) that arise from or are related to: (i) death of, injury to, or of any person, damage to or loss of any property caused by Supplier or its personnel; (ii) any negligent acts or omissions of Supplier or its personnel, or willful misconduct of Supplier or its personnel; (iii) infringement, misappropriation or violation of any intellectual property right or other right of a third party resulting from the Deliverables or TGW's exercise of its rights hereunder; (iv) any material breach of any representation, warranty or agreement made by Supplier under this Agreement; (v) any latent defect in the Deliverables; (vi) the provision of hazardous materials to TGW or the use of hazardous materials in performing any services; and/or (viii) Supplier's failure to

comply with any laws or applicable licensees, permits, and other requirements now or hereafter in effect of any governmental authority in the performance of its obligations under this Agreement or any work order; except, in each case, to the proportional extent the liability is caused by the negligence or willful misconduct of TGW. Supplier's obligation to defend is independent of its obligation to indemnify.

- 18.2. The Supplier undertakes to ensure that all insurance and taxation requirements applicable in the state of the construction site as well as all labor law regulations related to the employees working on the site are met and has to fully hold harmless and indemnify TGW in this respect.

## 19. Product liability

- 19.1. The Supplier shall enclose operating instructions and warning notices written in English language in its delivery and, as far as this is possible and reasonable, attach them to the delivered goods itself. If the delivered goods turn out to be defective after acceptance of delivery the Supplier shall be obliged to take such goods back and refund the complete purchase price.
- 19.2. If claims are made against TGW due to its product being defective or in particular having violated any official safety regulations, or due to national or foreign product liability provisions, TGW will be entitled to demand compensation for this damage from the Supplier, as far as this damage is attributable to the products he delivered. The Supplier shall commit to fully indemnify TGW from any resulting claims. This damage shall also include costs of replacement as well as costs of a preventive and required product recall.
- 19.3. If claims are made against TGW due to services performed by the Supplier, the Supplier shall be obliged to immediately deliver any of the means of evidence requested by TGW at its own cost, such as in particular quality and inspection protocols, certificates and so forth.

## 20. Industrial/Intellectual property rights

- 20.1. The Supplier asserts that his scope of supply and services as well as the documentation and drawings provided by him does not infringe any property rights (patent, trademark or sample rights, copyrights, equipment, product names, know-how, territorial protection and rights of a similar kind, in fact even if their granting has been applied for as needed). The Supplier shall be liable for all

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losses resulting from a breach of this provision as well as fully indemnify and hold TGW harmless from and against all third-party claims.

20.2. Without prejudice to further rights, TGW shall in case of a claimed infringement be entitled to refuse acceptance of the goods, to place already accepted goods at the Supplier's disposal again at its own cost and to retain payment of the total purchase price until the entitlement to the claims made has been clarified.

## 21. Non-solicitation agreement

21.1. The Supplier shall not solicit employees away from TGW, or to offer them a job directly or indirectly without prior written consent (both cases hereinafter referred to as "solicitation").

21.2. If the Supplier infringes this provision, it shall pay TGW, as liquidated damages, an amount equal to the annual gross pay the solicited employee received from TGW in the twelve (12) months of employment; in the case of a shorter term of employment, the annual gross pay will be projected to twelve (12) months.

## 22. Insurance

The Supplier undertakes to maintain general liability, auto and workers' compensation insurance with sufficient coverage during the order execution including the duration of the warranty periods. The Supplier shall provide a corresponding confirmation of insurance coverage to TGW prior to commencement of the Agreement without being requested.

## 23. Force majeure

Force majeure shall exempt the contracting parties from the duties to indemnify for the duration of interruption caused thereby and to the extent of its effect. The contracting parties shall be obliged to immediately provide the required information as far as reasonable, and to adapt their duties to the changed circumstances in good faith. In case a circumstance extends over a period of more than two months, and the parties are not able to reach a mutual solution, both parties shall have the right to withdraw from the Agreement in full or in part.

## 24. Withdrawal from Agreement

If the Supplier fails to comply with its contractual obligations in full or in part (e.g. also including delay in intermediate deadlines of the planning and manufacturing process as well as dependent ancillary services), TGW will be entitled to withdraw from the Agreement in full or in part after having granted

a reasonable period of grace without success and independent of a possible divisibility of the service. With regard to possible periods of grace, actually granting such a period, e.g. through repeated reminders to comply with the Agreement by TGW, shall be sufficient. In particular in the case of non-fulfilment of assured deliveries, TGW will have the right, independent of a divisibility of the services, to fully withdraw from the Agreement. This shall in equal measure be applicable in case of a considerable degradation of the Supplier's financial status. If TGW terminates this Agreement pursuant to this Section, all amounts paid to Supplier will be refunded to TGW and Supplier will be responsible for all costs, expenses and liabilities incurred by TGW as a result thereof. No rights of any kind shall be due to the Supplier from TGW in the event of such termination by TGW. The Supplier shall be obliged to immediately report circumstances of this nature to TGW.

## 25. Cancellation

25.1. TGW shall have the right to withdraw from the Agreement at any time in full or in part, even if the Supplier is not at fault.

25.2. In such a case, TGW will be obliged to reimburse the Supplier for the Agreement price in proportion to the already provided deliveries or performed services and, in addition, make up for the proved direct costs incurred for deliveries and services which are already in process or for the cancellation of sub-contracts. The Supplier shall transfer the property of the respective deliveries/services upon their payment; the burden of proof for the existence of the aforementioned costs shall rest with the Supplier. The Supplier will make every possible and reasonable effort, upon declaration of cancellation, to keep the direct costs to be made up for by TGW to a minimum.

## 26. Cessions / sub-contracting

In the event of the existence of material circumstances, such as for example the relocation of the production site, TGW shall be entitled to prohibit the cessation of the order with immediate effect and to demand performance according to Agreement from the Supplier.

## 27. Confidentiality

The Supplier may have access to certain proprietary and confidential information of TGW or its customers. Therefore, the Supplier shall agree to treat this information as confidential and use the information in question or disclose it to third parties

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exclusively for services within the framework of this Agreement and not for any other reason. All already existing non-disclosure agreements between TGW and the Supplier shall still remain fully valid. The Supplier agrees to indemnify TGW for any damages or costs caused by a breach of its duty to maintain confidentiality.

## **28. No-contact provision for directly contacting customers**

The Supplier agrees not to contact the customer directly during the service life of the respective site handed over to the customer by TGW in relation to business activities in connection with these sites without the written consent of TGW, and shall refer any orders or enquiries received from the customer in connection with the sites to TGW. The supplier shall also procure that any member of its group shall similarly be bound and shall accept responsibility for any breach by such member of its group. The supplier shall indemnify TGW for all losses arising from any breach of this provision including without limitation loss of profits and loss of opportunity.

## **29. Data protection**

TGW points out that the Supplier's data will be electronically saved and only used for the purpose of the Agreement.

## **30. Compliance**

The Supplier shall commit to comply with the Code of Conduct. This Code of Conduct is an integrative part of the present Terms and Conditions of Purchase, and available on the website under [www.tgw-group.com](http://www.tgw-group.com).

## **31. Customs / export control**

The Supplier shall be obliged to inform TGW about any obligation to obtain a permit in case of re-exports of its goods in accordance with German, European, US exportation and customs regulations as well as the exportation and customs regulations of the country of origin of his goods in its business documents. Therefore, the Supplier shall at least provide the necessary information as required according to the relevant customs and export regulations in its quotes, order confirmations and invoices for the affected items. The Supplier shall be obliged upon TGW's request to communicate all further foreign trade details on its goods and their components to TGW in writing, and to immediately inform TGW (prior to the delivery of the affected goods) about all changes of the aforementioned details in writing.

## **32. Spare parts proposal**

The Supplier shall guarantee spare parts supplies at least for a period of 10 years and that the spare parts will be available immediately upon request. The price maintenance period of the spare parts proposal must not be less than 18 months.

## **33. Place of fulfillment, choice of law and jurisdiction**

33.1. For all rights and obligations arising from the legal transactions made with TGW, the place of fulfillment for both parties shall be the respective construction site address, or, failing to name an address, the headquarters of TGW in Spring Lake, Michigan.

33.2. This Agreement shall exclusively be subject to substantive law of the State of Michigan without regard to conflict of law provisions.

33.3. Any court situated in the State of Michigan with competent jurisdictions shall be the exclusive forum for any dispute arising out of this Agreement.

## **34. Severability clause**

In the event that one or several of the provisions contained herein shall be held to be invalid, illegal or unenforceable, the parties shall be obliged to agree another provision that comes as close as possible to the economic intent of the Agreement which the contracting parties originally wished to pursue with the invalid or unenforceable provision. The invalidity, illegality or unenforceability of the respective provision(s) shall not affect any other provision of this Agreement.

## **35. Final provisions**

35.1. The titles of the provisions contained in the present General Terms and Conditions of Purchase shall only serve for better clarity and must not be used for interpretation.

35.2. No business development taking place between the Supplier and TGW and no delay or default regarding the exercise of a right, legal remedy or means granted to TGW according to the present General Terms and Conditions of Purchase shall be deemed as waiver of these rights. Any of the rights and legal means granted in these TGW Terms and Conditions of Purchase or any of the legal remedies granted in these Terms and Conditions of Purchase shall be cumulative and exist coequally and additionally to other legally granted rights, legal remedies and means.