

## GENERAL TERMS AND CONDITIONS OF SALE AND PURCHASE

of **MPE Cathodic AS** located at Rygge, Norway, hereinafter referred to as: **MPEC**

### SECTION I - GENERAL CONDITIONS

#### Article 1. Scope of application

- 1.1 These General Terms and Conditions apply to all offers made by and to MPEC, and to agreements for the sale and/or delivery, purchase and/or acceptance by MPEC of goods and/or services (hereinafter referred to as 'Products'), as well as to the execution of agreements. Deviations should be expressly agreed in writing with MPEC.
- 1.2 'Counter-party' in these Terms and Conditions shall mean every (legal) person that enters into the agreement with MPEC either directly or through the intermediation of third parties. In Section II, this will be the customer of MPEC, and in Section III, this will be the supplier of MPEC.
- 1.3 If MPEC enters into an agreement with a Counter-party whereby the applicability of these Terms and Conditions is agreed, these Terms and Conditions will also apply to (additional) orders and requisitions subsequently given by the Counter-party (orally, over the telephone, by fax, electronically or in any other manner), whether or not MPEC confirms the same in writing.
- 1.4 The applicability of the terms and conditions applied by the Counter-party is hereby expressly excluded. Such Terms and Conditions will only apply to the extent that MPEC expressly agrees to the same in writing.
- 1.5 The invalidity of a condition under this agreement or agreement(s) deriving from the same, including a condition under these General Terms and Conditions, will not affect the other conditions. If one or more conditions are declared to be invalid or found to be void, the parties will be deemed to have agreed on substitute terms and conditions that correspond to the original condition(s) to the furthest extent possible.

#### Article 2. Collection costs

- 2.1 If a Counter-party is in default of fulfilling one or more of its liabilities or obligations, all the reasonable costs incurred by MPEC internally or externally to obtain satisfaction of the same extra-judicially, will be borne by the Counter-party, subject to a minimum amount of NOK 5000.00.
- 2.2 The judicial and execution costs, if any, will be borne by the Counter-party.
- 2.3 The Counter-party will be liable to pay interest on the costs incurred in accordance with Article 13, paragraph 4 of these Terms and Conditions.

#### Article 3. Force majeure

- 3.1 MPEC is not bound to fulfil any obligation if it is prevented from doing so due to a circumstance that cannot be attributed to it or which would not be attributed to it under the law, a legal act or under generally accepted conventions.
- 3.2 Apart from what is understood in this regard under the law and in the case law, force majeure shall mean all external causes, foreseen or otherwise, over which MPEC has no control, but which prevent MPEC from fulfilling its obligations. These include defects in machines, disturbances in the supply of energy, employee sick leave, whether in the organisation of MPEC or that of third parties from whom MPEC procures the required

materials or raw materials as well as during storage or transport whether or not under own management, as well as non-performance of contract by sub-contractors, and all other causes beyond the scope of liability or risk of MPEC, including all shortcomings of third-parties that are involved in the execution of the agreement, whether or not at the request of MPEC.

3.3 MPEC shall also have the right to claim force majeure if the circumstances that prevent (further) fulfilment come into force after MPEC should have fulfilled its obligations.

3.4 Force majeure shall also be deemed to exist if during the execution of an order, but before completion of the same, MPEC finds that the order issued to it is technically impossible to execute. In such case, MPEC will immediately notify the Counter-party of the same. In that case, the parties will make a settlement of all the costs incurred and services provided by MPEC.

3.5 To the extent that MPEC has in the meantime partially fulfilled its obligations under the agreement at the time of the force majeure conditions enter into force, or will be in a position to fulfil the same, and if the part that has been completed or is to be completed has an independent value, MPEC is entitled to separately invoice the part already completed or to be completed. The Counter-party is obligated to pay this invoice as if it were a separate agreement.

#### **Article 4. Suspension and termination of contract**

4.1 MPEC shall have the right to suspend the fulfilment of its obligation in the following cases:

- in the case of force majeure;
- if suspension of payments is (temporarily) granted to the Counter-party, application is made to declare the Counter-party bankrupt, or the Counter-party itself applies for bankruptcy, if the Debt Repayment (Natural Persons) Act is declared to be (temporarily) applicable to the Counter-party, or the Counter-party offers an (out-of-court) composition of debts to its creditors, or calls a meeting of creditors for such purpose, or the organisation of the Counter-party is liquidated and/or the organisational activities of the Counter-party are actually suspended;
- the Counter-party does not or not fully fulfil the obligations under the agreement;
- after entering into the agreement, MPEC becomes aware of circumstances that give good reason to fear that the Counter-party will not fulfil its obligations.

4.2 Furthermore, MPEC has the right to terminate the agreement where circumstances exist such that the fulfilment of the agreement is impossible or can no longer be expected, taking into account the principles of reasonableness and fairness, or where other circumstances exist such that the continuation of the agreement without amendments cannot reasonably be demanded.

4.3 If the agreement is terminated, the claim of MPEC against the Counter-party will become immediately payable. If MPEC suspends the fulfilment of its obligations, it reserves to itself its claims under the law and under the agreement.

4.4 MPEC continues to reserve the right to demand compensation for damages incurred.

#### **Article 5. Liability**

5.1 Except in the case of malicious intention or conscious recklessness on the part of MPEC, its executive(s) or its managerial staff member(s), MPEC will never be liable for any damage, including business and consequential damages.

5.2 A damage compensation obligation, if any, that applies to MPEC shall at all times be limited to the maximum of the amount of insurance benefit payment that the (liability) insurer of MPEC may pay in cases that may occur. If the insurer does not make any payment, the damage payment obligation of MPEC shall be limited to the maximum net invoice value of the items supplied or work carried out.

5.3 The Counter-party should always study the manual provided by MPEC with items supplied by MPEC before starting to use such items, and also follow the safety regulations, failing which, MPEC will never be liable under any circumstances.

#### **Article 6. Non-disclosure**

The Counter-party shall keep secret from third-parties all business information and knowhow, in the broadest sense of the term, originating from MPEC, that comes to its knowledge, on pain of an immediately payable penalty of NOK 10,000 for each instance, as well as per day that such violation continues, without prejudice to the right of MPEC to claim damages actually suffered, in addition to the penalty.

#### **Article 7. Applicable law/disputes**

7.1 The law of Norway will be applicable to all relations between MPEC and the Counter-party, to the exclusion of all international conventions that may be deemed applicable to the (material) legal relationship between MPEC and the Counter-party, including the UN Convention on Contracts for the International Sale of Goods.

7.2 All disputes that may arise as a result of agreement(s) entered into between the parties will be decided upon by Norwegian Court unless MPEC brings the matter before the court that has the necessary competence to take cognisance of the dispute according to the law or convention. In such case, such court shall have the authority to take cognisance of the dispute.

### **SECTION II TERMS AND CONDITIONS OF SALE**

#### **Article 8. Terms and conditions of sale**

The provisions contained in the present chapter are exclusively applicable to all offers of MPEC, agreements with which MPEC sells and/or delivers goods and/or services, as well as the execution of agreements.

#### **Article 9. Offers**

9.1 All offers of MPEC are non-binding and revocable, unless a period for acceptance is specified in the offer.

9.2 If the acceptance deviates from the terms contained in the Offer (even in respect of secondary matters), MPEC shall not be bound by the same. The agreement will in such case not be formed according to this deviating acceptance, unless MPEC specifies otherwise.

9.3 If an offer made by MPEC is accepted by the Counter-party, MPEC shall have the right to withdraw its offer within three working days after receipt of the acceptance, in which case, no agreement will be formed.

9.4. If MPEC makes a composite price quotation, it will not be bound to supply a proportion of the products mentioned in the offer at a corresponding proportion of the specified price.

9.5 Tenders or offers will not automatically apply to repeat orders.

9.6 Information provided by MPEC in the form of printed matter, brochures, annexes to the offers, advisory reports, calculations, drawings, designs, dimensions and similar information will be passed on as accurately as possible, but will be non-binding, and will not qualify as an offer. MPEC is not liable for mistakes, deficiencies or incompleteness in the same.

9.7 Unless otherwise agreed, intellectual and/or industrial property rights relating to products to be supplied by MPEC will belong to MPEC. Unless otherwise agreed, the drawings, diagrams, illustrations, designs, calculations, descriptions and all other documents in which the offer is contained, shall remain the property of MPEC even after delivery. The Counter-party will guarantee that these documents will not be copied, imitated or otherwise reproduced, nor made available for inspection by or handed over to third parties, without the prior written permission of MPEC.

#### **Article 10. Agreements**

10.1 An agreement will only be formed if MPEC confirms the order or requisition to the Counter-party in writing within 14 days of placing the same, or has actually commenced with the execution of the same. The Counter-party has no right to revoke its order or requisition during this period.

10.2 Changes and/or additions, if any, made later, and (oral) commitments made by MPEC will only be binding if MPEC has confirmed the same in writing, or has commenced the actual execution of the same.

10.3 In case of deliveries and/or work for which, taking into account the nature and scope of the same, no offer and/or order confirmation is sent, the invoice will be regarded as an order confirmation, which will be deemed to represent the contents of the agreement fully and completely.

10.4 MPEC has the right to engage third parties for the proper execution of the agreement.

10.5 The Counter-party will ensure the timely provision to MPEC of all the information that MPEC specifies as necessary, or which the Counter-party may reasonably be expected to understand as being necessary for the execution of the agreement. If the information required for the execution of the agreement is not provided to MPEC in time, MPEC will have the right to suspend the execution of the agreement and/or to charge the Counter-party for the extra costs arising due to the delay, at the usual rates.

10.6 MPEC is not liable for damages of any nature whatsoever that arise because MPEC has relied on incorrect and/or incomplete information provided by the Counter-party, unless such inaccuracy or incompleteness was known to MPEC without independent investigation.

#### **Article 11. Substitute products**

11.1 If, due to grave circumstances, MPEC is required to supply products that deviate from those agreed, it may do so, provided that the modifications in question do not result in deterioration of quality.

11.2 The supply of alternative, at least equivalent, products will not give the Counter-party any right to damage compensation and/or to demand termination, or to suspend its obligations toward MPEC.

#### **Article 12. Prices**

12.1 Prices will be expressed in NOK, EUR or USD and will be exclusive of VAT and other government levies, unless expressly specified otherwise.

12.2 Unless otherwise stated, the prices are based on the prices of materials, salaries and wages, labour costs, social and other statutory charges, insurance premiums and other costs applicable at the time of the offer or the order date.

12.3 If one or more cost price factors increase, MPEC shall have the right to increase the order price correspondingly, taking into account the statutory provisions, if any, existing at the time, provided that mention should be made of future price increases that are already known at the time of entering into the agreement.

### **Article 13. Payment**

13.1 Payment should be made prior to delivery, unless otherwise agreed.

13.2 Payment should be made strictly within 30 days of the invoice date as standard, when credit terms are agreed in writing.

13.3 Complaints about the amount of invoices will not suspend the obligation to pay. This condition shall also apply if the invoice relates to products that are delivered on demand or where part deliveries are involved.

13.4 If the Counter-party continues in default of paying the invoice within thirty days of the invoice date, the Counter-party will be liable to pay interest at a rate of two per cent per month, unless the statutory interest rate for commercial transactions is higher, in which case the statutory interest rate for commercial transactions will apply. The interest for the payable amount will be calculated on the outstanding amount up to the date of actual payment, starting thirty days after the date of the invoice. A part of the month will be calculated as one full month.

13.5 The payments made by the Counter-party will first be applied to pay costs, then the interest due, and finally the principal sum and the accrued interest. MPEC may, without thereby entering into default, refuse an offer of payment, if the Counter-party has another obligation outstanding.

13.6 The Counter-party has no right to set-off unless MPEC has specifically permitted this in writing.

### **Article 14. Delivery and transport**

14.1 Deliveries will be made to an address specified by the Counter-party, by a transporter to be engaged by MPEC. The articles to be delivered will be insured at invoice value up to the moment of delivery.

14.2 The costs of delivery, insurance and transport will be borne by the Counter-party. MPEC shall include these costs in the offer.

14.3 If it is impossible or difficult for MPEC to make delivery at the place designated by the Counter-party, MPEC will have the right to make delivery at the nearest location that is accessible to MPEC.

14.4 The delivery dates specified by MPEC will enter into force as soon as MPEC has accepted the order in writing, provided the documents and information that MPEC requires for the execution of the work are in the possession of MPEC and the Counter-party complies with the formalities and other conditions laid down by MPEC.

14.5 Delivery times mentioned in statements made by MPEC are indicative and if the same are exceeded, they will not give the Counter-party any right to terminate the contract or to claim damage compensation, unless expressly otherwise agreed.

14.6 All products that are not accepted by the Counter-party or are sent back will nevertheless have to be paid for by the Counter-party, unless agreed otherwise in writing. The Counter-party should compensate MPEC for all damages that MPEC incurs due to non-acceptance or return of deliveries made by MPEC, unless the Counter-party can prove that the delivery does not fulfil the terms of the agreement.

14.7 Apart from the other rights that arise in its favour in such case under the law due to the default of the Counter-party, MPEC has the right to terminate the agreement without any judicial intervention to the extent of the part that has as yet not been executed, by means of a simple statement.

14.8 MPEC shall have the right to deliver the products in instalments, unless a deviation from the same is agreed, or if no independent value attaches to the instalment delivered. MPEC shall have the right to separately invoice the deliveries so made.

### **Article 15. Inspection, complaints**

- 15.1 At the time of delivery, the Counter-party is obligated to inspect (or to commission the inspection of) the products delivered by MPEC for externally visible faults, and to subject the same to tests for usability and functionality. If the products do not meet the requirements contained in the agreement, the Counter-party should notify MPEC about the same within 48 hours of delivery in writing (by fax or e-mail).
- 15.2 If MPEC finds the complaints to be well founded, it may replace or repair the products to which the complaints relate, at its option, or repay the invoice amount.
- 15.3 The submission of complaints will not discharge the Counter-party from any obligation under the agreement with MPEC in respect of the latter.
- 15.4 As regards complaints, every part-delivery will be regarded as a separate delivery.

### **Article 16. Lapsing of rights**

If the Counter-party fails to fully abide by the rules mentioned above, concerning for example the time and place of the delivery, inspection, testing and/or complaint, the right of the Counter-party to inspection, testing and/or complaint will lapse and the Counter-party will be deemed to have accepted the products supplied by MPEC.

### **Article 17. Samples and models**

If a sample or model is shown or provided to the Counter-party, it will be deemed to have indicative value only, and the actual article need not correspond to the sample or model, unless such correspondence is expressly agreed.

### **Article 18. Guarantee**

- 18.1 If during the period one year after delivery shortcomings arise in the articles delivered by MPEC, due to material or manufacturing defects, MPEC or a service centre designated by MPEC should repair or replace these articles or components. MPEC shall have the right to determine whether repair or replacement is necessary. In case of replacement, the replaced articles or components of the same shall become the property of MPEC.
- 18.2 Where MPEC supplies articles procured from third parties, the guarantee provisions of such third parties will apply to such articles.
- 18.3 All guarantee claims will lapse if the guarantee rules are violated, or the Counter-party itself carries out modification(s) or repair(s) (or commissions the same) to the articles supplied, or dismantles the articles delivered or commissions this to be done, or if the Counter-party handles/uses the delivered article improperly, or allows the same, or uses the articles for purposes other than those specified by MPEC, or in case of insufficient maintenance, overloading, (normal) wear and tear, or other causes beyond the control of MPEC, in the best judgement of MPEC.
- 18.4 In order to be able to make a claim under the guarantee, the Counter-party must have sent the claim to MPEC within eight days of delivery. In case of a possible guarantee claim, the claim should also be notified to MPEC in writing along with details within seven days of discovery, whereby the article in question should also be made available to MPEC for investigation, together with the fully completed 'Engine Log'. The Counter-party will bear the costs of despatch. The articles must be sent in their original packing.

**Article 19. Retention of title**

19.1 All the articles supplied by MPEC will remain MPEC property until the Counter-party fully pays all the amounts owed by the Counter-party to MPEC for whatever reason.

19.2 If a due amount is not paid, or if applications are made for the suspension of payments, or for declaration of bankruptcy, or for application for placement under receivership, or in case of death or liquidation (of the assets of) the Counter-party, MPEC will have the right to cancel the order or the part of the same that has still to be delivered, and to claim back, as its own property, the part that has already been delivered, the right to set-off any payments already made, without prejudice to any rights to damage compensation. In the above-mentioned cases, every claim against the Counter-party will be immediately claimable in one lump sum.

19.3 The Counter-party has no right to alienate articles that are subject to the right of retention, to encumber the same or to otherwise dispose of the said articles, otherwise than within the framework of its normal conduct of business. The Counter-party will notify MPEC as soon as possible if third parties attach any of the articles that are subject to right of retention, or want to attach or exercise any rights in respect of the same.

19.4 The Counter-party undertakes to insure and keep insured the articles delivered under right of retention, against theft, fire, danger of explosion and water damage, and to furnish MPEC a copy of the policy relating to such insurance for inspection, on first request by MPEC for the same.

19.5 In the event that MPEC decides to exercise the rights of retention mentioned in this article, the Counter-party henceforth unconditionally and irrevocably grants MPEC and third parties designated by MPEC the right to enter all such places where the property of MPEC is located, and to recover the articles from such place.

**Article 20. Liability and indemnity**

20.1 In case of deliveries not made, or not made in time, or not made properly, or in case work is not done at all, or in time, or properly, due to force majeure on the part of MPEC, the Counter-party will not have any right to damage compensation and/or to termination of contract.

20.2 The Counter-party indemnifies MPEC and/or its executive(s) and/or subordinate(s) for the claims of third parties in connection with damage that is caused due to the execution of the agreement or through the use of products supplied by MPEC, to the extent that such damage is not ascribable to MPEC. The Counter-party is obligated to indemnify MPEC for consequences that arise from such notice of liability.

**SECTION III TERMS AND CONDITIONS OF PURCHASE****Article 21. Terms and conditions of purchase**

The provisions contained in the present chapter are exclusively applicable to all offers made to MPEC, agreements with which MPEC purchases or accepts goods and/or services, as well as the execution of agreements.

**Article 22. Agreements**

22.1 An oral order, if any, issued by MPEC will always be confirmed with an order form provided for the same. An agreement will only be deemed to be formed if the Counter-party signs the written purchase order of MPEC provided for the purpose, in confirmation, and has returned such copy to MPEC within eight days, or, if there is no confirmation, when the Counter-party actually starts executing the agreement.

22.2 Offers sent to MPEC in writing will bind the Counter-party for the period mentioned therein, and such period will not be less than four weeks. If the Counter-party does not specify a period, the offer shall be valid for four weeks.

22.3 MPEC shall have the right at all times to change and/or supplement the order/requisition in consultation with the Counter-party. Additions and/or modifications, if any, should be confirmed in writing.

### **Article 23. Prices**

23.1 All prices are for carriage-paid delivery at the place of delivery, exclusive of VAT and inclusive of appropriate packing charges.

23.2 The prices are fixed and will be expressed in NOK, unless expressly specified otherwise. Foreign exchange rate fluctuations will not be set-off.

23.3 Price increases due to extra work and/or extra deliveries may only be charged if the same are accepted in writing by MPEC, and details of the same should be specified to MPEC within seven days of ordering the extra work and/or extra delivery.

### **Article 24. Payment**

24.1 Unless otherwise agreed, payment will be made within thirty days of the receipt of invoice without prejudice to the right of MPEC to set-off, and provided the terms of contract are fulfilled correctly and in time.

24.2 If at any time MPEC is liable to pay interest, the maximum rate for the same shall be the general statutory interest rate and not the statutory interest rate for commercial transactions.

24.3 The Counter-party will not, without the prior consent of MPEC, assign or encumber claims that it obtains against MPEC to third parties.

### **Article 25. Delivery**

25.1 Deliveries will be made carriage-paid at a place designated by MPEC. If MPEC has not specified any place of delivery, the delivery will be made to the MPEC establishment located at Rygge in Norway. MPEC will determine the sequence and times of delivery in consultation with the Counter-party.

25.2 The Counter-party should therefore make arrangements for transport and obtain insurance against possible damage during transport, which will be at the risk and on account of the Counter-party.

25.3 The Counter-party is bound to strictly abide by the delivery dates mentioned in the purchase order.

25.4 The Counter-party will immediately notify MPEC whenever there is a threat that the delivery date will be exceeded. If delivery is not made in time, the Counter-party will be deemed to be in default, without need to issue a notice of default. MPEC has the right to recover from the Counter-party any financial losses, such as extra costs, that it may incur because a delivery date was exceeded, if the shortcoming is caused by the Counter-party. If the agreed delivery period is exceeded without MPEC having accepted the same in advance, MPEC will be entitled at all times to terminate the agreement in whole or in part, without the need for issuing a notice of default or for judicial intervention, and without prejudice to its other statutory rights, such as the right to damage compensation.

### **Article 26. Inspection and Testing**

26.1 MPEC shall have the right to inspect or test (or to commission the same) the articles intended to be delivered to it, during production, processing and storage as well as after delivery.

26.2 The Counter-party authorises MPEC or (a) third-party/parties designated by it to enter the place where the production, processing or storage is undertaken. The Counter-party will extend its cooperation for the same free of charge.

26.3 MPEC shall have the right to refuse the products and/or to terminate the agreement in whole or in part, without the need to issue a notice of default or for judicial intervention, and without prejudice to other statutory rights, if it appears that the products do not correspond to the requirements contained in the purchase order and/or specifications.

### **Article 27. Guarantee**

27.1 The Counter-party guarantees that the products delivered are suitable for the purpose for which they are intended, that they are free of structural, material and manufacturing defects, and meet the quantity, description and quality requirements contained in the order.

27.2 Furthermore, the Counter-party will also guarantee that the products supplied meet the statutory requirements, if any, applicable to the product at the time of delivery.

27.3 As regards the faults that may be found by MPEC or its customers within three months of delivery, the Counter-party will replace the defective products within three working days of the first notification by MPEC of the same, or will repair all the faults and defects in the same, or will credit and repay the invoice amount, all at the option of MPEC.

### **Article 28. Liability and indemnity**

28.1 The Counter-party is liable for all damage that arises due to any shortcoming on its part in fulfilling the terms of contract, for direct as well as indirect damage caused to MPEC, its employees, its customers, or other third parties.

28.2 The Counter-party indemnifies MPEC against the claims of third parties to damage compensation and/or penalties due to faults or defects in the products supplied by it and/or that arise at the time of, during or due to the delivery of its products.

### **Article 29. Intellectual property**

The Counter-party will guarantee that the products it has supplied to MPEC will not violate the intellectual property or industrial property rights of third parties, and indemnifies MPEC against all claims that may be made on the basis of the same. The Counter-party will compensate MPEC for all costs, damages and interest that it may incur due to any violation.

\*\*\*