



Gesellschaft zur  
Luftreinhaltung und  
Lärmbekämpfung mbH

AIR-SONIC Gesellschaft zur Luftreinhaltung und Lärmbekämpfung mbH  
Raiffeisenstraße 18/20 • D-36391 Sinntal

## GENERAL TERMS AND CONDITIONS OF SALE

### 1. Integration

The General Terms and Conditions of Sale contained herein shall be deemed a material part of any sale or proposed sale by MIRATECH Group, LLC (“Seller”) to (“Purchaser”) and, unless and only to the extent specifically excluded therein, shall be a material part of any subsequent letter of authorization, contract, purchase order, sale or other agreement between Seller and Purchaser, with respect to all products, equipment, services and/or parts relating thereto (hereinafter referred to as the “Product”).

### 2. Compliance

To Seller’s knowledge, Seller has complied with all applicable laws and regulations including, but not limited to, the EU and German Equal Treatment Act (AGG) and all standard German and EU Employment Laws, the Fair Labor Standards Act, the Civil Rights Act of 1964, the Equal Employment Opportunity Act of 1972, as respectively amended, Executive Orders 11246, 11375 and 11141 (Title 41, Chapter 60, Code of Federal Regulations), the Vietnam Era Veterans Readjustment Act of 1974, and all amendments thereto and regulations, rules and orders there under, as amended or superseded and all of the foregoing are made a part hereof by reference and incorporated herein as though fully set forth herein. Purchaser understands and agrees that the foregoing sentence is for Purchaser’s information stating that which Seller strives to achieve and is not made as a covenant, warranty or representation and is not meant to create or permit, nor shall it be construed as creating or permitting any enforceable rights hereunder for Purchaser or any other person or entity. All standards promulgated with respect to noise or air control are specifically excluded hereunder.

### 3. Title, Risk of Loss, Security Interest

Title and risk of loss or damage to the Product shall pass to Purchaser under tender of delivery Ex-Works (Incoterms 2010) manufacturing facility unless expressly stipulated otherwise, regardless of when partial or final payment is to be made by Purchaser. Notwithstanding the foregoing, a purchase money security interest in the Product or any replacement thereof shall remain in Seller, regardless of mode of attachment to realty or other property, until full payment has been made therefore and collected by Seller.

### 4. Inspection, Rejection, Remedy

Purchaser shall have the right to reasonable inspection of the Product after delivery to destination, which inspection shall be completed within ten (10) days of the date of delivery to such destination. Any rejection by Purchaser as to part or all of the Product shall be in writing, specifically stating the non-conformities thereof. In such event, Seller shall have a reasonable period of time to determine the validity of and, if necessary, to correct the non-conformities forming the basis of the Purchaser’s rejection or, at Seller’s option and if appropriate, to replace part or all of the Product. Purchaser’s failure to make



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rejection as herein stated, or to allow Seller to cure Purchaser's objections, shall be deemed to conclusively establish acceptance by Purchaser of the Product.

## 5. Time, Force Majeure

Seller may, from time to time, quote delivery dates to Purchaser. Such dates shall be interpreted as estimated and in no event shall such dates be construed as falling within the meaning of "time is of the essence." Seller shall not be liable for loss, damage, detention, or delay due to war (whether declared or not), armed conflict or serious threat of same (including but not limited to hostile attack, blockade, military embargo), riots, civil insurrection or acts of the common enemy, hostilities, invasion, extensive military mobilization; civil war, rebellion, revolution, military or usurped power, insurrection, civil commotion or disorder, mob violence, act of civil disobedience; act of terrorism, sabotage or piracy; plague, epidemic, pandemic, outbreaks of infectious or communicable disease or any other public health crisis, including quarantine or other employee restrictions; act of authority whether lawful or unlawful, compliance with any law or governmental order, rule, regulation or direction, curfew restriction, expropriation, compulsory acquisition, seizure of works, requisition, nationalization; act of God or national disaster including but not limited to violent storm, cyclone, typhoons, hurricane, tornado, blizzard, earthquake, volcanic activity, landslide, tidal wave, tsunami, flood, damage or destruction by lightning, drought; explosion, fire, flood, severe weather conditions at Seller's premises or outside fabrication sites, destruction of machines, equipment, factories and any kind of installation, telecommunication or electric current; general labor disturbance such as but not limited to boycott, strike, lock-out, go-slow, occupation of factories or premises; acts of Purchaser, embargo, car shortage, wrecks or delay in transportation, inability to obtain necessary labor, materials or manufacturing facilities from usual sources, faulty forgings or castings, or other causes beyond the reasonable control of Seller. In the event of delay in performance due to any such cause, the date of delivery or time for completion shall be adjusted to reflect the actual length of time necessary to properly reflect the delay without change to the purchase price. In the event of such delay or default in delivery, Seller shall complete work in progress and/or make delivery as soon as reasonably practicable. Upon completion and delivery of the Product to Purchaser, after such delay in delivery, the obligation of Purchaser for payment shall be completely reinstated.

## 6. Taxes

Prices quoted by Seller do not include any federal, state or local property, license, privilege, sales, use, excise, gross receipts or other like taxes which may now or hereafter be applicable to, measured by, or imposed upon this transaction, the Product, its sale, its value, its use or any services performed in connection therewith. Purchaser, by agreeing to purchase product from Seller, agrees to be responsible for payment of any and all taxes it may owe as a result of such purchase and to hold harmless and indemnify Seller from any such tax liability. All sales made inside Germany are subject to the standard VAT which is not included in purchase/project price at time of quote. All other sales worldwide are subject to individual local and national tax laws, and taxes related to same shall be paid by Purchaser as stated herein and above.



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## 7.1 Limited Warranty

Products have different warranty periods and are subject to the exclusions contained herein. Seller warrants that the:

**MEC & MECE (One Year) Catalyst Elements (excluding specialty catalysts) for Reciprocating Engine applications** shall achieve the emission levels defined in Section 7.2 for a period of twelve (12) months from the date the Product is complete and ready for shipment;

**MECB & MECEB (Three Year) Catalyst Elements (excluding specialty catalysts) for Reciprocating Engine applications** shall achieve the emission levels defined in Section 7.2 for a period of thirty-six (36) months from the date the Product is complete and ready for shipment;

**KAME (One Year Prorated) Catalyst Elements (excluding specialty catalyst) for Reciprocating Engine applications** shall achieve the emission levels defined in Section 7.2 for a period of twelve (12) months from the date the Product is complete and ready for shipment;

**Siloxane Gas (Designated with "SG") Catalyst Elements for Reciprocating Engine applications operating on** landfill gas, digester gas, sewage gas and other siloxane-bearing fuels, carry no warranty;

**Specialty Catalyst Elements** shall achieve the emission levels defined in Section 7.2 for a period of twelve (12) months from the date the Product is complete and ready for shipment;

**Gas Turbine Catalyst Elements** shall achieve the emission levels defined in Section 7.2, unless other terms are specified in the proposal which provides the basis for these General Terms and Conditions, for a period of thirty-six (36) months from the date the Product is placed in operation or forty (40) months from the date the Product is complete and ready for shipment, whichever shall first occur. Gas Turbine Catalyst is a custom product. Please consult your Proposal for project-specific warranties and emission guarantees;

**Housings** shall be free of defects in material workmanship for a period of twelve (12) months from the date the Product is complete and ready for shipment;

**SCR Products** shall be free of defects in material and workmanship, unless other terms are specified in the proposal which provides the basis for these General Terms and Conditions, for a period of twenty-four (24) months from the date the Product is placed in operation or twenty-six (26) months from the date the Product is complete and ready for shipment, whichever shall first occur;

**Passive Diesel Particulate Filter Products** shall be free of defects in material and workmanship for a period of 8,000 hours of operation or twenty-four (24) months from the date the Product is ready for shipment, whichever shall first occur;

**Active Diesel Particulate Filter Products included with AT-IV** shall be free of defects in material and workmanship for a period of 2,600 hours of operation, twelve (12) months from the date the Product is commissioned by an authorized MIRATECH field service representative or eighteen (18) months from the date the Product is ready for shipment to Purchaser, whichever shall first occur;

**Service** shall be free of defects of workmanship for a period of ninety (90) days from the date the final Service is provided by Seller to Purchaser;



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**Silencer Only Products** shall be free of defects in material and workmanship for a period of twelve (12) months from the date the Silencer Only Product is placed in operation or eighteen (18) months from the date the Silencer Only Product is complete and ready for shipment, whichever shall first occur;

**Vaporphase Products** shall be free of defects in material and workmanship for a period of twelve (12) months from the date the Vaporphase Product is placed in operation or eighteen (18) months from the date the Vaporphase Product is complete and ready for shipment, whichever shall first occur;

**Replacement Parts for use on previously installed Products, ("Spare Parts")** shall be free of defects in material and workmanship for a period of twelve (12) months from the date the Spare Part is placed in operation or eighteen (18) months from the date the Spare Part is complete and ready for shipment, whichever shall first occur;

**Exhaust Accessories** shall be free of defects in material and workmanship for a period of twelve (12) months from the date the Exhaust Accessory Product is placed in operation;

**All other Products** shall be free of defects in material and workmanship for a period of twelve (12) months from the date the Product is placed in operation or eighteen (18) months from the date the Product is complete and ready for shipment, whichever shall first occur;

provided Purchaser shall, within such period, notify Seller in writing of such defect(s) and fully cooperate with Seller in pursuing the remedying thereof. Should any failure to conform to this warranty be reported to Seller within said period, Seller shall, upon Purchaser promptly notifying Seller in writing thereof, correct such nonconformity by suitable repair to the Product or, at Seller's option, furnish replacement parts F.C.A. Seller's point of shipment, provided Purchaser has restored the Product to the "as shipped" condition prior to installation and has installed, maintained and operated the Product in accordance with standard industry practices and article 7.2 of these Terms and Conditions of Sale and has complied with the specific recommendations of Seller with respect to the Product including but not limited to the Seller's Installation, Operation and Maintenance Manual. In the event Seller deems the Service to be defective, Seller's obligation shall be to correct non-conformities in the manner and for the remaining period of time of the Service warranty period.

Accessories or other parts of the Product furnished by Seller, but manufactured by others, shall carry whatever warranty, if any, the manufacturers thereof have given to Seller and which can be passed on to Purchaser. Purchaser agrees to look solely to such other manufacturers or suppliers of such accessories or parts for any warranty, repair or product liability claims arising out of the performance, condition or use of such accessories or parts. Seller agrees to cooperate in furnishing assignments of its rights thereto to Purchaser from such manufacturers and suppliers. Seller shall not be liable for any repairs, replacements or adjustments to the Product or any costs of labor performed by Purchaser without Seller's prior written approval. Seller's warranty shall expire in the event the Product is misused, neglected or operated other than for its intended purpose. Except as specifically stated herein, Seller makes no performance warranty of any kind respecting the Product except as contained in this document. The effects of corrosion, erosion and normal wear and tear are specifically excluded from Seller's warranty.

For all emissions related products, Seller's warranty shall expire in the event: an A-36 carbon steel housing provided by Seller is insulated, or has a heat shield or similar product adjustment installed, and operated with an inlet operating temperature to the housing greater than 900 deg F; or a component supplied by others that is upstream of the Seller's provided scope, damages the Seller provided scope.



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For all standalone silencers, exhaust accessories or piping, Seller's warranty shall expire in the event of either: (1) an A-36 carbon steel silencer provided by Seller is insulated (external to housing) or has a heat shield or similar product adjustment installed and operated with an inlet operating temperature to the housing greater than 1100 deg F for a period of greater than 500 hours per year; (2) an A-36 carbon steel silencer with internal insulation is operated with inlet temperature to the housing greater than 1100 deg F; or (3) an Aluminized steel silencer with internal or external insulation, a heat shield or similar product adjustments installed and operated with an inlet operating temperature to the housing greater than 1100 deg F.

Any damage or defects to the Products caused by the acts or omissions of others after receipt of the Product but prior to commissioning or during the warranty period are not warrantable events and are specifically excluded from this warranty.

Correction by Seller of non-conformities, whether patent or latent, in the manner and for the period of time provided above, shall constitute fulfillment of all liabilities of Seller for such non-conformities, whether based on contract, warranty, negligence, indemnity, strict liability or otherwise with respect to or arising out of the Product.

## 7.2 Limited Warranty, Conditions

Throughout the Warranty Period, Seller warrants that the Product will achieve the emissions levels set forth in the Proposal referenced in and attached to the Contract between Seller and Purchaser, subject to the conditions that:

- a. the Product is operated and maintained at all times in accordance with MIRATECH's written instructions (including but not limited to Seller's Installation, Operation and Maintenance Manual);
- b. the Purchaser's equipment is operated and maintained at all times in accordance with all manufacturer's instructions and guidelines;
- c. the Purchaser's equipment, during operation, shall never exceed the raw emission rate set forth in the Proposal;
- d. the Purchaser's equipment shall be operated within the temperature limits stated in the Proposal;
- e. the Purchaser's equipment, during operation, shall never exceed the exhaust flow rate stated in the Proposal;
- f. the Purchaser will operate the equipment so the engine emissions & temperature are as stated in the proposal and:
  1. the NO<sub>x</sub>, CO, VOC/NMNEHC, O<sub>2</sub>, and PM<sub>2.5</sub> will not fluctuate more than 2% from the Proposal value and,
  2. the Exhaust flow rate will not fluctuate more than 2% from the Proposal value and,





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3. the Exhaust temperature into the catalyst will not fluctuate more than 10°F from the Proposal value;

g. For catalyst applications in gas turbine, HRSG, and industrial boiler systems:

1. Seller requires that the exhaust gas velocity and concentration distribution at the entrance plane of the Catalyst be  $\pm 15\%$  RMS of the average and that less than 15% of the points measured are  $\pm 15\%$  of the average. Measurement methods shall be in accordance with EPA Test Methods #1 and #2.

2. Seller requires that the exhaust gas temperature distribution at the entrance plane of the Catalyst be  $\pm 25$  degrees Fahrenheit. Measurement locations shall be in accordance with EPA Test Methods #1 and #2.

Diesel Particulate Filter Products shall be operated and maintained at all times in accordance with the Seller's written instructions including:

i. for Passive Diesel Particulate Filter Product - the most recent version of the MIRATECH "Guidelines for the Successful Operation of Diesel Particulate Filters"; or

ii. for Active Diesel Particulate Filter Components included with AT-IV the most recent version of the AT-IV Operations and Maintenance Manual.

Vaporphase Products shall be installed, operated, and maintained at all times in accordance with Seller's written instructions. Performance levels listed in the Proposal are expected values and are not warranted, unless expressly noted as "warranted performance".

Emissions levels, temperature and flow rates from Purchaser's equipment and the Product discharge point shall be tested at the Purchaser's expense, in accordance with a mutually agreed test procedure and protocol consistent with accepted industry practices.

Purchaser will operate the engine, or cause the engine to be operated by others, other than the Seller, at no cost to and for the benefit of the Seller in order for the Seller to make adjustments and modifications to the Product.

If the above conditions are met and the Product fails to achieve the output performance stated in the Proposal within the Warranty Period, Seller will replace or modify and adjust its Product as needed to meet such output performance standards. Purchaser is required to notify the Seller in writing of the specific defect and provide Seller with complete documentation of the defect and satisfaction of all conditions, a – e, of this article.

### 7.3 Warranty Disclaimer

**SELLER MAKES NO OTHER WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER, EXPRESSED OR IMPLIED, EXCEPT THAT OF GOOD TITLE TO THE PRODUCT, AND ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED.**



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## 8. Remedies Exclusive

**KAME Catalyst Elements (excluding specialty catalysts)** - This product has a twelve (12) month prorated warranty which is defined as following: A percentage of the product replacement cost will be waived based on the following calculation. The numerator is the number of months (1-12) the product has been in service or complete and ready for shipment (whichever occurs first). The denominator is twelve (12) months. This calculation will give you the % of discount off a replacement catalyst element if a warrantable event were to occur.

**All other products** - The remedies of Purchaser set forth herein are exclusive. The total liability of Seller with respect to the performance and other matters related to the manufacture, sale, delivery, installation, repair or technical direction thereof, whether based on contract, warranty, negligence, indemnity, strict liability or otherwise, shall in no event exceed the purchase price of the particular Unit of Product upon which such liability is based, and not the aggregate of all Products covered by any agreement or document between Seller and Purchaser. Seller shall, in no event, be liable to Purchaser, any successors in interest or any beneficiary or assignee of Purchaser, for any consequential, incidental, indirect, special or punitive damages or any defect in, or failure or malfunction of, the Product, whether based upon lost goodwill, lost profits or revenue, interest, work stoppage, impairment of other goods, loss by reason of shutdown or non-operation, increased expenses of operation of Product, loss of use of power system, costs of purchase of replacement power or claims of Purchaser or customers of Purchaser for service interruption, whether or not such loss or damage is based on contract, warranty, negligence, indemnity, strict liability or otherwise. Purchaser warrants that the Product is purchased for, and will be used for, business purposes only by qualified and properly trained personnel.

## 9. Set-off

Purchaser shall not have the right to retain, back charge, or set off against any amounts which may be or become payable by it to Seller or otherwise, for amounts which Seller may allegedly or in fact owe Purchaser whether arising hereunder or otherwise.

## 10. Performance, Governing Law, Jurisdiction and Venue

The Purchaser and Seller agree that the purchase and sale of products under this Agreement shall be performed in the State of Oklahoma, and the rights and obligations of Purchaser and Seller shall be construed in accordance with and governed by the laws of Oklahoma, notwithstanding any conflict of law provisions which would have the effect of making the laws of another state applicable. The Purchaser and Seller agree that the sole and exclusive jurisdiction and venue respecting any and all disputes between Purchaser and Seller with regard to the purchase and sale of Product hereunder shall be in Tulsa County, Oklahoma.



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## 11. No Waiver

No waiver by Seller of any breach of any obligation of Purchaser set forth in the General Terms and Conditions herein shall be construed as a waiver of any succeeding breach of the same or of any covenant or condition, and in no event shall this provision itself be waived.

## 12. Invoicing and Payment

Invoicing and payment terms shall be as stated in the purchase order or other agreement between Seller and Purchaser. Terms of payment are net thirty (30) days from date of invoice, unless otherwise agreed in writing. Should a billing dispute arise, Purchaser agrees to continue business as usual with Seller, will not withhold services, and shall continue to pay all undisputed invoices. Both parties will act in good faith to resolve any billing disputes that may arise. If said billing dispute cannot be reasonably resolved between the designated project contacts for each party within thirty (30) days of the initial written billing dispute notifications, both parties agree to work in good faith to mediate with a local mediator of Seller's choice prior to seeking legal remedies in Court. It is the intent of both parties to avoid unnecessary legal fees in the resolution of any billing disputes.

### 13.1 Cancellation of Contract before Delivery for other than SCR, Diesel Particulate Filter, or Gas Turbine Catalyst Products

For standard products, a cancellation charge equal to, in the sole discretion of the Seller, not more than 50% of the original purchase price may be made for any cancellation of the Contract by Purchaser prior to Seller's delivery of the Product to Purchaser. For custom products, a cancellation charge equal to, in the sole discretion of the Seller, not more than 100% of the original purchase price may be made for any cancellation of the Contract by Purchaser prior to Seller's delivery of the Product to Purchaser. The parties agree that such cancellation charges represent Seller's liquidated damages arising out of cancellation of the Contract in lieu of actual damages, it being understood and agreed between the parties that Seller's actual damages would be impractical or extremely difficult, time consuming and expensive to ascertain. Seller's failure to impose a cancellation charge with respect to one or more cancellations by Purchaser and/or other customers shall not be deemed in any case a waiver of its right under the Contract to impose such a charge in connection with any other cancellation by Purchaser, and Purchaser may not rely on any representation of any person to the contrary.

### 13.2 Cancellation of Contract Before Delivery for SCR or Diesel Particulate Filter Products

In the event the Purchaser cancels the Contract after the date of such Contract, Purchaser agrees to pay the following charge as liquidated damages in lieu of actual damages, it being understood and agreed between the parties that actual damages to Seller would be impractical or extremely difficult, time consuming and expensive to ascertain:





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<b>% of Quoted Manufacturing Period Elapsed From Date of Contract to Time of Cancellation</b>	<b>% of Sales Price Not Including Shipping Costs</b>
0 to 33%	50%
33 to 66%	75%
66% to 100%	100%

### **13.3 Cancellation of Contract Before Delivery for GasTurbine Catalyst Projects**

Project scope may be limited to catalyst only, or may include catalyst support structures. The catalyst and the support structures are custom designed and manufactured for each project and cannot be utilized on other projects. In the event the Purchaser cancels the Contract after the date of such Contract, Buyer and Seller shall negotiate reasonable termination costs, which shall include Seller's reasonable, direct costs that have or shall necessarily be incurred as a direct result of such cancellation, plus reasonable indirect and overhead expenses, and profit. Seller's claim for such costs shall include reasonable documentation supporting such claim.

### **14. Returns**

Subject to Purchaser's payment in advance of a restocking fee, plus any associated shipping and handling costs, Seller will accept return of a standard Product (other than SCR or Diesel Particulate Filter Products) within 90 days following delivery of the Product to Purchaser if the Product is returned to Seller complete and uninstalled in new condition. The amount of such restocking fee will be determined in accordance with Seller's then current Return Material Authorization policy. Any return of a Product more than 90 days following delivery, including the terms thereof, shall be within the sole and absolute discretion of the Seller.

### **15. No Third-Party Beneficiary**

This agreement is executed and entered into by Seller and Purchaser solely for their benefit, and for no other party.

### **16. Assignment**

This Contract shall not be assigned by either party without the written consent of the other party. However, Seller may procure the delivery of the Product on its behalf by any of its affiliated suppliers.



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## **17. Agency and Representation**

The legal relationship between the parties shall be that of buyer and seller, and it shall not be understood so that either party is deemed a partner or an agent of the other party, nor will it confer upon either party the right or power to bind the other party in any contract or to the performance of any obligations as to any third party.

## **18. Conflicting Provisions**

In case of any conflict, the General Terms and Conditions contained herein shall supersede any and all specifications and/or other terms and conditions previously supplied by Purchaser in connection with or upon a letter of authorization, purchase order or any other agreement, as well as any custom, prior conduct or course of dealing. No agreement, oral representation or other understanding any way modifying or amending the General Terms and Conditions, or having the effect of enlarging the obligations of Seller hereunder, shall be binding upon the Seller unless such modification is clear, certain and in writing in the form of an amended letter of authorization, purchase order or other written agreement duly executed by Purchaser and an authorized representative of Seller.