

Eneria Sp. z o.o.
ul. Modlińska 11
Izabelin - Dziekanówek
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GENERAL TERMS AND CONDITIONS OF SALE

of parts / services by ENERIA SP. Z O.O.

I. GENERAL PROVISIONS

1. These **General Terms and Conditions of Sale**, hereinafter referred to as the '**GTCS**', govern the rules of selling parts and/or providing services by Eneria Sp. z o.o., hereinafter referred to as the '**Seller**', to a purchasing entity, hereinafter referred to as the '**Buyer**'. The **GTCS** constitute an integral part of offerings and confirmations of orders, and are binding on both Parties to an agreement, unless the Parties agree upon clearly different provisions.
2. Wherever the following terms are used herein in a capitalized form, they shall have the following meaning for the needs of the **GTCS** - unless detailed provisions stipulate otherwise:
 - a. **New Replacement Parts** - all new parts ordered by the **Buyer**,
 - b. **Remanufactured Replacement Parts** - parts remanufactured by the manufacturer (as a part of the so-called Reman or X-Change programs);
 - c. **Core** : parts used in the normal course of operation (a part removed from equipment owned by the Buyer), which may be sent to the manufacturer for the purpose of restoring the properties of a new part,
 - d. **Replacement Parts: New Replacement Parts or Remanufactured Replacement Parts**,
 - e. **Buyer** - a natural person, a legal entity or an organizational unit without legal personality who/which is a party to an **Agreement** with the **Seller** on sale of **Replacement Parts** and/or provision of **Services**,
 - f. **Manufacturer** - Caterpillar S.A.R.L. , Caterpillar Energy Solutions GmbH or another manufacturer specified in an offering,
 - g. **Seller** - Eneria Sp. z o.o. with its registered office in Łomianki at ul. Modlińska 11, Izabelin - Dziekanówek, 05 - 092 Łomianki, NIP (tax identification number) 118-13-64-018, Regon (statistical number) 013129241, KRS 0000044071;
 - h. **Service** - services provided by the **Seller** to the **Buyer**, including amongst others: inspections, repairs, overhauls, diagnostics, tests, replacement parts, technical consultancy;

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- i. **Agreement** – concurring declarations by the **Buyer** and the **Seller** concerning significant terms and conditions of **Sale of Replacement Parts** and/or provision of a **Service**,
 - j. **Order** – an order for **Replacement Parts**, a **Service**, placed with the **Seller** by the **Buyer**.
3. These **GTCS** apply to all sale agreements (including orders) concerning **Replacement Parts** and/or provision of **Services** and executed between the **Seller** and the **Buyer**.
4. These **GTCS** are the complete and sole regulation binding on the **Parties** in respect of sales of **Replacement Parts** and/or provision of **Services**. The **Parties** exclude application of any other contractual provisions (terms and conditions of sale, agreement specimens, rules and regulations etc.), in particular specimens used or created by the **Buyer**, **subject to item 5 below**.
5. The provisions of these **GTCS** may be amended by the **Parties** only in writing, or else any such an amendment shall be null and void. Provisions at variance with these **GTCS**, which are agreed by the **Parties** in the mandatory written form, shall prevail over these **GTCS** in case of any discrepancies or contradictions between such provisions and the **GTCS**.
6. When executing an Agreement with the **Seller**, the **Buyer** acknowledges that **Services** will be provided based on the procedures followed by an authorized service center of the Manufacturer, clearly specifying the manner of conduct, which the **Buyer** ordering **Service** to be provided by the **Seller** accepts herewith without reservations.

II. AGREEMENT EXECUTION / ORDER PLACEMENT (CONCERNING BOTH PARTS AND SERVICES)

1. The basis for placing an order by the **Buyer** is an offering from the **Seller** prepared in response to a request from the **Buyer**.
2. The **Buyer** shall place with the **Seller** an Order, which shall specify as a minimum: the Replacement Parts or the Service, the place of Replacement Parts delivery / Service provision, non-standard terms and conditions of Replacement Parts delivery / Service provision, contact data of the **Buyer**, i.e. name and surname / company name, address / registered office, NIP (tax identification number), KRS (National Court Register) number, full name, phone number and e-mail address of the person to be contacted in

www.eneria.pl

Eneria Sp. z o.o. registered at the Regional Court for the capital city of Warsaw under KRS No. 0000044071
Maritime Branch: ul. Jaśkowa Dolina 132, Skwer Morena, premises No.10, 80-286 Gdańsk, phone: +48 58 762 84 70, fax: +48 58 762 84 79
Service Branch: ul. Sielecka 63, building A, 42-500 Będzin phone: +48 32 674 27 56, fax: +48 32 674 28 56
NIP (tax identification number): 118-13- 64-018, REGON (statistical number): 013129241, Share capital: PLN 280,000.00

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matters related to Order filling, Offering number (where applicable), type and number of Replacement Part. The **Buyer** shall place an order using its own form or a form prepared by the **Seller**. An Order signed by an individual(s) authorized to represent the **Buyer** shall be sent by the **Buyer** to the **Seller** immediately by e-mail, by facsimile, or by post.

3. An agreement is executed when the **Seller** confirms in writing acceptance of an order for filling. Confirmation of order acceptance for filling shall be sent to the **Buyer** by e-mail to the number / e-mail address specified in the order. Any provided for in the law possibilities to tacitly (impliedly) accept an Offering or an Order are hereby excluded.
4. Any and all agreements, assurances, pledges and guarantees made orally in relation to the execution of an Agreement, placement of an Order, making of an Offering or acceptance of an Order shall not be binding.
5. Any declarations of the Parties, including in particular the Order, the Offering, Order acceptance and confirmation of the terms and conditions specified in Order acceptance document shall be delivered to the other Party in writing, by post, by fax, or by e-mail.

III. ORDER FOR REMANUFACTURED REPLACEMENT PARTS

1. If an **Agreement for Remanufactured Replacement Parts** is executed, the **Buyer** shall return the **Core** within two (2) weeks from the Agreement execution date. The **Buyer** shall return the Core to the address specified by the **Seller** in the **Agreement**.
2. The **Buyer** shall make a remanufacturing fee in the amount specified in the **Agreement or in the offering**. The fee shall be transferred in money to the bank account specified in the **Invoice**.
3. The **Seller** will have the right to withhold the relevant remanufacturing free in whole or in part in a situation where at least one of the following circumstances occurs: (i) the Core is not returned within the time limit provided for in Section III(1) of the **GTCS**; (ii) the core does not show the required features of a returnable item, which means, amongst others, that the Core has not been cleaned or its damage resulted from reasons other than normal use, or the **Manufacturer** finds that the Core may not be remanufactured.

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IV. COLLECTION OF REPLACEMENT PARTS AND ACCEPTANCE OF SERVICES

1. **Replacement Parts shall be collected** from the **Seller's** warehouse in Poland, or shall be sent by courier service to the address of the entity that placed an Order, as specified therein. Collection of **Replacement Parts** by the **Buyer** from the **Seller's** warehouse will be done on an EX works (Incoterms 2010) basis, unless the Parties agree upon otherwise. Sending **Replacement Parts** by courier service will be done on the DDP (Incoterms 2010) basis.
2. Except for deliveries to destinations situated outside the Republic of Poland, **Replacement Parts** may be delivered to the **Buyer** through the agency of a freight forwarder / carrier, if the **Agreement** so stipulates. If that is the case, the **Replacement Parts** are sent at the cost and risk of the **Buyer**, and the risk of accidental loss or destruction of a **Replacement Part** is transferred to the **Buyer** when the **Seller** releases the **Goods** to the freight forwarder or carrier (Incoterms 2010 DDP).
3. The completion time for **Orders** for **Replacement Part** and for delivery of **Replacement Part** is specified for illustrative purposes only and is not binding on the **Parties**. Delays in filling **Orders** for **Replacement Part** or in delivery of **Replacement Part** will not provide basis for annulling and/or cancelling the **Order**, and may not provide basis for any compensation.
4. The **Replacement Part** collection time is the date of **Replacement Part** collection: (i) by the **Buyer** in accordance with item 1 above, (ii) from the freight forwarder / the carrier in accordance with item 1 above, (iii) in a situation where the Replacement Part is not collected in the circumstances described in item 1 above, the collection date shall be the day when the **Buyer** receives a notification that the **Replacement Parts** are ready for collection. Collection from a warehouse will be confirmed with a relevant report.
5. The **Service** provision date shall be the **Services** completion date confirmed in the External Service Sheet or in another type of report issued by the **Seller** and signed by the **Buyer**, or a later date if a given Service requires consultation with the **Seller**.
6. Complaints concerning the quantity of collected parts may be filed only in a situation where the collected parcel showed no signs of tampering on the outside. The complaint referred to in the previous sentence should be filed in writing after the missing quantity is noticed, not later than within 2 business days from the goods reception date. The complaint should be accompanied by a prepared by a commission act of acceptance showing missing quantities, together with a copy of the relevant waybill, and the sale invoice or other documents accompanying the parcel, that is specifications or a shipping note.

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7. If the parts are delivered to the **Buyer** at the cost and risk of the **Seller**, the **Buyer** shall report in writing, in an act of acceptance, any evident defects of and damage to the delivered parts, as well as any missing quantities of delivered parts, or else the **Buyer** shall forfeit the right to file a complaint concerning defects, damage or missing quantities. If that is the case the **Buyer** shall send the original waybill together with an act of acceptance showing the defect or missing quantities, signed by the carrier and confirming the occurrence of damage during transport.

V. OWNERSHIP RIGHTS TO REPLACEMENT PARTS

1. **Replacement Parts** being the subject of an **Agreement** shall remain the property of the **Seller** until the **Buyer** pays the entire price (Article 589 of the Civil Code).
2. Upon physical release of a **Replacement Part**, the **Buyer** assumes an obligation to cover all the costs related to the maintenance, operation and use of the released **Replacement Part**, and to use the **Replacement Part** in accordance with its intended purpose.
3. If the price payment deadline is missed, the **Seller** may demand that the **Buyer** return the **Replacement Part** immediately. If that is the case, the **Seller** will be entitled to claims for wear and tear or damage to the **Replacement Part** caused by the **Buyer**, and to remuneration for the use of the **Replacement Part** by the **Buyer**, for a period counted from the date of physical release of the **Replacement Part** from the **Seller's** warehouse to the **Buyer** or to a freight forwarder / carrier, in an amount equivalent to 10% of the total price of the **Replacement Part**, as stipulated in the **Agreement**, for each commenced month of use of the **Replacement Part**, increased by the VAT due.
4. The cost of returning the **Replacement Part** to the **Seller** shall be borne by the **Buyer**.
5. In other cases a **Replacement Part** may be returned within 30 days, but the **Buyer** shall pay a handling fee in an amount equivalent to 10% of the **Replacement Part** value. **Filters**, rubber components, seals, as well as electronic or other parts specified in the offering as 'N-R' (not return) may not be returned.

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VI. PRICE / PAYMENT TERMS

1. The price and the payment conditions will be stipulated in an agreement or in order confirmation by the **Seller**.
2. The **Buyer** shall provide the **Seller** with **Buyer's** data required for issuing a VAT invoice in accordance with applicable laws.
3. VAT invoices shall be issued in the currency stipulated in the Agreement and in these GTCS, pursuant to a relevant report. The price of a **Replacement Part** / remuneration for a **Service** shall be increased by VAT, as per the rate applicable on the invoice issuance date.
4. In a situation where an agreement/an order stipulates a gross price, the price will be changed if the goods and services tax (VAT) rate is changed, following the rules arising from regulations amending the Act on Goods and Services Tax (VAT), or secondary legislation adopted pursuant thereto.
5. The **Buyer** shall make payment for the parts/service in accordance with the executed agreement/order.
6. In a situation where a confirmation provides for an advanced payment for the **Seller**, the amount paid by the **Buyer** is taken on account of the price.

If there is a delay in making the advance payment, the **Seller** will have the right to postpone the date of part delivery and/or service provision until the **Seller's** bank confirms reception of the advance payment.

The **Seller** declares that it is an active payer of the goods and services tax (VAT) registered under NIP (tax identification) number: **1181364018** and VAT EU number: **PL1181364018** assigned to the **Seller** for the purpose of conducting intra-Community transactions.

7. The date of payment is the date when the **Seller's** bank account specified in the invoice is credited. Before the entire price for **Replacement Parts** and/or remuneration for **Service** is paid:
 - a. the **Buyer** shall not transfer the ownership of the **Replacement Part** free of charge or against remuneration, or provide the **Replacement Part** as a collateral, or move the **Replacement Part** outside the territory of the country specified in the **Agreement** as the place of delivery;

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- b. In case the payment of the entire amount due or a part thereof is delayed, the **Buyer** shall pay statutory interest to the **Seller**.
- c. In case the payment of the entire amount due or a part thereof is delayed, the **Seller** may refuse to exercise the rights arising from the guarantee until the entire price is paid.
- d. Filing a complaint will not entitle the **Buyer** to withhold payment of the price for the parts/service or for a part thereof.
- e. If the **Buyer** does not make payment in accordance with the agreement/order, the **Seller** may initiate debt collection proceedings or withdraw from the agreement/order, and may demand that the **Buyer** return the parts for which the **Buyer** failed to pay.
- f. In a situation where debt collection proceedings are instituted, the **Seller** may claim from the **Buyer** the costs incurred in relation to such proceedings.
- g. The **Seller** may also demand compensation if the goods have been consumed or damaged, and in particular when the value of parts collected by the **Seller** from the **Buyer** is lower than the price that should be paid by the **Buyer** for the received parts.

VII. LIABILITY

1. The **Seller** will be liable towards the **Buyer** for a loss only in a situation where the loss has been caused deliberately.
2. The **Seller** will not be liable for non-material and indirect losses, or for lost benefits, which the **Buyer** could claim as compensation, and in particular for losses in production, operating losses, loss of profits or benefits, commercial losses.
3. The **Seller** is not obliged to cover costs, expenses and losses resulting from: (i) improper use of a **Replacement Part** by the **Buyer**, (i) modifications or repairs of a **Replacement Part** not agreed upon with the **Seller**; the above shall apply also to **Services** provided to the **Buyer**.
4. The **Seller** will not be liable for damage to engine/equipment not related to the ordered items.
The **Seller** will not be liable for the good order or quality of re-installed components, including direct and indirect damage, and will not be liable under guarantee for services related to installation of reused components, with an assumption that the actions are taken in a diligent manner.
5. **The Parties exclude the Seller's liability for benefits lost by the Buyer .**

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6. The **Seller** will be liable solely for the scope of work specified in the Order, and for consequences of such work occurred through the fault of the **Seller**; in no case shall the Seller be liable for other accompanying damages, occurred abnormalities etc. which were not related to the ordered items, for the condition of engine and for the condition of parts not included in the **Order**.
7. The **Buyer** shall pay to the **Seller** remuneration in accordance with the provisions of the agreement/order, and if this condition is not met, it shall cover the costs incurred by the **Seller**, including the costs of debt collection.
8. The **Buyer** shall collect the object of the agreement / the ordered items in accordance with the accepted provisions of the agreement/order.
9. The **Buyer** shall repurchase the parts delivered by the **Seller** which cannot be used by the **Seller** for performing other work, in a situation where the agreement is terminated or where the **Buyer** or the **Seller** withdraws from the agreement / the order for reasons attributable to the **Buyer**.

VIII. GUARANTEE / STATUTORY WARRANTY

1. The **Buyer** hereby acknowledges that the guarantee for the ordered **Replacement Parts** is granted on the terms conformant with the guarantee granted by the **Manufacturer**. (link.eneria.pl)
2. The scope of guarantee covers only the original parts and components of a **Replacement Part**, on the condition that the **Replacement Parts** will be used and maintained in accordance with recommendations from the **Manufacturer** and/or the **Seller**.
3. Under the guarantee, the **Seller** shall remove physical defect from the **Replacement Part** or shall supply a suitable **Replacement Part** free of defects, if the defects becomes apparent within: (i) for a **Replacement Part** - six (6) months from the **Replacement Part** collection date, (ii) for **Services** - within 6 months from the Service provision date. If the **Seller** replaces a **Replacement Part** with a new one, the used part subject to replacement will become property of the **Seller**. If the rights granted under guarantee covering **Replacement Part** are exercised, the guarantee provider will not be liable for installation of new/remanufactured parts, or for other accompanying services.

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4. The **Seller** shall remove physical defects from a **Replacement Part**, which occurred for reasons inherent in the **Replacement Part**, particularly those caused by imperfection of materials of which the **Replacement Part** was made, and from incorrect workmanship of the **Replacement Part**. The above does not apply in a situation where defects result from circumstances for which the **Manufacturer** bears no responsibility.
5. The guarantee for replacement parts does not cover the costs of delivery of a defective **Replacement Part** to the place of repair or of replacement with a new one, the costs of returning a **Replacement Part** or a **Replacement Part** to be replaced to the **Seller / Manufacturer**, the costs of repair, the costs of installation, the costs of accommodation and travel borne by the **Seller's / Manufacturer's** staff. **Engine/Unit** shutdown, time of repair or replacement, costs of transport, removal and reinstallation, or costs resulting from damage to adjacent systems shall in no case provide basis for payment by the **Seller** of any compensation to the **Buyer**.
6. The **Manufacturer's** liability under guarantee shall not cover in particular: (i) replacement with new ones or repair of parts subject to wear and tear during normal use of a **Replacement Part**; (ii) defects not related to a structural defect in a **Replacement Part**; (iii) defects related to improper installation of a **Replacement Part**; (iv) defects caused by performed by the **Buyer** repairs, modifications or installations of additional parts not sold by the **Manufacturer** – in a situation where such actions have not been previously agreed upon with the **Manufacturer** in a mandatory written form; (v) defects arising from normal consumption or wear and tear of a **Replacement Part**; (vi) defects arising from the use of a **Replacement Part** by the **Buyer** in a manner contradictory to its intended purpose; (vii) defects arising from incompetent, careless use of an item by the **Buyer**, (viii) defects occurred as a consequence of purely accidental events, or resulting from a force majeure event, (xi) replacement of parts or making repairs in relation to normal wear and tear of a **Replacement Part** or required as a consequence of neglect, lack of supervision over or maintenance of a **Replacement Part**, or use thereof in a way that is at variance with recommendations from the **Manufacturer** or the **Seller**.
7. Services resulting from the application of the guarantee will generally be provided at the **Manufacturer's / at the Seller's**, after the **Buyer** returns a **Replacement Part** and demands action under guarantee. A claim under guarantee will be considered only after the defectiveness of the part or components returned to the **Seller / the Manufacturer** is verified.
8. Unless the **Seller** gives prior written consent to other conditions, the guarantee will apply only in Poland.

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9. The choice between repair and replacement under warranty, and also regarding the details of performance and other actions, will be made solely by the **Seller**.
10. A repair or replacement of parts under guarantee will not extend the guarantee period for other parts, components or pieces of equipment not covered by a given repair under guarantee.
11. None of the certificates, approvals, declarations of conformity or other documents describing the quality, parameters and technical properties of goods, as provided by the **Seller** together with a **Replacement Part**, constitutes confirmation by the **Seller** of the data contained therein, and thus such documents do not constitute assurance that the **Replacement Parts** meet the criteria specified therein. The provided documents are in each case only information from the **Seller** that according to a declaration by **the Manufacturer**, the **Replacement Parts** have been manufactured to the criteria specified in the documents.
12. The application of regulations concerning statutory warranty covering defects is hereby excluded.
13. After the lapse of the guarantee period and within the scope not covered by guarantee, the **Seller** offers provision of chargeable service for the parts delivered and/or services provided by the **Seller**, in accordance with the terms and conditions stipulated in a separate agreement.

IX. SAFETY

1. The **Buyer** shall provide information on OHS conditions before work is commenced, and shall make sure that the working conditions for the **Seller** are conformant with generally applicable OHS regulations.

X. FORCE MAJEURE

1. The **Seller** will not be liable towards the **Buyer** for delays in fulfillment of the **Seller's** obligations caused by a force majeure event.

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2. A force majeure event shall be held to mean any and all causes not foreseen by the **Seller** and remaining beyond the control of the **Seller**, which prevent fulfillment of the obligations arising from an Agreement in whole or in part, such as: disasters, floods, strikes, civil commotion, warfare, actions taken by government agencies in the area of granting import and export licenses, amendments to applicable laws.

XI. COMPANY SECRET

1. Throughout the term of an **Agreement** and after its expiry, the **Buyer** shall keep in strict secrecy, and shall not hand over, disclose or use without prior written consent from the **Seller**, any confidential information constituting company secret of the **Seller**, within the scope stipulated in Article 11 of the Act of 16 April 1993 on counteracting unfair competition.
2. In addition, the **Buyer** shall not, throughout the term of the **Agreement** and after the expiry thereof, disseminate, disclose or use information which does not constitute company secret of the **Seller**, but whose dissemination, disclosure or use could in any way hurt the **Seller's** reputation or cause other harm to the **Seller**.
3. The obligation referred to above shall not apply to information which:
 - a. had been legitimately known to the **Buyer** before the disclosure thereof by the **Seller**,
 - b. were transferred by the **Seller** without any limitation to any other person or entity,
 - c. has been independently obtained by the **Buyer** without using or relying on confidential information,
 - d. is commonly known or has been disclosed to the general public through no breach of this confidentiality clause,
 - e. could have been legally obtained by **Buyer** from a third party.

XII. ASSIGNMENT - SUBCONTRACTING

1. An assignment of rights and obligations arising from an **Agreement** shall require consent of the other **Party**, which shall be given in writing or else shall be null and void.

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2. The **Seller** may fulfill its contractual obligations through subcontractors.

XIII. APPLICABLE LAW – DISPUTES

1. Matters not regulated with an **Agreement** and with these **GTCS** shall be subject to the relevant provisions of commonly applicable Polish law.

The **Parties** shall resolve amicably any disputes that may arise during **Agreement** performance, and if no agreement can be reached, the **Parties** shall unanimously refer such disputes to a competent common court for resolution.

XIV. FINAL PROVISIONS

1. The titles of particular sections of these **GTCS** have been introduced for convenience only and are of no legal significance.
2. If any provision of the **GTCS** turns out to be invalid or ineffective, it shall not impact the validity and effectiveness of the other provisions. If that is the case, the **Parties** shall adopt provisions that will effectively reflect the intent of the **Parties**.
3. These **GTCS** have been adopted by the Eneria Sp. z o.o. company on 03.04.2017.