

Trans Marine Propulsion Systems

GENERAL TERMS AND CONDITIONS for the SALE of SPARE PARTS

1. GENERAL

1.1 The following general conditions are valid for all tenders and sales agreements unless otherwise expressly confirmed in writing by Trans Marine Propulsion Systems (hereinafter referred to as "TMPS")

2. TENDERS AND ORDER ACKNOWLEDGEMENTS

2.1 Tenders are submitted subject to the goods being unsold, and become void if they have not been accepted by the customer within 30 days of the date of the tender. Accepted tenders are normally confirmed by TMPS by means of order acknowledgements. Possible complaints by a customer concerning discrepancies in the order acknowledgement must be raised immediately upon receipt of the order acknowledgement.

2.2 Orders from customers are only binding on TMPS after a written order acknowledgment has been issued and only on the conditions stated in the order acknowledgment

3. SPECIFICATIONS AND PRICES

3.1 All information on weight, dimensions, capacity, price, technical and other data stated in the catalogues, prospectuses, circulars, advertisements, illustrated matter and price lists is to be considered approximate. Such information is only binding to the extent stated in the order acknowledgement or in other agreements expressly referring to such information.

3.2 All sales are made at the prices valid on the date of TMPS' tender or the date of TMPS' order acknowledgement

3.3 Unless otherwise agreed in writing, delivery is made "ex works" in accordance with Incoterms 2000, but the delivery price is exclusive of packing, which will be charged extra.

4. TIME OF DELIVERY

4.1 The time of delivery or completion stated by TMPS is approximate unless TMPS has expressly guaranteed delivery or completion at a definite time. Such guaranteed delivery or completion at a definite time is subject to the customer's fulfillment in due time of his contractual obligations.

4.2 If a definite time of delivery or completion has been expressly agreed upon in writing, such time of delivery or completion is always stated with reservation for delays due to labor conflicts or other reasons beyond TMPS' control. The time of delivery or completion will be deferred, if necessary, for a period corresponding to the duration of such delay. Delivery or completion postponed for the reason referred to here shall, in every respect, be considered as having been affected in due time.

4.3 If a delay in delivery or completion, caused by reasons as stated in 4.2 can be expected to last longer than 3 months, the customer, as well as TMPS, shall be entitled to cancel the agreement without paying compensation.

4.4 If the delay is caused by reasons other than stated above, the customer is only entitled to cancel the agreement if the delay can be considered essential and if TMPS has not affected delivery 30 days at the latest after having received a written demand to this effect.

4.5 In the event that the agreement is cancelled according to 4.3 or 4.4 above, TMPS shall repay any payments made by the customer, and the customer shall return any goods already delivered. Beyond this, no claim whatsoever, on account of a delay, can be accepted for compensation for loss of earnings or time or any other losses, irrespective of whether the responsibility for the delay lies with TMPS.

5. TERMS OF PAYMENT

5.1 Unless otherwise expressly agreed in writing, payment shall be affected net cash no later than 30 days after the date of the invoice.

5.2 If the dispatch of goods is postponed at the request of the customer, payment shall, however, be made 30 days at the latest after the customer has been informed that the goods are ready for dispatch.

5.3 If payment is not made when due – see 5.1 and 5.2 – interest will accrue on the overdue amount at 1 ½ per cent per each month commenced.

5.4 The customer is not entitled to set-off-payment against a claim which the customer considers to have against TMPS in respect of the consignment concerned or any other consignment.

5.5 In each case where some form of credit is granted, the sale will be considered as having been made with TMPS retaining the ownership until full payment has been affected. If the customer does not pay when due, TMPS is entitled to take back the goods without a court judgment in accordance with the valid rules of law on this point.

6. RESPONSIBILITY FOR DEFECTS AND SHORTAGES

6.1 Claims must be made to TMPS within 14 days at the latest after the time when the customer discovered or ought to have discovered the defects or shortages concerned. Furthermore, goods delivered in error shall be returned unused in an undamaged condition so as to reach TMPS within 4 months of the date of the invoice.

6.2 In the event that goods delivered by TMPS prove unusable owing to faulty material or manufacture, TMPS undertakes to replace or repair such goods free of charge during the first 6 months after the date of delivery. It is a condition that the goods have been operated under normal operating conditions in accordance with TMPS' instructions.

6.3 TMPS's liability is limited to the above and thus does not cover, inter alia: wear, damage caused by carelessness or negligence by the customer or by personnel in the service of the customer, damage caused by material supplied by the customer himself, or damage caused during construction/assembly carried out by the customer without the written approval of TMPS. TMPS reserves the right to examine the goods concerned in its own workshop before the question of liability is finally decided upon.

6.4 The obligation of TMPS to repair or replace defective goods pursuant to 6.2 shall be fulfilled by delivery ex. works of the replaced or repaired goods. The forwarding and returning of the goods are for the customer's account and risk. If, following an agreement with TMPS, a guarantee repair is carried out in a non-TMPS workshop, TMPS is only obliged to reimburse the repair costs with the amount it would have cost TMPS to carry out the repair in its own workshop.

6.5 If the goods supplied by TMPS are mounted in an engine for which the customer has also used non-OEM parts (i.e. parts which have not been manufactured by original equipment manufacturer) TMPS does not assume any liability for any damage which may arise.

6.6 For repaired and reconditioned goods, TMPS undertakes the same liability as stated in 6.2 – 6.5, with the exception, however that repaired and reconditioned goods will not be replaced by new parts.

6.7 Except as stipulated in 6.1 – 6.6 above, TMPS shall not be liable for defective goods supplied. This applies to any loss the defect may cause, including loss of production, loss of profit or other indirect loss. This limitation of TMPS' liability shall not apply if TMPS has been guilty of gross misconduct.

7. REPAIR AND RECONDITIONING

7.1 For goods which are sent to TMPS for repair, reconditioning, assembling, or other processes, the forwarding to and from and the storage at TMPS' workshop shall be for the account and risk of the customer.

7.2 If, in the opinion of TMPS, any goods referred to in 7.1 are not suitable for repair or reconditioning, they will be scrapped without charge to the customer as TMPS' examination costs will be considered to be covered by the scrap value of the goods.

If the customer desires to have such unsuitable goods returned, this must be previously informed to TMPS in writing. Such goods will then be returned for the customer's account and risk, and MBD's expenses for the examination of the goods will be charged to the customer.

8. LIABILITY FOR DAMAGE CAUSED BY THE PRODUCT (PRODUCT LIABILITY)

8.1 TMPS shall be liable for damage to property caused by goods sold by TMPS only if it proved that such damage was caused by negligence on the part of TMPS or others for whom TMPS is liable.

8.2 TMPS shall in no circumstances be liable for loss of production, loss of profit or other consequential damage or indirect loss.

8.3 To the extent TMPS might incur product liability vis-à-vis any third party, the customer shall indemnify TMPS as far as TMPS' liability has been limited by 8.1 – 8.2

8.4 The above limitations in TMPS's liability shall not apply where TMPS has been guilty of gross misconduct.

9. LAW AND DISPUTES

9.1 TMPS's tenders and all contracts with customers, including the present General Terms and Conditions shall be interpreted according to Florida State law.

9.2 If a difference of opinion cannot be settled by the parties themselves, the dispute shall not be referred to a court of law, but shall be decided by arbitration in accordance with the rules and procedure of the American Arbitration. The arbitration proceedings shall take place in New York City, New York.

9.3 The above will not, however prevent TMPS from choosing, at its own discretion, to bring an action against a customer in the ordinary courts of law having jurisdiction over such a case.