

Terms of sale and delivery

West Diesel Engineering A/S

1. General

Unless otherwise agreed in writing, the general terms of sale and delivery outlined below (hereinafter referred to as "the Terms") shall govern all supplies made by West Diesel Engineering as, H.E. Bluhmesvej 6, DK-6700 Esbjerg (hereinafter referred to as "the Seller") to the Buyer.

The Buyer's general purchasing conditions, irrespective of whether these form part of the Buyer's sales documents, including the acceptance, shall not be taken into account. The above shall apply irrespective of when such purchasing conditions appear.

2. Quotation, order and acceptance

Written quotations made by the Seller which do not stipulate any specific period of time within which acceptance must be given shall lapse unless absolute and unqualified acceptance is received by the Seller within 30 days from the date of the quotation. Verbal quotations shall be accepted immediately. Quotations made by the Seller are subject to the goods being unsold. The Seller's services shall only include what appears from the order confirmation/invoice. Any agreed changes or addendums to the original contract shall not be binding on the Seller without the Seller's written confirmation. It shall be possible at any time to demand that security for the full amount be provided – e.g. by way of a bank guarantee – before delivery/erection is commenced.

3. Prices

All prices shall be stated in Danish kroner (DKK) or EUR exclusive of VAT, freight, customs duties, direct and indirect taxes. Should the prices of the quoted or agreed supply change due to changes in purchase prices, raw material prices, exchange rates, freight, customs duties, direct and indirect taxes and the like, the Seller shall be entitled to change the prices quoted to and/or agreed with the Buyer. Unless otherwise agreed, the price shall be ex warehouse.

4. Payment

Unless otherwise agreed in writing, payment shall be effected in compliance with the terms of payment printed on the invoice. In case of late payment, default interest of 2 per cent per month or part thereof shall be charged as from the due date. Payment cannot be effected by a set-off if the counter claim is in dispute. Failure to observe the Seller's terms of payment shall be considered as material breach of contract entitling the Seller to stop any further supplies to the Buyer and to demand that any outstanding amount, due or not due, be paid immediately. A reminder fee shall be charged for each reminder forwarded.

5. Changing or cancelling orders

Should the Seller approve that the order is changed or cancel-led, the Buyer shall be under an obligation to pay the expenses incidental to the change or cancellation. In the event of cancellation in full or in part, the Buyer shall moreover compensate the Seller for any lost profit.

6. Product information and changes

Data included in product information shall only be binding in so far as the Seller makes explicit references thereto in writing. The Seller shall reserve the right to change all product specifications without notice if such changes can be made without any considerable inconvenience to the Buyer. Drawings, specifications and the like supplied by the Seller before or after the conclusion of the contract shall remain the Seller's property and shall not be allowed to be passed on without the Seller's written consent.

7. Delay on the part of the Buyer (clauses 19 and 20 of NLM 94)

If the Buyer finds that he will be unable, within the agreed time, to carry out the measures which he is under an obligation to carry out and which is necessary for the completion of the supply, including the obligations pursuant to clauses 9, 12 and 13 of NLM 94, or if such delay on his part seems likely, he shall, without undue delay, by written notice inform the Seller thereof. He shall also state the reason for the delay and, if possible, how long the delay will last.

If the Buyer is in delay with respect to carrying out his obligations in accordance with the preceding paragraph, he shall nevertheless effect any payment conditional on the Seller's services as if the delay had not occurred.

If the Buyer is in delay with respect to carrying out his obligations or otherwise fails to perform his obligations, including those pursuant to clauses 9, 12 and 13 of NLM 94, he shall reimburse any additional cost thereby incurred by the Seller in addition to any claims made in pursuance of clause 23(2) of NLM 94. The Seller shall be entitled to a reasonable extension of the time of delivery as a consequence of the Buyer's breach of contract. Should the Seller demand such extension, he shall, without undue delay, inform the Buyer in writing thereof. Should the breach be material, the Seller shall be entitled to refuse to continue the delivery and the erection until the breach has been remedied. If the Buyer has not remedied the breach within one month after having received a written notice from the Seller stating that the Seller intends to exercise his right to terminate the contract, the Seller shall be entitled to terminate the contract by forwarding a new written notice to the Buyer. If

the contract is terminated, the Seller shall be entitled to claim damages from the Buyer for any loss suffered by the Seller as a result of the Buyer's breach of contract. Such damages shall not exceed the contract price.

8. Dispatch and delivery

Time and place of delivery shall be as stated in the order confirmation. Unless otherwise agreed, the terms of delivery shall be ex warehouse so that the Buyer bears the risk and the costs in connection with the supply.

9. Time of delivery

The time of delivery shall be fixed by the Seller to the best of his judgment in accordance with the conditions existing at the time of making the quotation and/or the contract. Unless otherwise agreed in writing, an extension of the delivery time by 10 working days shall in every respect be considered as timely delivery, which means that the Buyer cannot for this reason exercise any rights against the Seller. The Seller shall, without undue delay, inform the Buyer of any changes in the time of delivery.

10. Liability for property damage before the Buyer's taking over of the supply

The Seller shall be liable for any damage to the supply occurring before the risk has passed to the Buyer. This shall apply irrespective of the reason for the damage unless the damage is caused by the Buyer or some other person for whose actions the Buyer is liable. Should the Seller not be liable for the damage to the supply pursuant to this Clause, the Buyer shall nevertheless be entitled to demand that the Seller makes good the damage at the Buyer's expense.

The Seller shall only be liable for damage to the Buyer's property before the Buyer's taking over of the supply if it can be proved that the damage in connection with the completion of the supply has been caused by negligence on the part of the Seller or some other person for whose actions the Seller is liable. However, the Seller shall under no circumstances be liable for any operating loss, loss of profit or other consequential financial loss.

11. Defects and complaints

The Buyer shall immediately on delivery and not later than three days from receipt of the goods examine the goods sold in such a way as required by generally accepted business practice.

Should the Buyer wish to complain about a defect, the Buyer shall immediately and not later than two weeks from the time when the defect is or should have been detected notify the Seller in writing thereof, stating what the defect is about. Such notice shall describe how the defect manifests itself. If there is reason to believe that the defect may cause damage, such notice shall be given immediately.

In the event that the Buyer has or should have detected the defect and the Buyer fails to complain as specified, it shall not be possible for the Buyer to submit a claim with respect to the defect at a later time.

If the Buyer fails to complain about a defect to the Seller within twelve months from the date of delivery, it shall not be possible for the Buyer to submit a claim with respect to the defect at a later time. If the supply is used more intensively than agreed or more intensively than presumed at the conclusion of the contract, this period shall be shortened proportionately.

The Seller shall be under an obligation to remedy all defects due to faults in construction, material or workmanship. Defective goods shall, at the Seller's option, be repaired or replaced or the Buyer shall be credited with the purchase price of the defective goods. The Seller shall, for a period of twelve months, assume the same obligations for the parts of the supply which have been repaired or replaced as those applying to the original supply. For the other parts of the supply, the period mentioned shall only be extended by the time period during which it has been impossible to use the supply due to defects. Notwithstanding the above, the Seller's liability for defects shall not apply for any part of the supply for more than 24 months from the Buyer's taking over of the supply. Any change to or technical modification of the goods sold without the Seller's consent shall exempt the Seller from all liability and all obligations.

No warranty shall be provided on any goods purchased or any services rendered.

The Seller's liability shall only cover defects appearing under the working conditions foreseen in the contract and during the correct use of the supply. The Seller's liability shall not cover any defects caused by material provided by the Buyer, designs prescribed or specified by the Buyer, faulty preparatory work performed by the Buyer and circumstances appearing after the Buyer's taking over of the supply, including defects caused by faulty maintenance on the part of the Buyer, changes in the supply made by the Buyer without the Seller's written consent, faulty repairs made by the Buyer as well as normal wear and tear and deterioration.

The Seller shall not be liable for other defects than those mentioned above. This shall apply to any loss caused by the defect, including operating loss, loss of profit and any other consequential financial loss. Such limitation of the Seller's liability shall not apply in case of gross negligence on the part of the Seller.

12. Retention of title

The Seller shall, with the limitations stipulated by mandatory provisions of law, retain the title to the goods sold until the entire purchase price and the expenses incurred in connection with the dispatch, delivery and insurance of the goods which are paid by the Seller on behalf of the Buyer have been paid by the Buyer, or the agreed security has been provided, and until this has taken place, the Buyer shall not be entitled to resell the goods or otherwise deal with the goods in a way that conflicts with the Seller's retention of title.

In the event that the goods sold are modified or processed, without the goods losing their distinctive features or identity, however, the retention of title shall be maintained in such a way that it covers the modified or processed goods to an extent corresponding to the value which the goods sold represented before being modified or processed.

When the Buyer has paid or provided the agreed security for all amounts due, and the title to the goods has passed to the Buyer, the Seller shall confirm this when demanded by the Buyer.

13. Limitation of liability

As far as claims concerning the Seller's performance or non-performance of his obligations are concerned, the Buyer shall be entitled to receive damages for direct loss with the following limitations:

The Seller's liability for damages shall be limited to direct damage/loss and shall – irrespective of the cause and irrespective of the nature of the claim – be limited to the highest of the following two amounts: DKK 2,000,000.00 or the amount invoiced for the service which caused the damage/loss or which is the cause of or which is directly related to the claim for damages. The Seller shall under no circumstances be liable to pay damages to the Buyer for any loss of profit, loss of savings or other indirect loss or consequential damage due to the use of the goods sold or lack of opportunity to use the goods sold irrespective of whether the Seller has been informed of the possibility of such claims.

14. Force majeure

The Seller shall not be liable to pay damages to the Buyer for loss which arise from circumstances of an unusual nature and which prevent the performance of the contract or makes the performance of the contract difficult or expensive in the event that such circumstances occur after the making of the quotation and are beyond the Seller's control, including: Labour conflicts (strikes and lockouts), fire, war, rebellion, civil unrest, unusual weather and natural disasters, currency restrictions, public seizure, import and export bans, interruption of general traffic, including supply of energy, considerable increases in prices and/or indirect taxes, exchange rate fluctuations, production and delivery difficulties due to circumstances for which the Seller cannot be blamed as well as the occurrence of force majeure and/or hardship at the relevant sub-suppliers.

15. Product liability

The Buyer shall indemnify the Seller if the Seller is held liable to any third party for such damage and such loss for which the Seller, cf. points a and b below, is not liable towards the Buyer. The Seller shall not be liable for any damage caused by the supply after the Buyer's taking over of the supply:

- to property or chattels personal occurring while the supply is in the Buyer's possession,
- to products manufactured by the Buyer or to products of which these products form part, or for any damage to property or chattels personal caused by these products as a result of the supply.

The limitations of the Seller's liability mentioned above shall not apply in case of gross negligence on the part of the Seller. In all other respects concerning product liability, the Seller shall be liable and/or responsible pursuant to the provisions on product liability included in Danish law. The Buyer shall notify the Seller immediately if any third party claims that the Buyer incurs product liability. The Seller shall under no circumstances be liable for any operating loss, loss of profit or any other indirect loss.

Should a third party bring an action against the Seller concerning product liability, the Buyer shall accept that he may be joined as a party to the action or that proceedings may be initiated against him at the court of law or the arbitration tribunal hearing the case.

16. Disputes, applicable law and jurisdiction

Disputes between the parties which cannot be settled amicably shall be decided by the Maritime and Commercial Court in Copenhagen, Denmark, or in the event that the Maritime and Commercial Court lacks the subject-matter jurisdiction to hear the case – by the City Court in Esbjerg, Denmark, under Danish law. However, Danish private international law referring to foreign law as well as the Convention on Contracts for the International Sale of Goods (CISG) shall not apply. Reference is, moreover, made to the provisions included in NLM 94 which – in so far as the Parties' contractual relationship is not governed by the above – shall apply to the Parties' business operations.