

1. INTRODUCTION

These General Terms and Conditions – Parts (2016) (the “Conditions”) shall, unless otherwise agreed in writing, apply to all sales of parts (the “Parts”) by any authorized member, subsidiary, agent or representative of Winterthur Gas & Diesel Ltd. (the “Supplier”) to a purchaser (the “Buyer”). Supplier’s offers are non-binding until accepted and confirmed by a purchase order issued by Buyer in compliance with these Conditions which is acknowledged by Supplier (any such acknowledged purchase order, a “Contract”). These Conditions shall form an integral part of the Contract. Buyer may not change or cancel any purchase order after it has been received by Supplier unless Supplier has agreed in writing to such change or cancellation.

2. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

Neither party shall copy or disclose to a third party any document or data provided by the other party without the prior written consent of the other party or use them for purposes other than those for which they were provided. Intellectual property rights associated with the Parts or any document or data provided by Supplier in connection therewith shall remain Supplier’s property. Buyer shall defend, indemnify and hold harmless Supplier against all claims, losses and damages, including reasonable attorneys’ fees, arising out of or resulting from any reuse, modification, reproduction or publication of Supplier’s intellectual property documents or data.

3. DELIVERY, ACCEPTANCE AND RETURNS

3.1 All references to trade terms shall be interpreted in accordance with Incoterms® 2010. Unless otherwise agreed in writing, the Parts shall be deemed to be sold “Ex works”. Any date or period for delivery stipulated or quoted shall be deemed to be an estimate only. Packing materials shall not be returned to Supplier. Buyer shall be deemed to have accepted the quantity and quality of the Parts delivered by Supplier as being in accordance with the Contract unless Buyer has notified Supplier of any shortages or damage within three (3) days following delivery of the Parts. No returns of Parts will be permitted or allowed by Supplier.

3.2 If Buyer anticipates that it will be unable to accept the delivery of Parts at the time set forth in the Contract, Buyer shall notify Supplier in writing stating the reason and the time when Buyer anticipates being able to accept the delivery. Buyer shall pay the part of the Contract price that becomes due at the delivery as if the delivery had taken place. Supplier may by notice require Buyer to accept the delivery within a final reasonable time. Any additional costs related to such delay shall be borne by Buyer.

3.3 The Supplier has the right to suspend the performance of its obligations under the Contract if it is reasonably clear from the circumstances that Buyer will not be able to perform its obligations as stated in the Contract.

4. PAYMENT AND OWNERSHIP

Unless otherwise agreed, payment shall be made by bank remittance in the currency and to the bank account set forth in the Supplier’s invoice within twenty (20) days following the date of the invoice. Payment shall be made in full without any set off, counterclaim or deduction. Buyer shall pay interest on overdue payments at a rate of three (3) percent per annum/pro rata from the date payment is due until the payment is received in full. Buyer shall pay Supplier all costs related to the collection of overdue amounts, including reasonable attorneys’ fees. In the event any payment is more than thirty (30) days late, Supplier shall be entitled to suspend or terminate the Contract by written notice to Buyer, and such remedies shall not be exclusive of Supplier’s additional rights under contract or law. Title to the Parts shall pass to Buyer only when payment in full has been received by Supplier. The Supplier may as a precondition for delivery of Parts, request (i) advance payment and/or (ii) that Buyer pays or provides security covering any unpaid amount already owed to Supplier or one of its affiliates.

5. WARRANTY

5.1 Supplier shall repair or replace, at its sole discretion, any defect in the Parts which appears during the warranty period as a result of defective material or manufacturing, provided that any replaced part shall upon Supplier’s request be returned to Supplier at Supplier’s cost. Buyer shall immediately take appropriate steps to prevent any defect from becoming more serious, and all warranty claims with respect to this warranty shall be made in writing without delay and not later than fourteen (14) days following discovery of such defect during the warranty period.

Buyer shall have the responsibility to establish that its claim is covered by this warranty. Replaced parts shall become Supplier’s property. Delivery of replaced or repaired parts will be made in accordance with the original Contract delivery terms.

5.2 The warranty period for the Parts begins on the date of delivery and ends six (6) months from the date when the Part is placed in service or twelve (12) months from the date of delivery, whichever occurs earlier. The warranty period in respect of parts which have been repaired or replaced under the warranty shall expire six (6) months following the date when (i) the repaired or replacement part is placed in service or (ii) upon the expiration of the warranty period applicable to the originally supplied Part as set forth above in this Clause 5.2, whichever occurs earlier. The warranty for repaired or replacement parts shall be subject to the same terms, conditions and limitations of liability as those applicable to the originally-supplied Part. Under no circumstances shall the warranty period of any part (whether as originally supplied or as repaired or replaced) extend beyond the date that is twelve (12) months following the date of commencement of the original warranty period as stipulated above in this Clause 5.2.

In case the Parts are ready for delivery but Supplier is not able to deliver the Parts due to reason attributable to Buyer, the warranty period as stated above in this Clause 5.2 shall commence from date the delivery should have taken place according to the Contract.

5.3 Supplier shall not be liable for any defect due to or arising in connection with: (1) any materials, components, tools, designs or software provided by Buyer; (2) negligence or wilful misconduct of Buyer; (3) parts, accessories or attachments other than those supplied as Parts by Supplier; (4) improper service work, installation or alterations carried out by Buyer; (5) normal wear and tear; (6) use of unsuitable material or consumables by Buyer; (7) fluctuation in the grid; or (8) any use, service or operation of the Parts which is not in conformity with manuals, instructions or specifications provided by Supplier or which is otherwise not in accordance with normal industry practice. Supplier’s warranty obligation does not include any cramage, electricity, scaffolding, docking, diving, sub-sea work, towage costs, demounting or mounting costs, expenses of Supplier’s personnel or representatives, taxes and duties, and all such costs and expenses shall be reimbursed by Buyer to Supplier when applicable. If after Supplier’s warranty investigation it is found that Buyer does not have a warranty claim within the scope of these Conditions, then Buyer shall be responsible for all applicable costs and expenses for such inspection, repaired or replaced components or other service work.

5.4 This clause 5 sets forth the only warranty applicable to the parts and is in lieu of any other warranties, guarantees, obligations and liabilities express or implied including warranties, guarantees, obligations or liabilities against non-conformity or defects. Buyer hereby waives all other remedies, warranties, guarantees and liabilities, express or implied, arising by law or otherwise (including without limitation fitness for purpose, merchantability or satisfactory quality).

6. SUPPLIER’S LIABILITY

6.1 In no event shall supplier be liable for any indirect, contingent, special, consequential or incidental damages, however caused or arising (including without limitation) for any loss of actual or anticipated profits or revenue or anticipated savings, punitive or exemplary damages, the cost of substituted equipment or parts not arising from the warranty provided herein, towage charges, pollution remediation costs, costs for docking, diving or sub-sea work, damage to any vessel, engine room or power plant site, yard or other property (including damage to goods owned by buyer), damage to any equipment or property other than the parts delivered hereunder, cost of labour for the removal or reinstallation of the equipment or parts or any part thereof, costs for any additional tests (including, without limitation, sea trials), debris removal, or for loss of time or use of any equipment, installation system, operation or service). This limitation on supplier’s liability shall apply to any liability for breach of supplier’s obligations under or in connection with the contract, whether based on warranty, failure of or delay in delivery or otherwise.

6.2 Notwithstanding any other provision of the Contract, Contractor’s aggregate liability under the Contract shall not exceed (i) in case of Parts contracted by Contractor directly with the Customer one third (1/3) of the Contract Price or (ii) two hundred thousand (200’000) Swiss Francs in all other cases.

6.3 Each party shall obtain a waiver of all rights of recourse and subrogation against the other party from its insurers as well as indemnify

and hold the other party harmless for all claims of or by either of the parties' insurers.

7. EXPORT CONTROLS

7.1 The parties agree that the Parts shall be delivered subject to all applicable export controls or restrictions imposed on technology and products by any country or organization or nation which are enforceable in the jurisdiction of Supplier, its affiliates or parent company, including Suppliers country, the United Nations, the European Union and the United States of America. Buyer acknowledges that the Parts and all related technical information, documents and materials may not be imported or exported, re-exported, transhipped, traded, diverted or transferred, directly or indirectly, contrary to such controls or restrictions.

7.2 Buyer confirms that the Parts supplied will be used solely for peaceful purposes. Buyer further confirms that the Parts will not be used in connection with, or for purposes associated with any chemical, biological or nuclear weapons, missiles or any other vehicles or vessels capable of delivering such weapons, or in support of any terrorist activity, or in connection with any other military end use. Nor will the Parts be re-sold if it is known or suspected by Buyer that it is intended to be used for such purposes. Upon request by Supplier, Buyer shall furnish Supplier with all the relevant certificates relating to export control laws, regulations and restrictions, such as, but not limited to, end-user certificates, in form and substance specified by Supplier.

8. DATA PROTECTION

The Supplier is entitled to process the personal data of the Buyer in order to perform the Contract. Furthermore, the Buyer consents in particular to the Supplier transmitting such data to third parties in Switzerland and abroad for the purpose of performing and maintaining the business relationships between the Parties.

9. SOFTWARE

If the Equipment and Services delivered by the Supplier include software, the Buyer is granted a non-exclusive right of use of the software together with the delivery item, unless otherwise agreed. The Buyer is not entitled to copy (except for archival purposes, troubleshooting or to replace faulty data carriers) or to edit the software. In particular, the Buyer may not disassemble, decompile, decrypt or reverse engineer the software without the prior written consent of the Supplier. In case of infringement, the Supplier may withdraw the right of use. For third-party software, the conditions of use of the licensor apply, and the licensor, as well as the Supplier, may also assert a claim in the event of infringement.

10. FORCE MAJEURE

Neither Supplier nor Buyer shall be liable for any failure or delay in performing its obligations hereunder, or for any loss or damage resulting therefrom, caused by or arising from an event of force majeure ("Force Majeure"), which includes without limitation, acts of God, wars whether declared or not, any events involving armaments of war, civil wars and riots, hostilities, public disorder, acts of terrorism and severe threat of terrorism, any measures taken by public authorities in connection with threat of terrorism, embargos, acts of civil or military authorities, fire, flood, accidents, strikes, failure of a subcontractor or sub-supplier to provide manpower, materials or goods caused by an event that qualifies under this Clause 8, epidemics, unusually severe weather affecting either party, or causes beyond their control.

11. SECURITY AGREEMENT

Buyer hereby grants to Supplier a continuing security interest, and when applicable a maritime lien for necessities, in and to the Parts, together with all goods into which the Parts are attached at any time, and all products and proceeds derived from the sale or lease thereof as security for the payment in full of such Parts.

12. DUTIES, TAXES, FEES AND COMPLIANCE WITH LAWS

Buyer shall pay, where applicable, all duties, withholding and other taxes, customs fees and charges and all charges and fees by a classification or inspection society. All such documentation or approvals which are required by applicable laws, and any applicable modifications of such laws, shall be the responsibility of and paid by Buyer.

13. ENTIRE AGREEMENT

These Conditions, plus the additional agreed upon terms of the Contract (relating only to price, time and location for delivery, technical specifications and quantity of Parts to be delivered) contain the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings relating to such subject matter. Any service work to be provided by Supplier to Buyer shall be in accordance with Supplier's General Terms and Conditions – Service Work (2015). If a provision of these Conditions is at variance with necessary requirements of applicable law, then these Conditions shall be deemed to be amended to the minimum extent necessary to comply with such applicable law. No terms, conditions, representations, warranties or covenants contained in any correspondence, catalogue, or in any other form shall be applicable unless incorporated herein by express written agreement of the parties hereto.

14. APPLICABLE LAW, ARBITRATION AND JURISDICTION

14.1 The Contract shall be governed by the substantive laws of Switzerland with exclusion of the conflict of law provisions in there.

14.2 Any dispute arising out of or in connection with this Contract shall be finally settled under the Rules of the International Chamber of Commerce by three (3) arbitrators appointed in accordance with the said Rules. The arbitration shall be in the English language and the place of arbitration shall be Zürich, Switzerland.

14.3 Nothing contained in this Clause shall preclude the Supplier from bringing any legal suit, action or proceedings against the Buyer in the courts of any jurisdiction where the Buyer or any of its property or assets may be found or located, and the Buyer hereby irrevocably submits to the jurisdiction of any such court.