

GENERAL TERMS OF BUSINESS

NIPPON DIESEL SERVICE GMBH/HAMBURG

I. General Information

The following terms and conditions apply for all of our offers, sales and delivery contracts and contracts for work and labour, including consulting, assembly, repairs and other contractual performances. The customer's terms of business shall not apply unless we have expressly recognised them in writing. Deviations from our terms of business, ancillary verbal agreements and assurances invariably require our written confirmation before they become valid. Any modification of the above clause stipulating written form is solely possible when made in writing.

II. Offers

1. Our offers are invariably without obligation. Orders are deemed accepted only when we have confirmed them in writing.
2. Offer documents, cost estimates, drawings, descriptions, etc. only approximately prevail, and they remain our property. They may not be made accessible to third parties without our expressed consent, nor may they be used as design or repair documents. They are to be returned to us if an order is not placed. In any event, we shall retain the copyright to the above materials.
3. In the event of repairs, the customer shall be advised on the scope thereof in accordance with our own best knowledge. However, the customer has the right to decide on the scope and advisability of repairs himself. The written order confirmation or the customer's written order shall prevail for the scope of any repairs in the absence of a confirmation.

III. Services, Deliveries and Delivery Deadlines

1. Delivery shall principally ensue ex our warehouse, Hamburg, unless otherwise expressly stipulated in writing. All goods shall be dispatched by order of the customer.
2. We shall choose the type of shipment when sending spare parts or parts required for performing repairs. Any such items shall always be sent as postage paid deliveries at the customer's own risk. Said risk shall transfer to the customer with the notice that the shipment is ready for dispatch, if shipment is delayed at the customer's own request or for other reasons for which the customer is responsible.
3. The delivery deadline or an agreed delivery date are deemed complied with if the item slated for delivery has left our plant by expiration of the same, or if we have served notice that the shipment is ready for dispatch, or if risk has transferred to the customer. Compliance with a delivery deadline or a delivery date requires that the customer fulfils his contractual obligations, in as far as the customer is under obligation to cooperate or to provide materials, or if he is required to render other performances prior to delivery (e.g., advance payment).
4. If force majeure, labour disputes or other events, which we were unable to avert despite applying reasonable diligence under the circumstance, prevent performance of our duty to supply goods or services, then the delivery deadline shall automatically extend by the duration of any such disturbance. Such disturbances shall include: disruption of the manufacturing process at a supplier's, disruption of transportation options, incorrect or non-punctual self supply, difficulties in procuring raw materials, energy shortages, official measures, discontinued production at a vendor's, regardless of whether they occur at our place of business or at a supplier's place of business. The customer is entitled to rescind the contract, following stipulation of a reasonable deadline, if he can no longer reasonably adhere to the contract under the above circumstances. We will be released from our obligation if delivery or rendering of services becomes impossible or unreasonable due to circumstances of the abovementioned nature.
5. The customer is entitled to rescind the contract in compliance with legal requirements in the event of delayed delivery or delayed service or impossibility of performance for which we bear responsibility. Customer's claims to damages based on delay or on non-performance caused by subsequent impossibility are excluded. If we perform a delivery or service late due to our own fault, and if the customer sustains damages due to the same, then the customer may claim default damages for the amount of substantiated damages, however, for a maximum of 5% of the portion of our performance which could not be placed into useful operation or service due to delay. The aforementioned exclusions and restrictions of liability shall not apply if intent, gross negligence or at least negligent infringement of essential contractual obligations is present on our part. However, liability regarding infringement of essential contractual obligation, without gross culpability, is limited to replacement of typical damages foreseeable at the time that the contract was closed.
6. We are released from the obligation to deliver or to render a service in instances when such delivery or service depends on issue of an export license and/or other official approvals and a requisite approval is not issued or is revoked through no fault of our own.

IV. Acceptance

Acceptance, as required under the law or by contract, is deemed transpired if the ordering party immediately fails to declare that it refuses acceptance after receipt of the delivered goods, under statement of grounds for refusal, or that it refuses acceptance immediately after completion of a trial run, in the event that we have taken over assembly in such latter instance.

V. Warranty, Liability

1. The customer is required to inspect received goods immediately and to immediately submit written complaints in compliance with § 377, German Commercial Code.
2. Our warranty obligation is limited to rectification or replacement delivery in the event of defects - also in the absence of warranted qualities. The warranty does not cover parts subject to wear and tear. The customer may demand a reduction in our remuneration or rescission of contract should we permit a reasonable grace period for remedy of a defect and/or replacement delivery, which the customer has set for us, to lapse in an abortive manner due to our own fault, or if such remedy or replacement has become impossible or ultimately fails.
3. We assume no liability for used products which we deliver. The same applies for defects that are traceable to materials or products supplied by the customer or traceable to a design which the customer stipulates.
4. If defects arise during operation which could cause damage to the item we deliver or have repaired were operation to continue, then the customer is required to take the endangered part out of service or to alter operation in such a manner that prevents spread of damage or occurrence of other damages. If the customer culpably fails to take the above action, then our obligation under warranty shall not cover the portion of damages which arise through customer's neglect to perform the same. Replaced parts shall become our property.
5. The customer may solely make recourse to us under our warranty obligations if he has fulfilled the agreed terms of payment, if he has informed us immediately in writing of arising defects, and if he gives us the opportunity to establish and remedy the defect. The customer is required, at our request, to send the defective part to us freight paid. He is also obligated, at our request, to install a refurbished part or delivered spare part. The customer shall bear the costs of removing and installing parts which he performs.
6. The customer is authorised to remedy the defect himself, at our expense, if we consent to the same or if immediate remedy of a defect is necessary in order to prevent proportionately greater damage. We shall refund the customer's costs arising from the above, provided that he is entitled to remedy a defect himself. However, we shall solely refund the amount of cost which would have arisen for us had we performed the same work in compliance with the foregoing provisions. Additional warranty on our part shall lapse if

the customer remedies the defect himself without being entitled to perform the same in accordance with these terms of business. The customer is obligated not to remedy any defects on his own upon our request.

7. We, our legal representatives and vicarious agents shall not accept any responsibility for damages that arise within the scope of warranty due to breach of ancillary contractual obligations, consulting errors, tortious act, culpable breach of obligations involving replacement delivery or remedying of defects, or which arise based on other legal grounds, and especially in as far as any such damages do not arise to the delivered item itself, unless intent, gross negligence or at least negligent infringement of essential contractual obligations is present on our part. However, liability for vicarious agents, provided that these are not management personnel, as well as for negligent infringement of essential contractual obligations is limited to replacement of typical damages foreseeable at the time that the contract was closed. Claims to damages for warranted qualities are also excluded if any such warrant did not specifically mean avoidance of typical consequential damages.
8. The foregoing exclusions of liability and limitations of liability do not apply to damages for which we are liable under the provisions of the Product Liability Act dated 15th December 1989.
9. Any claims under warranty, regardless of the nature thereof, shall lapse under the statute of limitations 12 months following acceptance provided that we did not fraudulently maintain silence regarding any defect. For all remaining purposes, all other claims to damages shall fall under the statute of limitation 12 months after acceptance, regardless of legal grounds for the same, with the exception of those claims arising from tortious acts. The before mentioned exclusion and limitation of liability do not apply in cases of damage to health, personal injury or loss of life.

VI. Prices and Terms of Payment

1. The prices in effect on the date of delivery or date on which work was performed shall apply.
2. The customer is required to effect payments in compliance with the agreed terms of payment. Invoices are due for payment upon receipt unless otherwise agreed.
3. Performance of payment obligations are deemed complete for bank transfers and cheque payments when the amount has been irrevocably credited to our bank account.
4. The contractual price applies ex works, excluding loading and packaging, unless otherwise agreed.
5. If the customer is in arrears with payment, then we may postpone performance of all acts required for fulfilling our own obligations until any such payment in arrears has been effected. Delivery deadlines will extend accordingly.
6. If the customer is in arrears with payment, then we are entitled to request interest on such payment in delay. Said interest will be calculated at a rate of 5% above the basic interest rate. We are entitled to rescind the contract and to demand return of performances rendered or to claim partial remuneration following expiration of a reasonable deadline which we have set. This shall not have an impact on more extensive claims for damages.
7. The customer's commercial and other rights of retention are excluded. Customer's set-off of its counter claims is likewise excluded unless any such counterclaim is noncontested or established by a final court judgement.

VII. Retention of Ownership

1. We shall retain title of ownership to delivered goods (retained goods) until complete payment of outstanding claims to payment arising from the business relationship, including ancillary expenses and interest. This provision shall likewise apply for redeeming and cashing bills of exchange and cheques issued for any such claims. Our right of retained ownership shall apply as assurance for our balance of payments in the event of continuous invoicing.
2. Processing and handling of retained goods shall ensue for us without any obligations arising on our part for the same. If delivered goods are processed, bonded or mixed with other goods that do not belong to us, then we are entitled to co-ownership of the resulting new goods commensurate with the invoiced value of our retained goods to the value of said new goods that they possess at the time of processing, bonding or mixing. Should the customer acquire sole ownership of new goods, then the customer hereby transfers co-ownership in the new goods to us commensurate with the invoiced value of our retained goods to such new goods that they possess at the time of processing, bonding or mixing, and the customer shall keep our proportionate share in said new goods in custody whilst exercising due commercial diligence.
3. Further sale of delivered goods, regardless of whether they are unprocessed or processed or bonded or mixed, is solely permitted for retailers in the course of ordinary business activities, subject to our right of retention. Said resale of goods is likewise solely permitted when the claim to payment for our goods emerging from resale passes to us. The customer is not permitted to pledge the delivered goods or to assign them as collateral. Agreement of a ban on assignment and of assignment without our consent within the scope of factoring is likewise prohibited. The customer hereby assigns to us, in advance, all present or future claims to payment arising for him from resale, or on other legal grounds, with regard to goods we have delivered. We hereby accept the above assignment. The value of retained goods is defined as our invoiced amount plus a security surcharge of 10% which will not be place to account if it is opposed by third party rights. The customer's right to collect on, resell or reprocess our retained goods shall expire if he fails to fulfil his contractual obligations vis-à-vis us in due manner. In such latter case, the customer is required to inform his buyers of the above assignment and to provide us with the information and documents required for us to assert our rights against said buyers.
4. The customer is required to notify us immediately if third parties adversely affect our property via attachment, or in another manner, and to inform any such third parties of our security rights.
5. At customer's request, we shall undertake to release appropriate securities (goods and claims) to which we are entitled in accordance with the foregoing regulations, provided that their value exceeds the amount of the outstanding debt they cover by more than 20%. Ownership of retained goods and assigned claims shall transfer to the customer upon payment or all of our claims to payment arising from the business relationship. The before mentioned exclusion and limitation of liability do not apply in cases of damage to health, personal injury or loss of life.

VIII. Place of Performance, Venue of Courts of Law, Applicable Law

1. Hamburg is deemed place of performance. Hamburg is likewise venue of courts of law for all disputes arising from this contract provided that the customer is a registered merchant as defined by the German Commercial Code. However we are also entitled to file suit against the customer at the site of his place of business.
2. German law shall apply for this contractual relationship. The provisions of the United Nations Convention on Contracts for the International Sale of Goods and provisions of national acts involving incorporation of international laws under national law shall not apply for this contract.
3. The 1990 INCO Terms shall apply in the currently valid version thereof.
4. If the customer furnishes us with an incorrect VAT ID number and if we are forced to pay VAT for this reason, then the customer will be required to reimburse these and all other damages arising from any such incorrect information.