

# TMPS-Terms-And-Conditions

## *Our standard Terms and Conditions.*

Trans Marine Propulsion Systems  
GENERAL TERMS AND CONDITIONS for the SALE of TECHNICAL SERVICES

### **1. APPLICATION**

These General Terms and Conditions for the Sale of Technical Services (hereinafter referred to as the "Conditions") apply to Work, as defined in paragraph 2, carried out by Trans Marine Propulsion Systems (hereinafter referred to as "TMPS"), whether or not any reference to the Conditions is made in the respective contract, purchase order or order confirmation (hereinafter referred to as the "Contract"). Inclusion by the purchaser (hereinafter referred to as the "Customer") of any terms inconsistent with or in addition to the Conditions is of no effect unless accepted in writing by TMPS.

### **2. SCOPE OF TMPS' WORK**

Subject to the Conditions, TMPS agrees to provide the Customer with qualified technical personnel (hereinafter referred to as the "Personnel") for the repair or maintenance of the Customer's equipment at the Customer's site, dock or vessel (hereinafter referred to as the "Work") in accordance with the Contract and these Conditions. Unless otherwise specifically agreed in writing, the following preparatory, related or required work does not form a part of the Work including, but not limited to, stripping, dismantling pipes and equipment, cleaning, gas freeing and providing general access to work space, tools and cranes.

### **3. OBLIGATIONS OF THE CUSTOMER**

The Customer shall provide at no cost to TMPS the amenities listed in 3.1 through 3.7 below. In the event the Customer is unable or unwilling to provide the required amenities, TMPS at its own option, may provide the amenities itself for the account of the Customer, or it may terminate the Contract without liability.

#### **3.1 Equipment and Tools**

Ancillary personnel equipped with necessary tools, heavy duty hoisting and transport facilities including fuel, lubricants, water, electricity, compressed air and cleaning facilities if not separately otherwise agreed.

#### **3.2 Lodging**

Proper heated/air conditioned facilities for working, board and lodging for the Personnel in close proximity to the work site as follows:

- a) sufficient safe storage sheds with locks, equipped with shelves and bins for tools, equipment and supplies of the Personnel;
- b) sufficient changing rooms with locks and washing facilities for the use of the Personnel;

c) sufficient furnished offices with locks, equipped with telephones, telefax, Internet connection and other communication requirements of the Personnel; and

d) accessible toilet facilities and drinking water at the work site.

### **3.3 Electric Power and Compressed Air**

Electric power outlets for welding equipment, drills and hand lamps as well as compressed air lines shall be provided at points convenient and accessible for the work site.

### **3.4 Customs Assistance**

All necessary assistance requested by TMPS with the customs formalities required for the import and export of the Supplier's equipment and tools free of all duties and taxes.

### **3.5 Compliance with Laws, Rules and Regulations**

Customer compliance with all laws, rules and regulations and permitting applicable at the work site, or arising out of the performance of the Work.

### **3.6 Taxes and Personnel Costs**

Payment of all governmental imposed taxes, duties or charges levied upon TMPS or its Personnel in connection with the performance of the Work at the Customer specified site or incidental to the lodging or travel of the Personnel.

### **3.7 Requisite Visas and Work Permits**

All necessary actions requested by TMPS to ensure that the Personnel obtain visas and any other official entry, exit, residence or working permits that may be required in the country of the work site, including free ingress and egress from the installation.

## **4. REMUNERATION**

### **4.1 Evidence of Work**

Time sheets shall be completed by the personnel at the completion of the Work or latest once a week and shall be checked and attested without delay by the Customer's representative. Time sheets prepared by the Personnel and attested by Customer's representative shall be considered proper documentation for hours of work invoiced by TMPS.

### **4.2 Remuneration and Work Hours**

a) Hourly rates and daily allowances are specified in TMPS' Price List attached and shall be charged to the Customer accordingly. The Customer will be charged for the daily allowance of the Personnel based on the number of work hours and days from the time and date of departure of the Personnel until their return in accordance with the travel regulations of TMPS.

b) If not expressly otherwise agreed in writing, the Contract prices proposed by TMPS assume the Work will be performed during normal working hours.

#### **4.3 Overtime**

Unless otherwise agreed, any Work done outside the normal working hours shall be charged to the Customer as overtime. If extensive overtime is required, the permission of TMPS must first be obtained. Overtime work will be charged at prevailing prices specified in TMPS' Price List.

#### **4.4 Waiting Time**

Any waiting time for which TMPS is not responsible, shall be charged to the Customer as normal working time.

#### **4.5 Traveling Expenses**

a) All traveling expenses incurred in connection with the Contract shall be chargeable to the Customer. Traveling expenses include:

I. fares for journey by rail, sea, air, car and/or bus;

II. carriage, freight and customs duties as well as insurance due in connection with personal effects, instruments and tools required for the Contract, including necessary costs for overweight on journey by air; and

III. all out-of-pocket expenses incurred by TMPS for the Work ordered by the Customer, such as telefax, telexes, telegrams, internet charges and phone calls.

b) Time spent by Personnel traveling from TMPS' premises and back to TMPS' offices shall be charged at the normal work hour rate specified in TMPS' Price List for the respective Personnel.

c) All travel of Personnel between Customer-provided lodging and the work site shall be for Customer's account.

#### **4.6 Extra Work**

Any assistance or work performed by TMPS outside the contract, or related to paragraph 12 shall be charged as extra work in accordance with TMPS' Price List.

#### **4.7 Holidays**

Local holidays shall be observed. The Work may proceed on TMPS' observed holidays, which are not local area holidays, but in no event will Personnel be obliged to work on Christmas Day, New Year's Day, Good Friday and Easter.

If the work site is not in TMPS' country and the Contract duration exceeds three (3) consecutive months, then each member of the assigned Personnel team shall at the end of each period of two (2) months be

entitled to a round trip to the country of TMPS and back for a period of two (2) weeks. Such round trip traveling expenses shall be for the Customer's account in accordance with paragraph 4.5 above.

## **5. ILLNESS & ACCIDENTS OF THE PERSONNEL**

In the event of personnel illnesses or accidents, at work or outside work, necessitating medical attention or hospital treatment, the Customer shall be responsible for ensuring that such medical facilities and necessary medications are made available to the Personnel. Medical attention and hospital treatment shall be the best possible available. If after medical examination it is considered necessary to repatriate injured or deceased person, the Customer shall arrange for such repatriation in the safest and most expedient manner. Subject to Paragraph 11, all costs incurred under this Paragraph 5 shall be for the account of TMPS.

The Customer shall indemnify TMPS of all fines, penalties or charges imposed as a result of the failure to comply with all safety related laws, rules and regulations imposed in the jurisdiction where the Work is performed, unless such fine, penalty or charge is imposed as a result of the intentional misconduct of TMPS or its Personnel.

## **6. WITHDRAWAL & SUSPENSION**

### **6.1 Withdrawal of Personnel**

If the Work is interrupted by Force Majeure as defined in Paragraph 15 or for other reasons not attributable to TMPS, the costs for maintaining the Personnel at the installation (including but not limited to wages and lodging) will be borne by the Customer. If the interruption continues for more than one (1) week, the Personnel shall, if required by TMPS, be returned to TMPS' country. All expenses in relation to such withdrawal and/or subsequent return shall be for the account of Customer.

### **6.2 Suspension**

If Personnel have been withdrawn, the performance of the Contract shall be suspended until the Customer has requested the return of the Personnel to the work site by giving a two week's prior notice. TMPS shall be entitled to an extension of time for completion of the Contract equal to the delay caused by suspension and subsequent resumption of the work.

### **6.3 Termination**

Should the suspension exceed two (2) months, either party shall be entitled to terminate the Contract by notice in writing to the other party without prejudice to the rights of either party up to the date of termination.

### **6.4 Extra Costs**

All reasonable extra costs, including the extra cost of completing the Contract, incurred by TMPS as a consequence of work suspension, and any subsequent resumption of the work, shall be reimbursed by the Customer.

## **7. PRICE AND PAYMENT**

## **7.1 Price and Payment**

All prices for hourly and daily allowances shall be in accordance with TMPS' Price List. TMPS reserves the right to make annual changes to their Price List without prior notice effective January 1 of each year the Contract is in force. Unless otherwise agreed payment is to be made by bank remittance in the currency and to the bank account set forth in the invoice within 20 (20) days from the date of the invoice. Payment shall be made in full without any offset, counterclaim or deduction. All expenses for remitting payments shall be borne by the Customer.

## **7.2 Overdue Interest**

Interest on overdue payments is charged at the percentage rate specified in TMPS' invoice from the maturity date until the actual date of payment, or, if unspecified, interest shall accrue at the rate of one and one-half percent (1.5 %) per month, compounded annually from the date of maturity. Customer agrees to pay TMPS all costs related to the collection of overdue amounts, including reasonable attorney's fees.

## **7.3 Advances**

If the scheduled duration of the Work is expected to exceed one (1) month, TMPS may invoice the Customer on a monthly basis in accordance with Paragraph 7.1 above and shall, when paid, be deducted from TMPS' final invoice.

## **8. LOCAL LAWS AND SAFETY REGULATIONS**

### **8.1 Local laws and Regulations**

The Customer shall provide all necessary assistance to ensure that TMPS and Personnel obtain relevant information concerning local laws and regulations applicable to the Work. In the event local laws provide for TMPS lien rights, the Customer hereby consents to the attachment of any liens on Customer's property based upon, arising out of, or as a result of the Work. The Customer furthermore waives any and all claims, defenses, and causes of action that the Customer may have in connection with any such lien rights.

### **8.2 Customer's Safety Regulations**

The Customer shall provide TMPS full details of any safety regulations which the Customer imposes on its own employees, and TMPS shall ensure the observance of such safety regulations by its Personnel.

Should the Customer become aware of any failure by TMPS' Personnel to materially adhere to Customer's safety regulations, the Customer shall so inform TMPS in writing. TMPS shall, in consultation with the Customer, take such measure as are necessary to avoid repetition of such non-adherence.

### **8.3 Special Local risks**

The Customer shall inform TMPS and its Personnel of any dangerous conditions or particular risks that may be encountered in the Customer's country, at the work site or in the use of any equipment and tools provided by the Customer. The Customer will comply with all reasonable requests by the Personnel for the invocation of additional safety measures.

## **9. WARRANTY**

Should the Work performed by TMPS be inadequate due to defective workmanship, TMPS, at its cost, will redo such Work, provided the defective workmanship appears during the warranty period. The warranty of the Work performed is limited to defective workmanship which appears within three (3) months after completion of the Work.

THIS IS THE ONLY WARRANTY APPLICABLE TO THE WORK

PERFORMED UNDER THE CONTRACT AND REPLACES ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR LATENT DEFECTS, AND ANY OTHER OBLIGATION OR LIABILITY, WHETHER IN CONTRACT, AT LAW OR IN EQUITY.

## **10. TMPS' LIABILITY**

TMPS SHALL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY DIRECT, CONSEQUENTIAL, OR INCIDENTAL DAMAGES NOR FOR ANY LIABILITY FOR LOSS OF TIME, INABILITY TO USE REPAIRED EQUIPMENT, LOSS OF ACTUAL OR POTENTIAL PROFIT OR REVENUE, PUNITIVE OR EXEMPLARY DAMAGES, THE COST OF SUBSTITUTE REPAIRED EQUIPMENT, TOWAGE CHARGES, POLLUTION REMEDIATION COSTS, DAMAGE TO ANY VESSEL, ENGINE ROOM OR POWER PLANT SITE, YARD OR OTHER PROPERTY OF CUSTOMER, ARISING OUT OF OR CONNECTED WITH THE PROVISION BY SUPPLIER OF THE WORK HEREUNDER.

In no case shall the liability of TMPS inure to damages that could not have been foreseen by TMPS at the time the Contract was issued. TMPS shall not be liable for any work carried out by the Customer or by any third party, even though carried out with the assistance of TMPS' technical advisor. The Customer carries the risk for its equipment and other goods in connection with the work, even if the equipment or goods are provided by TMPS under a separate contract and warranty or if the equipment and goods are stored in TMPS' buildings or other facilities.

Notwithstanding any other provision of the Contract or these conditions, TMPS' maximum liability hereunder shall not exceed twenty percent (20%) of the Contract price.

## **11. CUSTOMER'S LIABILITY**

Damage for which TMPS is not liable under paragraph 10 above shall be for the account of Customer. The Customer shall likewise be liable if damages are due to defective tools, hoisting equipment or other equipment or materials furnished by the Customer, and Customer's liability shall not be diminished by the absence of any complaint by the Personnel about defective conditions.

## **12. EXTENSION OF TIME**

Should delay in completion of the Contract be the fault of or caused by any act or omission of the Customer, there shall be granted such extension of time for the completion as is reasonable having due regard to all of the circumstances surrounding the delay.

## **13. INSURANCE**

TMPS and the Customer shall at their own cost provide for and maintain comprehensive insurance coverage to protect their own property and personnel.

#### **14. SALES OF SPARE PARTS**

The sale of any spare parts purchased from TMPS by Customer shall be in accordance with TMPS' General [Terms and Conditions for the Sale of Spare Parts](#).

#### **15. FORCE MAJEURE**

Neither Customer nor TMPS shall be considered in default of or liable under the contract to the extent the party can establish that fulfillment of its Contract obligations has been prevented by Force Majeure.

Either party claiming a Force Majeure event shall be under a duty to immediately inform in writing the other party and take the necessary measures to mitigate the loss which has occurred, providing it can do so without unreasonable inconvenience or cost.

Force Majeure means an occurrence beyond the control of the party affected (including, but not limited to: wars, civil riots, terrorism or specific threats of terrorism, hostilities, public disorder, strikes, lockouts or other industrial disputes and any other conflicts, embargoes, insurrections, epidemics, fires, acts of God, governmental restrictions and actions, winding up or failure of a subcontractor to provide materials or goods, shortage of transport or of material, restrictions in the use of power or loss of works) provided that such party could not reasonably have foreseen such occurrence at the time of entering into the Contract and could not reasonably have avoided or overcome the Fore Majeure event or its consequences.

#### **16. OTHER PROVISIONS**

The failure of either party to insist on any occasion upon the performance of the Conditions or any other indulgence granted by one party to the other shall not hereby act as a waiver of the Conditions.

If any of the Conditions or any addenda thereto should be declared invalid, null, void or unenforceable, the validity, legality and enforceability of the remaining Conditions shall not in any way be affected or impaired thereby.

Any illustrations, catalogue pictures, diagrams, statements of weights and measures and similar disclosed data provided by TMPS are for reference only and are not to be relied upon by the Customer as containing any representations, warranties or indemnities, unless expressly agreed in writing by TMPS. All such disclosed data shall be treated as confidential and shall not be disclosed to a third party without TMPS' written consent.

**Attorneys' Fees.** In connection with any suit, action, or other proceeding, including arbitration or bankruptcy, arising out of or in any manner relating to collections of outstanding balances owed to TMPS, the prevailing party shall be entitled to recover reasonable attorneys' fees and disbursements (including disbursements which would not otherwise be taxable as costs in the proceeding). All references to attorneys' fees shall be deemed to include all legal assistants' and paralegals' fees and shall include all fees incurred through all post-judgment and appellate levels and in connection with bankruptcy proceedings.

#### **17. ARBITRATION AND APPLICABLE LAW**

All disputes arising between the Customer and TMPS shall be settled through friendly consultation between the parties. In the event that no agreement can be reached through consultations, the dispute shall be submitted to arbitration for final and binding resolution. Either party may at any time submit a dispute to arbitration and this action shall terminate any obligation to amicably consult under.

The arbitration procedure shall be governed by the Rules of the American Arbitration Association and the arbitration shall be conducted by one or more arbitrators appointed in accordance with the said rules. The arbitration proceeding shall be in the English language and will take place in the State of Florida.

This Contract and these Conditions shall be governed by and interpreted in accordance with the laws of the State of Florida, excluding its conflict of law rules.

Nothing contained in this paragraph 17 shall preclude TMPS from bringing any legal suit, action or proceeding against the Customer in the courts of any jurisdiction where the Customer or any of its property or assets may be found or located; to the extent permitted by the applicable laws of such jurisdiction, the Customer hereby irrevocably submits to the jurisdiction of such court.



# TMPS-Terms-And-Conditions-Spares

*Our standard Terms and Conditions for spare parts sales.*

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 ACKNOWLEDGMENTS

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 acknowledgement**

## 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 effected 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 effected 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 effected 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 effected. 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 Washington 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 the State of Florida.

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.