

## GENERAL COMMERCIAL TERMS AND CONDITIONS

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General Commercial Terms and Conditions of  
**Holland Marine Parts B.V.**  
Donker Duyvisweg 297  
3316 BL Dordrecht  
The Netherlands

### **I Applicability of the Present General Terms and Conditions**

1. The present General Terms and Conditions shall apply to all offers and to all agreements concerning engines, machines and components. Unless the opposite appears explicitly, the present General Terms and Conditions shall equally apply to the assembly, disassembly, repair and other activities. The General Terms and Conditions of the customer shall not be binding on us, unless we have agreed to the contrary in writing.
2. The stipulations of the present General Terms and Conditions shall always remain in force, unless otherwise agreed upon in writing.
3. Each and every assignment or offer given orally or in writing by staff in the service of the contracting party, be they authorised to do so or not, on behalf of the contracting party, shall be binding on the contracting party. If the contracting party is not bound, then the party that concluded the agreement is deemed to be the contracting party.
4. In the present General Terms and Conditions “us” and “we” shall always refer to Holland Marine Parts B.V., whereas contracting party shall refer to our other party.
5. The nullity or annulment of any clause in the present General Terms and Conditions shall not prejudice the validity of the other clauses.

### **II Offer and Confirmation of the Order**

1. Our offers shall be without obligation in every respect, unless explicitly stated otherwise. We shall only be bound, having due regard to the stipulations hereinafter in the present General Terms and Conditions, when we have confirmed the order in writing. The same shall apply to potential additions and/or changes to the order.
2. The text of our order confirmation shall determine the contents of the order. Arrangements or agreements with employees shall not be binding on us, to the extent they have not been confirmed in writing by us.
3. All technical data can only be deemed to have been given to the contracting party as an approximation.
4. All drawings, illustrations, dimensions and weights given, shall remain our property under explicit reservation of copyrights and patent rights. Subject to our consent in writing, the contracting party shall not be allowed to copy said documents, to make them available for inspection to any third party or to make them otherwise available to any such third party. The contracting party shall hold us harmless against claims of third parties, including all extra judicial and judicial costs, that we have to make or pay to claimants, if the contracting party violates the provisions of this subsection.

### **III. Prices and Packaging**

1. Unless otherwise agreed upon in writing, prices shall be based on delivery at our enterprise in Dordrecht (ex Works).
2. The prices given, shall be exclusive of value added tax, unless stated otherwise.
3. If so required, packaging shall be charged at cost price and shall not be taken back. The decision as to the necessity to use packaging or not shall be made at our sole discretion.
4. If there are any changes in price, currency fluctuations, devaluation or revaluation of the Euro compared to any foreign currency or any changes to salaries, import duties or other taxes, social contributions or government levies, freight, etc., even if these changes occur due to circumstances that could already have been foreseen when the offer was made or accepted in writing, we shall be entitled to modify the sales prices and the costs for assembly, disassembly, repair and other costs, accordingly.

### **IV Delivery and Delivery Period**

1. Goods shall be delivered at our enterprise in Dordrecht (ex Works). Delivery periods shall be determined approximately.

2. The delivery period shall commence when we have confirmed the order in writing, when all formalities required to start the activities have been complied with, when all necessary documents are in our possession and when the contracting party has provided us with all the data concerning the order. In the event of instalments, the delivery period shall only commence following receipt of the first instalment.
3. The delivery period shall be determined on the assumption that the necessary materials in the broadest sense of the word, be delivered to us in due time.
4. Exceeding the delivery period can never lead to any claim to damages, not even following a notice of default.
5. With respect to the delivery period, the goods shall be deemed to have been delivered when they are ready at our enterprise in Dordrecht and/or at the location referred to in our order confirmation and/or are made available at another location to be specified, all this after we have informed the contracting party thereof in writing. If we have accepted to assemble the goods, the goods shall be deemed to have been delivered in respect of the delivery period, when they have been made available at the place of delivery agreed upon.
6. From the moment the goods are deemed to have been delivered by virtue of section 5 of the present article, the risk of all direct and indirect damage to or in connection with said goods, sustained by the contracting party, shall be for the latter's account.

## **V. Transport**

1. From the moment they are shipped by or to us, all goods and materials shall be transported for the risk of the contracting party. Even in the case delivery carriage paid has been agreed upon, the contracting party shall be liable for all damage (such as damage caused by transport, fire and water, theft or embezzlement) to the goods during transport. The contracting party shall be under the obligation to take out an insurance to cover said risk, with the exclusion of recourse by the insurer(s) against us, our employees and/or supporting personnel.
2. The contracting party shall have to verify the condition the goods are in upon their arrival.
3. Without prejudice to the above, we shall not be liable for any damage whatsoever caused to the goods or not in connection with the transport.

## **VI Assembly**

1. Unless otherwise agreed upon in writing, the assembly of the goods shall not be included in the delivery.
2. If an order to assemble the goods is given without a complete listing in writing of the activities the contracting party wants us to carry out, and if such activities are equally not referred to in the order confirmation, the agreement shall be deemed to include the activities we deem necessary.
3. The staff charged by us with the assembly, shall limit themselves to the assembly of the material supplied by us and/or the material that was included in the order. We shall not be responsible for assembly or repair work beyond the scope of the agreement or for any work done by third parties to materials, machines and/or machine components delivered by us.
4. When, through no fault of ours, the assembly work cannot be arranged for or done without interruption or is delayed in any other way, we shall be entitled to charge on the corresponding additional costs to the contracting party at the normal rate.
5. All potentially extra costs shall be for the account of the contracting party, more in particular:
  - a travel and accommodation expenses and cost of living of the technician(s);
  - b costs arising due to the fact that the assembly work cannot be done during usual day hours.
6. Upon completion of the assembly and when the goods have been put into operation, the assembly shall be deemed to have been carried out properly.
7. If the contracting party wishes to call on our services after assembly of the goods and after they have been put into operation or afterwards wishes to call in our assistance to inspect the goods sold / delivered, we shall be entitled to a reimbursement of expenses at the usual rate, to be increased by travel and accommodation expenses.

## **VII Liability**

1. Neither we, nor our employees and/or our supporting personnel, shall be liable for any damage whatsoever, be it direct or indirect, regarding work done in the broadest sense of the word or regarding goods delivered pursuant to the agreements to which the present General Terms and Conditions apply.

2. Without prejudice to the stipulations of section 1, we shall only be liable for damage if the contracting party proves that the damage is due to gross negligence or intent on the part of the directors of Holland Marine Parts B.V.. We shall not indemnify the contracting party against gross negligence or intent on the part of our personnel or our supporting personnel, neither shall we indemnify the contracting party vis à vis any third party. Damage that has not been established by an expert appointed by us, shall never be considered to be damage. Under no circumstances shall we be liable for any kind of indirect damage whatsoever, no matter by whom such damage is sustained, including in particular consequential loss and/or the loss of time.
3. The contracting party shall be liable for all damage sustained by us or by our subordinates or supporting personnel, caused through the fault of the contracting party, including but not limited to, damage resulting from defects to or the nature of the goods delivered or made available by the contracting party, or otherwise due to circumstances which are reasonably for the risk of the contracting party.
4. The contracting party shall be under the obligation to state special characteristics or characteristics that pose a risk, of material made available by the contracting party, without such statement releasing the contracting party from the liability resulting from section 3 and the contracting party shall be under the obligation to indemnify us at its expense against all claims or titles of third parties and the consequences thereof, including measures to seize property before judgement.
5. The contracting party shall have to forthwith inform us of shortcomings or defects to repairs or deliveries that have been discovered, at any rate not later than three working days from the day the shortcoming or defect was discovered, and to do all that is necessary to limit the damage, all this under penalty of the loss of any right to damages or warranty..
6. If the contracting party wants to carry out an expert's appraisal (have such carried out), it shall have to inform us thereof in due time in order to enable the latter to be present, together with the latter's own experts or not, all this under penalty of the loss of any right to damages or warranty.
7. Notwithstanding any other provision, our liability shall never exceed a maximum of (25.000) twenty five thousand Euros.

#### **VIII Warranties**

1. Having due regard to the restrictions to be listed hereinafter, we shall undertake to repair or replace the new engines or machines we have delivered, which show a defect within a period of 24 months from the day of delivery as referred to in article IV, provided the defect is forthwith reported to us by telephone or in writing and provided that the defect is caused solely by faulty material or a faulty construction. The warranty shall not apply if the goods malfunction due to other causes such as normal wear and tear, unsuited kinds of fuel, lubricants, sealing and insulation material, measuring equipment, overloading, poor foundations, aggressive cooling water, faulty air supply, faulty piping, incorrect conduits, improper handling or accidents as well as in those cases in which the cause is not evident beyond doubt.  
The obligations under warranty do not comprise the burden to carry costs of crantage, electricity, docking, diving, dismounting, or travel and boarding costs.
2. With respect to the assembly, disassembly, repair and other work done by us, a warranty shall only be given for the reliability of the execution of the work done, unless explicitly otherwise agreed upon.
3. The obligations under the warranty shall lapse if the contracting party has made any changes or has done any repair work to the goods delivered on its own initiative during the term of warranty, or has had such done by a third party, or if, in our opinion, the contracting party has failed to properly service the goods delivered.
4. None of the indirect or direct damage, including consequential damage, sustained due to the malfunctioning of the goods delivered, shall be compensated.
5. We shall not be held to fulfil any obligation under the warranty if the contracting party fails to comply in a proper or timely manner with its obligation to pay or with any other obligation that might result from any agreement the contracting party has concluded with us.
6. No warranty shall be given for used engines, machines and components, unless explicitly agreed upon otherwise.
7. The warranty given on engines, machines and components purchased from third parties, shall not exceed the warranty given to us by our supplier(s).

8. The fact that obligations under the warranty may still exist on our part, shall not entitle the contracting party to postpone any payment, no matter what such payment is intended to cover.
9. Goods in respect of which warranty claims are lodged have to be shipped carriage paid. Components that are replaced shall become our property.
10. The warranty period in respect of goods which have been repaired or replaced under the warranty shall be three (3) months from the date of repair or replacement, or until the expiration date of the original warranty period of those goods.
11. All stipulations set out hereinabove and to be set out hereinafter, shall apply to the activities to be carried out by us under the present warranty clause. The warranty as set forth in this clause is the only warranty for the goods or services supplied, and replaces expressly any other warranty or claim, express or implied, whether in law or in contract. The contracting party waives all other further-reaching rights, whether from law or from contract.

## **IX Conditions of Payment**

1. Payment of engines, machines, components, assembly, repairs and other activities shall have to be made in cash upon delivery, completion respectively, unless otherwise agreed upon in writing.
2. Delivery, completion respectively, as referred to in the first section of the present article, shall be understood to be:
  - a. with respect to engines and machines, the moment they are made available in our enterprise in Dordrecht and/or at the location stated in the order confirmation, or at another storage location of our choice to be specified;
  - b. with respect to components, the moment they leave our warehouses, or are kept ready in them for shipment respectively;
  - c. with respect to assembly and repairs, the moment the work is finished in our opinion;
  - d. expenses we advance that are for the account of the contracting party, shall be settled in conformity with the stipulations of section 1 of the present article.
3. We shall reserve the right to demand interim payments and/or, in our opinion, valid securities for the delivery of engines and/or machines as well as for assembly work, repairs and other services. The refusal on the part of the contracting party to furnish the security required, shall entitle us to dissolve the agreement by means of a written statement, without prejudice to our rights to compensation of expenses and loss of profits as well as of all other damage.
4. All payments shall have to be made without any deduction or set-off, either at our offices in Dordrecht, or by transfer into a bank account to be specified by us, unless explicitly otherwise agreed upon.
5. Complaints (each and every claim further to any alleged delivery deviating from the contract) concerning the execution of work or deliveries as well as invoices, shall have to be filed in writing by registered letter under penalty of nullity of the complaint concerned, within 8 days from completion or delivery of the work or the good concerned or from the day the invoices were sent. Complaints shall not suspend the contracting party's obligation(s) to pay.
6. If the contracting party is in default with the payment, it shall be deemed to be in default by operation of law and we shall have the right without any notice of default, to charge an interest on the entire amount due still outstanding, equalling the statutory commercial interest increased by 3% on an annual basis commencing on the date the payment concerned becomes due and payable, or, in the case of instalments, commencing on the day the term of the instalment concerned expires, and furthermore to recover all collection costs, both the judicial and extrajudicial costs, from the contracting party, all this without prejudice to the other rights vested in us. The extrajudicial collection costs shall amount to 15% of the principal with a minimum of EURO 250.-.
7. All of the delivered goods shall remain our property until they have been paid in full. As long as payment in full has not yet been made, the contracting party shall not be entitled without our consent in writing to that effect, to dispose of the goods in any way whatsoever. In order to be able to exercise our property rights, the contracting party shall be under the obligation if it wishes to establish any mortgage right, right of pledge or any other restricted right to any immovable property, registered good or movable property for which the goods to be delivered by us are intended, to first inform the creditor that the goods delivered are still our property and that a mortgage right, right of pledge or any other restricted right first requires our consent in writing.

**X Retention of Title**

1. Up to the moment the contracting party has paid our claim concerning the goods delivered and/or the work done in full, the goods delivered, be they processed or not, shall remain our exclusive property for the account and the risk of the contracting party.
2. The contracting party shall not be authorised to give said goods as collateral, to let them or to transfer title to them to any third party.
3. If goods are taken back, we shall reserve the right to claim all damage, loss of profits and interest.
4. The contracting party shall be under the obligation to forthwith notify us of the fact that third parties enforce rights to goods falling under the retention of title pursuant to the present article.
5. If it is shown at any point in time that the contracting party has failed to fulfil any of aforementioned obligations, the contracting party shall owe a penalty to the amount of 15% of the unpaid part of the purchase price or the work done, without prejudice to the right to damages.

**XI Dissolution / Cancellation**

1. Each and every failure to comply with any obligation on the part of the contracting party, shall entitle us to dissolve the agreement(s) by means of a mere written statement, without prejudice to our right to damages. At our own discretion, we shall always be able to demand compliance with the agreement(s), without prejudice to the right to damages. Failure to comply with any obligation shall also count as a resolatory condition which we can invoke in writing at our own discretion, without prejudice to our right to claim compensation for all damage.
2. The contracting party shall waive all rights to dissolution of the agreement, unless cancellation of the agreement in conformity with the stipulations of section 3 of the present article is agreed upon.
3. The contracting party shall only be able to cancel the agreement if we consent to it. In that event, the contracting party shall owe us a compensation to the amount of 15% of the contracting / purchase price (exclusive of VAT), unless the damage, which shall include the costs and the loss of profits, exceeds 15% of the contracting / purchase price (exclusive of VAT), in which case the compensation shall cover the total amount of damage, interest and costs. In the event the agreement is cancelled, the contracting party cannot lay claim to anything that we have already done and everything that we have already done shall have to be undone at the expense of the contracting party, all this at our discretion.

**XII Purchase Conditions**

1. If and in so far as we, as a buyer, are bound, the following conditions shall apply instead of the stipulations of III, IV, VI and VIII through X, maintaining the other stipulations:
2. Prices shall be fixed prices and delivery periods shall always be terms to be observed on penalty of forfeiture of rights, unless otherwise stated.
3. In the event of late delivery, the contracting party shall be immediately in default and shall always owe us a penalty to the amount of the purchase price agreed upon exclusive of VAT, without prejudice to the right to damages to the extent the latter exceed said penalty. The penalty and the damages can be settled against any sum we may owe under any agreement whatsoever.
4. The contracting party shall undertake to give the warranty we are held to give our customers.

**XIII Disputes**

All disputes between us and the contracting party resulting from any agreement, preliminary agreement or any other legal relationship whatsoever, shall be exclusively referred to the judgement of the competent court in Dordrecht, subject to the absolute competence of the subdistrict sector. The court in Dordrecht, division for interim injunction proceedings, shall be exclusively competent for interim injunctions.

**XIV Applicable Law**

Dutch law exclusively, shall apply to all offers made and agreements concluded on the present General Terms and Conditions and the consequences thereof. The application of the Vienna Sales Convention shall be excluded.