

1. INTRODUCTION

These conditions shall apply to the individual Services (as hereafter defined) offered and/or ordered, as far as no different terms and conditions have been agreed upon in writing. Any conditions stipulated by the Customer and which are in contradiction with these General Conditions are valid only if the Contractor has accepted them in writing.

2. DEFINITIONS

The following terms used herein shall mean:

- Services: Engineering services or work of various kinds (such as studies, calculations, measurements, evaluations, investigations, preparation of data, of criteria or of the like, checking, testing, supervision and any other services which may commonly be understood in the industry as "engineering") to be performed in connection with marine or stationary Diesel engines, vessels, plants or other installations which may embody or use Diesel engines, or concerning various equipment used in any such vessels or plants, auxiliary installations thereto, or the like.

- Results: The findings materializing upon completion of the Services concerned, such as data, reports, studies, descriptions, recommendations, bids or any other proposals, test or measurement results, specifications, drawings, plans, sketches, expertise or the like, irrespective of the form or the means of data communication by which the findings concerned may be transmitted (including, but not limited to, microfilms, tapes, discs, computer output, oral transmission).

3. SCOPE OF SERVICES

The scope and execution of the Services concerned shall be as specified in the confirmation of order submitted by Winterthur Gas & Diesel Ltd. (the "Contractor"). Any items not referred to therein shall be charged separately.

4. TENDERS

Tenders of the Contractor which do not stipulate an acceptance date are not binding. Each contract for Services is deemed concluded when, after receipt of an order, the Contractor has confirmed its acceptance.

5. DOCUMENTATION

5.1 Any documentation, data etc. which have not expressly been specified as binding shall serve as approximate indication only and the Contractor reserves the right to alter them.

5.2 Unless otherwise agreed in writing, the Results to be furnished will be supplied by the Contractor in one copy of each document etc. concerned and at the Contractor's sole discretion either in English or German language. They will be prepared in accordance with SI units and recommendations (ISO) and with those norms, etc. which the Contractor normally applies for the relevant kind of Services.

Should the Services have to take into consideration any particular norms and/or standards, laws, regulations etc. (collectively called "Norms"), this is to be agreed upon in writing, and the customer (the "Customer") must inform the Contractor in due time of all such Norms and of any further regulations and circumstances relevant for carrying out the Services. The Customer shall hold the Contractor harmless from any consequences resulting in case such Norms have not been duly and timely notified to the Contractor.

6. DUTIES OF CUSTOMER

The Customer shall

i) provide the Contractor in time with all data, information, documentation, experience, suggestions, etc. (collectively called "Data") which are normally needed or are useful for carrying out the Services concerned and in addition such Data which may have been specially agreed upon. Any

Data will be examined by the Contractor solely as far as this may have been specially agreed upon;

ii) at his expense procure any permits, approvals or the like of any authorities outside Switzerland which may be needed in connection with any Services or Results or any use thereof;

iii) allow the Contractor to lodge tenders in any call for bids by the Customer irrespective of whether the Contractor has furnished any Services in connection with the relevant tender call;

iv) allow the Contractor access, also together with customers or potential customers of the Contractor, to such plants, vessels, installations etc. (collectively called "Plants") in which any Results have been used and allow the Contractor to mention such Plants as reference in its publicity, including using pictures thereof.

7. INTELLECTUAL PROPERTY RIGHTS

7.1 The Customer may use the Results for those purposes only which have been mutually agreed or if no such agreement has been made which are usually deemed as normal use in the relevant technical field under the given circumstances. Apart from such use, all Results are to be treated in confidence by the Customer and shall not be made accessible to any third party.

7.2 All intellectual property embodied in any of the Results or any other know-how or the like originating from carrying out the Services, whether patentable or not, shall vest in the Contractor's company, which will be free to make any use thereof.

7.3 The Contractor shall treat in confidence all documentation and information furnished to the Contractor by the Customer and which the Customer has expressly marked as confidential, unless the relevant information is or becomes public knowledge or is already in the Contractor's possession or is furnished to the Contractor by a third party entitled to such furnishing.

8. CONTRACT PRICE AND PAYMENT

8.1 The price is subject to adjustment when

i) a sliding price has been agreed or
ii) the delivery time is extended for any of the reasons stated in section 13 or
iii) the extent of the Services has been changed or
iv) the information submitted to the Contractor by the Customer did not correspond to actual circumstances or was incomplete.

8.2 All payments shall be made in Winterthur as per the conditions of the confirmation of order, with no deductions for taxes, dues, expenses, discount or for any other reasons whatsoever. Payment is deemed effected when Swiss Francs have been made freely available to the Contractor in Switzerland.

All additional cost such as for packing, mailing, permits, certifications etc. as well as any taxes, fees and other charges shall be borne by the Customer.

8.3 The due dates of payment shall also be observed if transport or delivery of the Results is delayed or prevented by circumstances beyond the Contractor's control.

If the Customer does not observe the agreed due dates of payment he shall without formal notice be liable to pay interest on overdue amounts at a rate of three (3) percent per annum/pro rata from the date payment is due until the payment is received in full, provided that a higher rate of interest has not been agreed, this without prejudice to any other rights which the Contractor may have in the case of payment delays. Payment of such interest does not release

the Customer from his obligation to make payments on the agreed dates.

9. DELIVERY OF RESULTS

9.1 If a specific delivery time for furnishing the Results has been agreed the relevant period of time commences as soon as, after conclusion of the contract, the Customer has provided the Contractor with all information, data, permits, etc., the essential technical points are settled, the payments due with the order have been made and any agreed securities furnished by the Customer. The delivery time is deemed to have been observed if the Results which have been agreed to be provided are by that time ready for dispatch by us.

9.2 The delivery time shall be reasonably extended

- i) if any information required by the Contractor to execute the order is not received in time or subsequent changes which delay delivery are made by the Customer;
- ii) if hindrances occur which, despite our due care, the Contractor cannot avoid, such as epidemics, mobilisation, war, riots, strikes, picketing, lock outs, serious break downs, accidents, labour conflicts, official or other measures of whatever kind, transport difficulties, natural catastrophes, acts of God;
- iii) if the Customer is behind schedule with any information he has to furnish the Contractor or late in fulfilling his contractual obligations such as in particular the terms of payment.

10. DELAY IN DELIVERY

10.1 Liquidated damages for late delivery can only be imposed on the Contractor when it can be proved that the delay regarding the agreed time for delivery by the Contractor of the final Results is his fault and as far as the Customer can show that he has suffered a loss due to such late delivery. Such liquidated damages shall not exceed 1/2 per cent for each full week's delay and shall in total not exceed 5 per cent. All said percentages will be calculated on the price of that part of the Services which could not be used by the Customer in time due to the delay.

10.2 The Customer is not entitled to impose liquidated damages for the first two weeks of delay.

10.3 If the delay exceeds six months, the Customer will be entitled by written notice to set the Contractor a reasonable period for completion and supply of the Services. Should the Contractor fail to observe such time limit for reasons within our control, the Customer will have the right to cancel the order. In such case, the Customer shall be entitled to the maximum of the above mentioned liquidated damages and shall in turn pay the Contractor the price for all Services which may have been furnished to the Customer.

10.4 The remedies of the Customer specified in this section 10 shall be to the exclusion of any further rights or claims against the Contractor in case of delay, whether in contract, in tort, on negligence or for any other legal grounds.

11. WARRANTY AND LIMITATION OF LIABILITY

11.1 The Customer shall examine the Results within the shortest possible time after delivery and inform the Contractor immediately in writing in case any defects or deficiencies caused by the Contractor (hereafter collectively called "Faults") have been detected. With regard to Faults so communicated, as well as for any further Faults which the Customer could not detect upon delivery but which appear during a period ending twelve months from the date of delivery of the Results, and provided the Faults concerned have been notified to the Contractor in writing immediately upon detection, the Contractor shall as soon as possible and at his expense correct the Results concerned by re-performing the corresponding Services free from Faults.

11.2 Should it be proved that a Fault in a Result furnished by the Contractor is due to negligence of the Contractor and that such Fault has been the exclusive reason for a damage arisen in material property being an integral part of such vessel, plant or other installation with regard to which the Results have been specifically performed by the Contractor as expressly mentioned in the respective contract, then the Contractor shall bear the cost of making good the above specified property damage, it being however understood that the Contractor's total liability does in no case exceed 50 per cent of the price of the Service concerned. The Contractor is entitled at his discretion to himself carry out any work etc. covered by the above cost bearing obligation or to have it carried out by any third party engaged by the Contractor.

11.3 The remedies of the Customer specified in sections 11 hereinabove shall be to the exclusion of any further rights or claims against the Contractor in case of any defects, deficiencies, faults, etc. in or with regard to any Results and/or Services, and the Contractor shall not be under any liability, guarantee or the like whether in contract, in tort, on negligence or for any other legal grounds with regard to any such defects, deficiencies, faults, etc.

12. SUPPLY OF GOODS AND PLACE OF PERFORMANCE

12.1 Should the Contractor have to supply any goods under or in connection with an order for Services, the Contractor's General Conditions of Supply shall apply to such supplies.

12.2 The place of performance is Winterthur both for the Contractor and for the Customer.

13. APPLICABLE LAW, ARBITRATION AND JURISDICTION

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

13.2 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.

13.3 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.