

General Sales Conditions of JP Marine Sp z o.o.-SK

I. GENERAL PROVISIONS

1. The Terms and Conditions specified below concern each and every transaction of sale and each delivery of goods made between the Seller and the Buyer.
2. These terms shall be binding on the Parties for all consecutive transactions, regardless of their kind.
3. Any changes, additional arrangements, suspension or termination of these terms require the Seller`s consent in writing.

Other rights and obligations of the Parties that are different from these terms and conditions shall be binding on the Seller only if the Seller has agreed in writing to having a different agreement on the Parties` mutual rights and obligations. Errors and obvious mistakes are not binding on the parties. What is particularly excluded is accepting any "General Sales Conditions" of the Buyer or any other terms or documents of similar nature by mere signing a confirmation of order or any other documents referring to such terms and conditions; such an acceptance requires an explicit statement in writing.

II. DEFINITIONS

1. The phrase "commercial goods" or "goods" means **marine engines, drive systems, propellers, transmissions, clutches, shafts, rescue scooters, fenders and tubes** as well as spare parts and accessories sold by the Seller.
2. The phrase "Seller" or "Selling Party" means: JP Marine spółka z ograniczoną odpowiedzialnością spółka komandytowa [JP Marine limited liability and limited partnership] of Gdańsk, registered in the National Court Register maintained by the Gdańsk-Północ Regional Court in Gdańsk at the number: 0000538976, tax identification number: 5833163148.
3. The phrase "Buyer" or "Buying Party" means an entity, an organisational unit not being a legal entity or an individual conducting a business entered in the Business Register.
4. The phrase "Party" or "Parties" means the Selling and the Buying Party jointly.

III. CONCLUDING AN AGREEMENT

1. Catalogues, price lists and other information for clients are not an offer.
2. The Seller`s sales representatives act only within the scopes of their powers of attorney. The Seller bears no responsibility for acts of sales representatives beyond the scope of their powers of attorney.

IV. DELIVERY

1. "Order", means an offer of purchase of the Goods made by the Buyer in writing. It may be submitted by post, courier, fax or e-mail, but it must contain at least: information on the assortment of the ordered goods, quantity, Buyer`s data necessary to issue a VAT invoice and company data, contact data such as telephone numbers and addresses, the manner, term and place of collecting the ordered products. Accepting the order requires an explicit statement to be made by the Seller.
2. The order should specify any divergences from any possible standard sales conditions, e.g. the warranty period, manner of use or installation to make it valid, which have to be clearly confirmed on accepting the Order. In any case, the Buyer shall assemble the commercial goods at his own risk.
3. The times of deliveries shall be specified by the Seller in the confirmation of accepting the Buyers order or in the Seller`s offer. Upon meeting the requirements resulting from the accepted Order, the Seller shall immediately place an order for the goods at a supplier/ producer. The Seller shall not be held responsible for any delay in the delivery caused by the supplier/ producer of the goods. The Seller shall do his utmost to make timely deliveries. Keeping delivery deadlines also depends on the Buyer`s timely fulfilment of the contractual obligations, including the deadline for accepting an offer, making an advance payment and giving all the necessary information; it also depends on the Seller`s contractors and sub-suppliers fulfilling their obligations so that the Seller may fulfil the obligations towards the Buyer. Any changes required by the Buyer may extend the term of delivery. The commercial products/ goods are deemed to have been delivered on time if they have been handed over to the first carrier or if they have been reported as ready to be collected from the Seller`s factory prior to the lapse of the agreed term.
4. The term of delivery is counted from the day of serving the Buyer with the confirmation of accepting the order or of receiving the agreed advance payment or down payment, depending on the specific agreement between the Parties. If the Buyer has not specified the place of delivery to be accepted by the Seller, the deadline is deemed to be met if on that day the goods are ready to be handed over in the Seller`s factory or in a different place previously agreed on. The cost of storing the goods from that moment is covered by the Buyer.
5. The Seller shall not be held responsible for not meeting a deadline due to force majeure or any other circumstances beyond the Seller`s control, including a delay in delivering the goods to the Seller by the producer or an intermediary supplier.
6. If a delivery has been withheld or limited by the producer or an intermediary supplier due to reasons not related to the Seller, the term of delivery is suspended in full or in part of the delivery which is withheld, until the hindrance has ceased.
7. In none of the abovementioned situations shall the Seller be deemed to have failed to perform his obligations or to have performed them inappropriately, and the Buyer shall not be entitled to claim compensation or contractual penalties.
8. In the case of a contract for cooperation regarding permanent deliveries, each single delivery is treated as a separate sales contract. The provisions of these terms and conditions of concluding agreements shall apply accordingly.

9. If the Seller is delayed in completing a delivery or if its completion becomes impossible, the Buyer may withdraw from the agreement with regard to other deliveries; however, he shall not be entitled to claim compensation for any loss incurred due to the Seller`s failure to complete the deliveries.
10. If a delivery is delayed due to the reasons on the part of the Buyer, or if the goods have not been collected by the Buyer by the agreed deadline, the Seller may, at his own discretion and without any liability incurred, put the products in a warehouse at the Buyer`s cost and risk. If the goods are stored in the Seller`s warehouse, the cost is at least 0,01% of the invoiced value (the price of ordered goods) for each day of storing, starting from the day when they were reported as ready to be handed over. The Seller has the right to set another date for handover, and if this term has elapsed, he has the right to withdraw from the agreement with consequences set forth in p. XI of the Sales Conditions, with the Seller saving his right to receive compensation due to storing the goods.

V. DISPATCH

1. If the delivery is to be made via a freight forwarder or carrier, the risk of accidental loss or damage to the goods is transferred to the Buyer upon the Seller handing the goods over to the freight forwarder or the carrier. The Seller is not responsible for any deficiencies and lacks both in the goods themselves and the packaging from then on. If the Client would like to collect/ collects the goods by himself, then the EX works Incoterms 2000 rules shall apply. If the purchase is made abroad, the client/ Buyer is responsible to organise transport on his own, and he bears the risk of transport and loading from the Seller`s factory, Ex Works in accordance with the terms and conditions of Incoterms 2000.
2. If the Buyer fails to specify the manner, type of packaging and transportation to be accepted by the Seller in advance, and not later than 2 working days prior to the Seller dispatching the goods, the Seller may, at his own discretion but with due diligence, select the packaging and means of transport and send the goods to the Buyer at his cost. The packaging, the way of wrapping and its type is extra paid if the cost exceeds the one provided by the Seller.

VI. PRICES

1. The prices given in price lists, offers and confirmations are net prices (without VAT tax). If there is a change in applicable VAT rates, the gross price shall change. VAT tax is added to each net price and they Buyer is obliged to pay it with the net price. Price lists include net prices in Euros. Sales transactions are made in Euros or in Polish zlotys after calculating the zloty value of the prices specified in Euros according to the sales exchange rate of the Seller`s bank as of the day of issuing the invoice.
2. Prices may change after placing an order and concluding an agreement, if there have been changes in semi-finished products for the sold goods or in accompanying services, e.g. freight. If there is a change in the price, the Seller shall inform the Buyer about this in writing.

VII. PAYMENTS

1. Invoices issued by the Seller become due by the term specified on the invoice. The day of payment is the day of paying in cash or when the Seller`s account is credited; however, payments are considered to have been effected only if they have been made in full.
2. If the day of payment falls on a day which is a public holiday, payment may be made on the next working day.
3. An invoice is also the first call for payment.
4. Any advance payments or prepayments made by the Buyer for future deliveries shall not be deemed as down payments as construed by the Civil Code, unless the Seller confirms in writing that a specific payment is a down payment.
5. If agreed terms of payment are exceeded, legal steps for such a delay (not meeting the payment obligation) may be taken without notice.
6. If the Buyer is delaying one or several due payments, the Seller may condition further deliveries on the Buyer making the due payments or the providing a collateral for such obligations. The Seller may also withdraw from the agreement with an immediate effect. In such a situation all obligations of the Buyer before the Seller become immediately due as of the day of the Seller withdrawing from the agreement.
7. Applying any mutual deductions in settling accounts between the Parties is excluded.

IX. RESPONSIBILITIES OF THE PARTIES

1. The Buyer is responsible for the correctness and completeness of the data in the order or documentation submitted to the Seller.
2. The Buyer is responsible for any possible applications and results of using of the goods delivered by the Seller, even if the Seller was acting as an advisor or consultant in preparing the construction and the final product for the Buyer.
3. The Seller is responsible for fitness and correctness of applying his goods in specific solutions and final products of the Buyer only when this results explicitly from the agreements between the Parties. However, the Seller shall not bear the above responsibility if the Buyer has failed to obey clear guidelines, recommendations and instructions of the Seller. Under no circumstances shall the Seller be responsible for the Buyer not reaching the assumed parameters of use by the object where the purchased goods were applied: the correct selection of goods is the responsibility of the Buyer.
4. The Seller is not responsible before the Buyer for defects in products or goods made by the Buyer with the use of goods delivered by the Seller.
5. No Party is responsible before the other one for any profits lost or for any other loss incurred by a Party due to non-performance or undue performance of the contract, save for the responsibilities explicitly stated in these conditions.

X. WARRANTY, GUARANTEE, CLAIMS

1. Depending on the type of goods, the terms of the given warranty card issued by each producer for each device shall apply.
2. The Buyer or the carrier is obliged to inspect the goods for hidden or visible defects or quantitative deficiencies at the moment of receiving them.
3. Goods collected by the Buyer or the carrier without any reservations are considered defect-free.
4. If the goods have been handed over in a common packaging, any possible defects or quantitative deficiencies must be reported at collecting the goods from the carrier.
5. The Seller is not responsible for any losses incurred by the Buyer due to failures or malfunctions of the goods.
6. The warranty includes only the goods that are used and mounted in accordance with the installation manual delivered with the goods, and such mounting must be carried out by an authorised entity (a shipyard, a specialised factory) in standard conditions. The warranty is excluded if the goods are used in non-standard conditions, other than the ones specified in the warranty card, assembly manual or technical and operational documentation.
7. Guarantee responsibility is excluded by these Conditions/ contract.
8. In every case, warranty conditions are in accordance with the conditions specified by the producer of the goods in the warranty card. The warranty does not include the costs of delivery and assembly of the device unless the warranty card specifies otherwise. The Seller does not grant a quality warranty to the Buyer; however, inasmuch as it is specified herein, he shall co-operate with the Buyer in exercising the warranty rights from the producer of the goods.
9. Claims procedure:
 - 9.1 The Buyer reports his claim in writing, describing the subject matter and scope of damage.
 - 9.2 The Seller sends the reported claim to the producer – supplier to be considered.
 - 9.3 The Buyer may demand that the damaged part be replaced at his own cost before the warranty claim is considered. If the claim is accepted, the Seller shall issue a corrective invoice and return the funds that have been paid (without transportation costs, unless the guarantor – producer covers these costs).

XI. THE BUYER WITHDRAWING FROM THE AGREEMENT

1. Save for the cases of withdrawing from the agreement specified by the civil code, the parties may terminate the agreement by mutual consent. If the agreement is terminated after handing over the goods for reasons not related to the Seller, the Seller is not obliged to accept the return of defect-free goods that were delivered. If, however, the Seller agrees to accept the goods previously delivered due to the termination of the agreement, the cost of delivering the goods to be taken back by the Seller shall be covered by the Buyer.

2. If the Buyer withdraws from the agreement for reasons related to the Buyer, or the Seller withdraws from the agreement because of the Buyer's fault, the Buyer shall pay a contractual penalty of 30% of the gross sale price to the Seller. The Buyer shall pay the contractual penalty on the first demand of the Seller in writing, within 7 days of receiving this demand.

XII Contractual penalties

1. The Seller shall pay the Buyer a contractual penalty of 0,01 % of the gross sale price subject to these general commercial conditions for each day of delay in delivering the sold/ordered goods, counted from the second week of the delay through the Seller's fault, but not exceeding 10% of this price.
2. Neither of the Parties to the Conditions/ the Contract is responsible before the other one for any loss, lost benefits, lost profit, lost possibility to use, loss of production, loss of contracts or for any other direct, indirect or consequential damages that may or have been incurred by the other party, save for the terms and conditions regulating the obligations of the parties herein.
3. The Buyer declares that he is aware of criminal and civil liability for unfair competition practices specified in the Unfair Competition Prevention Law of 16th April 1993, and in particular of the following obligations:
 - a. he may not distribute, disclose or use the Seller's classified information as construed by art. 11.4 or the abovementioned law; and
 - b. he may not persuade any entity (an individual, an organisational unit with or without a legal personality) being the party to an agreement with the Seller not to perform or to unduly perform their obligations before the Seller.
4. The Buyer shall not undertake any actions specified above within 5 years of performing this agreement.
5. During the period of this agreement and after its lapse, the Buyer shall not distribute, disclose or use also such information that is not classified by the Seller but whose distribution, disclosure or usage might in any way tarnish its reputation or do it harm in any other way.

XIII Final provisions

1. These conditions and agreements between the parties shall be governed by the Polish law only. In the matters not regulated by these conditions, the rules of the civil code shall apply accordingly.
2. If agreements and sales conditions have been drawn up in the Polish language and in another language, the original language of the contract is Polish. If there are any discrepancies between the Polish and the non-Polish version of a contract, the Polish version shall be the decisive one.
3. Any changes to these Conditions and any changes to agreements between the parties have to be made in writing in order to be valid.
4. Any disputes resulting out of these conditions and the agreements based on them shall be considered by common courts with a jurisdiction over the Seller's venue of business.

5. The Seller reserves the right to make structural changes resulting from the technical developments in relation to the solutions presented in the current sales offer, which may not be considered as goods being inconsistent with the agreement.
6. These conditions apply only to business entities. Their application for individual (consumer) sales is excluded.
7. In the matters not regulated by these Conditions, the provisions of the Civil Code shall apply.