

GENERAL CONDITIONS OF TPN LTD



A: with regard to the sale and delivery of products and related services

Article I - General

- These General Conditions of Sale and Delivery apply to all offers, orders, contracts of sale, contracts for services and other agreements relating to deliveries of products and/or services to be made by TPN Ltd ("TPN") and all the provisions hereof shall apply between the parties, unless both parties expressly provide otherwise, in writing. For the purpose of these conditions the following definitions apply: TPN: the party referring in his quote to "contractors". Customer: any party to whom the aforementioned quote(s) is (are) directed.

Article II - Quote

- Each quote made by TPN involves no commitment.

Article III - Agreement

- If the agreement is concluded in writing, it is considered as completed on the day the contract is signed by the Customer, or on the day of dispatch of the written confirmation of the order by TPN.
- Verbal promises, arrangements or other juristic acts shall only be binding upon us if made or performed by persons holding a specific proxy or persons with other powers of representation.

Article IV - Price

- Unless stated otherwise, by us, the prices quoted are based on delivery EXW or DDP in accordance with the most recent version of the INCOTERMS, and do not include packaging, VAT and other charges levied by the government on sales and deliveries.
- If assembly and/or putting into operation of the product to be delivered has been agreed, the price is, unless otherwise directed in the agreement, calculated including the agreed assembly and delivery of the product in operating order at the location referred to in the quote, including all costs, but excluding value added tax.
- If, after the date of completion of the agreement, one or more of the cost price factors have been subject to a rise, even if this occurs as a result of foreseeable circumstances, TPN is entitled to raise the agreed price accordingly.
- Each quote of TPN is based on implementation of the agreement under normal circumstances and during normal working hours.

Article V - Drawings, calculations, descriptions, models, tools etc.

- Data listed in catalogues, illustrations, drawings, statements of dimensions and weights etc. are only binding if and insofar as they have been explicitly included in a contract signed by the Customer and TPN, or in a confirmation of the order signed by TPN.
- Quotes given, as well as drawings, calculations, software, descriptions, models, tools, etc. made or provided by TPN, remain the property of TPN, irrespective of whether costs have been charged for these. The information enclosed in or underlying the manufacturing and construction methods, products etc. remain exclusively reserved to TPN, even if costs have been charged for these. The Customer vouches that the information we provide will be used solely and exclusively in connection with the agreement and that he will not use that information in any manner that is in breach of the intellectual rights of third parties.
- The Customer shall indemnify us in respect of all direct and indirect consequences of claims asserted against us by third parties as a result of the violation of the rights referred to in the foregoing sub-clause.

Article VI - Delivery and delivery time

- The delivery time commences on which ever of the following times is latest:
 - the day of completion of the agreement,
 - the day of receipt by TPN of the requisite documents, data, permits, etc. for implementing the order;
 - the day on which the necessary formalities for commencing the work have been fulfilled;
 - the day of receipt by TPN of that which in accordance with the agreement had to be implemented prior to commencing the work. If a delivery date or week has been agreed, the delivery time is the period between the date of completion of the agreement and the delivery date or week.
- The delivery time is based on the working conditions at the time of completion of the agreement and on delivery in good time of the materials ordered by TPN for implementing the work. If, due to no fault of TPN a delay arises as a result of a change to the said working conditions or because materials ordered in good time for performing the work have not been delivered in good time, the delivery time will be extended insofar as is necessary.
- With reference to time of delivery, the product is deemed to be delivered, when it is available for transfer of ownership to the Customer, or at least can be placed within his power and the Customer has been informed of this, without prejudice to the obligation of TPN to comply with any commitments regarding assembly or installation.
- Notwithstanding the provisions set forth elsewhere in these conditions with regard to extending the delivery time, the delivery time is extended by the duration of the delay arising on the part of TPN as a result of the failure of the Customer to comply with any of the obligations arising from the agreement or any cooperation to be required from him with regard to the implementation of the agreement.
- If the agreed delivery period is exceeded – for whatever reason – this shall not entitle the Customer to wholly or partially dissolve the agreement or to perform or cause to be performed any work in execution of the agreement, without having judicial authorization to do so.
- Any fine in the contract for exceeding the delivery time must be deemed to be set in the place of any entitlement of the Customer to compensation. Such a fine is not owed if the exceeding of the delivery time is a result of force majeure.
- If the Customer refers to the products offered him, all costs deriving from this (including freight, handling and storage costs) are to be paid by the Customer.
- In the event of the cancellation of the agreement or failure to take possession of the goods to be delivered by us, the Customer shall, with immediate effect, owe 10% of the agreed price, without prejudice to our right to demand from the Customer, in addition to this payment towards the costs and lost profit, full compensation for the damages suffered as a result of the cancellation.

Article VII - Assembly and installation

- The Customer is responsible vis-à-vis TPN for implementing correctly and in good time all arrangements, facilities and/or conditions that are necessary for setting up the product to be assembled and/or the correct operation of the product in assembled state, except and insofar as this work is carried out by or on behalf of TPN in accordance with data and/or drawings made by or on behalf of the latter.
- Notwithstanding the provisions of paragraph 1, the Customer shall in any event arrange at his own expense and risk that:
 - the employees of TPN, or the employees of its subcontractors as soon as they have arrived at the place of installation, can commence their work and continue performing their work during normal working hours and moreover, outside normal working hours if this is deemed necessary by TPN, provided the Customer has been informed of this in good time.
 - suitable accommodation with all conveniences becomes available for the employees of TPN or its subcontractors, as required by virtue of governmental regulations, the agreement or contract;
 - the access roads to the place of installation are suitable for the requisite transport;
 - the designated place of installation is suitable for storage and assembly;
 - the necessary lockable storage sites for equipment, tools and other matters are present;
 - the requisite and usual auxiliary workers, auxiliary equipment, additives and materials and lubricants, polishes, painting and other small materials, gas, water, electricity, steam, pressurised air, heating, lighting etc.) as well as the normal measuring and testing equipment for the business of the Principal, are available for TPN employees and its subcontractors

in good time, free of charge and in the right place;

- all necessary safety and precautionary measures have been taken and will be maintained in accordance with the guidelines for VCA certified work and that, as regards assembly or installation undertaken by our technicians is compliant with all government regulations;
 - at the start of and during the assembly all the requisite products and materials are present in the correct place.
- Damage and costs arising because the conditions set forth in this article have not been complied with or not in good time, are to be paid by the Customer.
 - With regard to the assembly/installation time, article VI is likewise applicable.

Article VIII - Transfer of risk and ownership

- Passing of the risk in respect of all direct and consequential damages is in principle, determined by the Incoterm used in clause IV. However if the Customer, after being given notice of default, continues to fail to accept the product, TPN will be entitled to charge the Customer for the costs of storing the product.
- Without prejudice to the stipulations of the foregoing paragraph and of clause VI paragraph 3, title to the product shall only pass to the Customer once all amounts due to us from the Customer in connection with the delivery or related work have been settled in full, including interest and costs.
- Should the occasion arise, TPN will be entitled to unimpeded access to the delivered products. The Customer will grant all cooperation in order to give to TPN the opportunity of exercising the condition with regard to ownership given in paragraph 2, by taking back the delivered products, including any disassembly that may be required.

Article IX - Invoicing and payment

- Unless otherwise agreed, the agreed price will be invoiced as follows:
 - 30% on awarding the order; 70% prior to delivery as referred to in article VI paragraph 3;
 - upon delivery of parts or accessories: for the full amount.
- Unless otherwise agreed in writing, all payments should be made without any deductions or offset, immediately upon receipt of the invoice to the designated account or an office of TPN.
- If, in the event of late payment, collection is made through judicial or other channels, the amount of the claim to be increased by 10% to cover administration costs and the judicial and extra judicial costs shall be borne by the Customer in the amount paid or owed by TPN.

Article X - Claim and guarantee

- Claims with regard to visible defects must be made, immediately after receipt of the product, but at the latest five days after the actual transfer of the product to the Customer, in a written specified notification to TPN. Claims with regard to non-visible defects must be submitted immediately after their discovery, but in any event within the guarantee period referred to in paragraphs 2 and 3, in a written, specified notification by the Customer to TPN. Should the said periods be exceeded, all claims vis-à-vis TPN lapse with regard to the said defect. Legal claims in this matter should be submitted within a year after the claim has been submitted in good time, on pain of the claim ceasing to be valid.
- Notwithstanding the constraints set below, TPN vouches for the soundness of the products supplied and for the quality of the materials used and/or supplied for these products, for a period of 12 months subsequent to delivery in accordance with article VI paragraph 3, excluding visible defects. If TPN has agreed in assembly or installation, the aforementioned obligation of TPN applies for a period of 12 months subsequent to assembly or installation, but at the latest up to 18 months after delivery in accordance with article VI paragraph 3. For parts delivered separately, a period of 6 months applies after said delivery.
- Particular attention is likewise applicable to defects whose causes lie solely or largely in improper assembly or installation by TPN. If assembly or installation of the product will be done by TPN, the periods referred to in paragraphs 1 and 2 commence on the day on which assembly/installation by TPN has been completed, on the understanding that in that case the period of guarantee terminates in any event once 18 months subsequent to delivery in accordance with article VI paragraph 3 have elapsed. Guarantee of TPN with regard to a possible failure to a product, irrespective where this failure occurs, comprises the repair and/or replacement of the defective part on the premises of TPN or else, when it is by dispatching a part for replacement, all the way to the choice of TPN. In all events the guarantee covers, besides the free of charge dispatch of replacement material, among other too in, the reasonable and customary labour necessary for remedying the defect and if necessary, again at the choice of TPN, too in the labour for disconnecting and reconnecting the product from its attached equipment, foundation and connecting systems. All costs exceeding the sole obligation as described in the preceding sentences of this paragraph but not limited to; costs for transportation abroad, waiting hours, travel and accommodation expenses, as well as all extra costs which never occur during repair under circumstances in a domestic workshop and are arising from either disassembling or mounting are to be paid by the Customer. The Customer will grant TPN assistance in any disassembly and assembly upon first request.
- Only after written permission from TPN the Customer may have a necessary repair carried out by a third party for the account of TPN. This may be the case if the costs of the repair are reasonable. In order to establish whether these costs are reasonable the cost price level of TPN will be the standard. TPN will designate the third party who may carry out the necessary repair in consultation with the Customer. Repair by a third party in accordance with this paragraph is only possible: - if TPN unable or not able in good time to repair the defect in its premises, or - when it comes to a disproportionate difference between the necessary costs of transporting of the product to the workshop of TPN and the costs of repairing this in situ, or - if in connection with the repair of the Customer it cannot be required to have him carried out the repair in a workshop of TPN.

- In any event defects that do not come under the guarantee are those occurring which are fully or partially the result of:
 - failure on the part of the Customer to have due regard for operating and maintenance regulations or other use than is normally anticipated;
 - defects not due to material and/or constructional faults, such as defects arising from normal wear and tear, internal and external contamination, rust, corrosion, overloading, overvoltage, freezing, overheating, overloading and/or letting the product fall;
 - assembly/installation or repair by third parties with the exception of that which is referred to in paragraph 4 - including the Customer;
 - materials or products applied at the request of the Customer; or
 - materials or products which have been provided for treatment or processing by the Customer to TPN;
 - materials, products, methods and constructions, which have been applied at the explicit instruction of the Customer, as well as materials and products supplied from, by or on behalf of the Customer.
- If the Customer fails to comply with any obligation deriving from the contract that he has concluded with TPN or a contract connected with it, or if he does not do so properly or in good time, TPN cannot be held to any guarantee in these agreements, however it is referred to. If the Customer resorts to or has resorted to disassembly, repair or other work with reference to the product without the prior written approval from TPN, all entitlement under guarantee lapses.
- If TPN replaces a part in order to comply with the guarantee obligations, these parts and products become the property of TPN. The original guarantee period is not extended upon replacement.
- As regards inspections, consultancy and similar operations carried out by TPN, no guarantee will be given. Nor can TPN accept any responsibility for designs and parts made available by the Customer himself.
- The alleged non-performance of the guarantee obligation on the part of TPN does not absolve the Customer from his obligations deriving from any agreement concluded with TPN.

Article XI - Liability

- The liability of TPN is confined to compliance with the guarantee obligations described in article X of these conditions.
- With the exception of gross negligence and willful misconduct on the part of TPN's managerial and senior supervisory personnel and with the exception of the provision of paragraph 1, all liability of TPN, such as liability for interruption of business, loss of profit, consequential loss, and loss as a result of liability vis-à-vis third parties, is excluded. In no event shall the total aggregate liability of TPN exceed the price allocable to the sale and delivery by TPN giving rise to the claim. Nothing in these conditions will limit TPN's liability for death or personal injury caused by his negligence, fraud or fraudulent misrepresentation or for anything else that cannot be limited or excluded as a matter of law.
- Consequently TPN is not liable for:
 - the violation of copyright, licences or other rights of third parties as a result of the use of data provided by or on behalf of the Customer;
 - damage or loss, through whatever cause, arising from raw materials, semi-manufactures, models, tools, and other matters made available by the Principal;
 - transport difficulties, fire and other serious disruption to our business or that of our suppliers;
 - the consequences for the Customer under civil law of the violation of regulations of public law as a consequence of any activities provided for or undertaken by third parties engaged by us in the service of the Customer;
 - If TPN, without being assigned to carry out the assembly, provides assistance and help of whatever kind in the course of the assembly, this will be done at the risk of the Customer.
- The Customer is obliged to hold harmless and indemnify TPN with reference to all claims of third parties for compensation of damage for which the liability of TPN in relationship with the Customer been excluded in these conditions.

Article XII - Force majeure

- For the purposes of these General Terms and Conditions of Sale and Delivery, force majeure shall mean: any circumstance as a result of which performance is prevented or made unreasonably difficult and also, insofar as not already included within that definition, war, threat of war, civil war, riot, industrial action, lockout, transport or other cutbacks, fire and other serious disruption to our business or that of our suppliers.

Article XIII - Suspension and dissolution

- In the event of an impediment to the implementation of the agreement arising as a result of force majeure TPN shall be entitled, without the intervention of the court, to suspend the implementation of the agreement for a maximum of 6 months or to dissolve the agreement in full or in part, without being obliged to pay any compensation. During the suspension TPN is empowered, and at the end of this period to opt for implementation of the agreement or for dissolution of the agreement. Both in the case of suspension and dissolution, TPN is entitled to require immediate payment for all that already has been performed for the implementation of the agreement.
- If the Customer fails to comply with any obligation deriving for him from the agreement concluded with TPN, or from a coherent agreement, or fails to do so properly or in good time, or if there is a good ground for fearing that the Customer is unable or will be unable to comply with the contractual commitments vis-à-vis TPN, as well as in the case of bankruptcy, suspension of payment, closure, liquidation or partial transfer for whatever reason, otherwise, of the Customer's business, including the transfer of a major portion of his receivables, TPN is entitled, without notice of default and without the intervention of the court, to suspend the implementation of each of these agreements for a maximum of 6 months or to dissolve them in full or in part without being held to any compensation or guarantee or reimbursement of the costs incurred by TPN. During the suspension TPN is empowered, and at the end of this period, to opt for implementation or full or partial dissolution of the suspended agreement(s).
- In the event of suspension and/or dissolution by virtue of paragraph 2 TPN's agreed price becomes immediately due and payable. The instalments already paid, and the costs saved by TPN as a result of the suspension or dissolution.
- The Customer is not entitled to claim dissolution of the agreement with retroactive force.

Art. XIV - Disputes and applicable law

- Any dispute arising out of or in connection with the agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be one. The seat, or legal place, of arbitration shall be London. The language to be used in the arbitral proceedings shall be English.
- The substantive law of England will be applicable to all agreements to which these conditions are applicable in full or in part, unless this is departed from in writing and signed by both parties, without reference to the UN Convention on Contracts for the International Sale of Goods.

B: With regard to repairs, revision and other services

Article I - General

- These General Conditions apply to all offers, orders, contracts for services and other agreements relating to repairs, servicing or other services ("Services") to be performed or rendered by TPN and all the provisions hereof shall apply between the parties, unless both parties expressly provide otherwise, in writing.
- In these general conditions, the following definitions apply:
 - TPN: the party that refers to these General conditions in its offer(s);
 - Customer: the party to whom the aforementioned offer(s) is (are) addressed.

Article II - Quote and agreement

- If either party confirms previously made arrangements in writing, the agreement shall take effect as a result of that confirmation. If this confirmation is accompanied by a general description of the order and no objection is made to that description within two working days of receipt of the confirmation, the description will be deemed to reflect the arrangements made.
- If the Customer himself determines the extent of repairs or servicing, and/or which parts are to be replaced and, in our opinion, this does not provide sufficient guarantee with respect to the outcome of the work to be done, we may refuse to perform the order without being obliged to pay any compensation.
- Anything that is established by TPN in consultation, in writing or otherwise, with the Customer during the performance of the agreement over and above the work expressly stipulated in the written agreement or, failing that, in the written acceptance shall be regarded as being additional work. The effects of additional work on the Price and delivery time shall be agreed upon.
- Performance shall be considered completed when either:
 - TPN has provided written confirmation that the repair or services has been completed and if applicable the protocol of acceptance was signed; or
 - eight days have elapsed from the time the TPN notified the Customer as above and Customer has neglected to inspect the repair or services provided within the written agreement or, failing that, to notify TPN in writing of its approval or rejection or
 - the Customer commences, without the approval of TPN and during the term of performance, the use or the operation of the equipment or objects on which the repair or services were provided.

Article III - Price and conditions of payment

- Prices given by TPN are always based on cash payment and delivery ex warehouse or workshop, unless otherwise is agreed in writing. Any price represents a reasonable and anticipated estimation of the costs, charges etc. resulting from the services or repairs to be provided.
- The costs related to the Services provided comprise:
 - costs for expertise;

- labour, supervision of inspectors and mechanics at current rates;
- charges of subcontractors or suppliers;
- travel and accommodation expenses of employee(s) of TPN and/or its subcontractors or suppliers;
- costs of used parts;
- costs of auxiliary materials including cleaning agents and lubricants, fuel, etc.;
- any additional costs for testing or environment software.

- Any waiting time shall be charged as normal working hours.
- Payment shall be made in cash, unless otherwise agreed, in which case payment must be made by transfer within 14 (fourteen) days of the invoice date to a bank account designated by us, without any setoff or deductions.

- In the event of late payment, collection is made through judicial or other channels, the amount of the claim will be increased by 10% to cover administration costs and the judicial and extra judicial costs shall be borne by the Customer in the amount paid or owed by us.

Article IV - Conditions in connection with repair work

- If the repair or revision will be carried out in the workshop of TPN, all transport and other costs that will be incurred outside the TPN workshop as well as all risks relating to the matters to be repaired and/or revised are to be paid for by the Customer.
- If the repair or revision is carried out on the location of the object, the Customer must:
 - ensure that the work can be carried out in an area that is sufficiently protected from the influence of the weather, which is clean and where sufficient light and if necessary water is present; this area must be lockable, at the same time the Customer has to see to it that all regulations with regard to safety, fire prevention, etc. have been complied with;
 - ensure that the mechanics of TPN, or its subcontractors, can commence work immediately upon arrival at the site of the activities and can continue to work undisturbed;
 - take responsibility for all costs which arise if the mechanics of TPN or its subcontractors cannot commence work immediately upon arrival, or are forced - for no fault of their own - to interrupt the work or have to continue the work outside normal working hours;
 - grant all help that reasonable can be required and to make available electrical energy, fuel, water etc. as well as shelving, lifting, hoisting and transport equipment;
 - make available assistance upon first request of the mechanics of TPN free of charge;
 - pay for all the costs of activities such as dismantling of pipelines, discharge pipes, steps, landings, etc., which are necessary for implementing the work properly and the assembly and installation of these again, subsequent to the repair; and to pay for all the costs of travelling and transportation as well as costs for waiting and lodging;
 - take all necessary safety and precautionary measures and maintain these and take measures and maintain these as to comply with applicable regulations of the government with regard to the work;
 - take out insurance to the satisfaction of TPN, against every form of damage arising as a result of accident or fire caused during the preparation or implementation of the work assigned to TPN and to have this insurance continued for at least the duration of the work.

- TPN can reject the responsibility for the sound operation of repaired or revised products or part thereof if it is enforced to accept the assistance of the employees of the Customer for instance as a result of setting the time of repair too narrow by the latter or for other reasons TPN cannot be blamed for.

- Costs arising as a result of the non-performance of the conditions as listed in this article will be for the account of the Customer.

Article V - Guarantee and liability

- TPN warrants performance to its reasonable abilities. Any additional warranty with respect thereto is explicitly excluded. TPN only accepts responsibility for the sound operation of the repaired or revised products or part thereof if:
 - the repair has been carried out with all the activities, innovations, adjustments and deliveries as found necessary by TPN. The method of carrying out the activities, supervision and the number of mechanics and assistants needed for the work to perform has been determined by TPN;
 - the Customer refrains from any form of intervention in the nature and/or the implementation of the activities.
- With due observance of the provisions of paragraph 1 of this article, TPN grants six months guarantee on all Services carried out, which period commences, either: (i) immediately after completion of the Services or (ii) immediately after the repaired or revised products have been tested by TPN, or (iii) have been returned to the Customer, irrespective of the latter will put the repaired or revised products immediately in operation at that time, whichever occurs first. Defects emerging within this period as a result of parts or materials mounted or introduced improperly, or as a result of inadequate craftsmanship on the part of mechanics employed by or on behalf of TPN, all of this to be judged by TPN will be remedied by reperforming the Services or replacement of the defective part or materials, provided that these defects are reported in writing to TPN eight days subsequent to the first occurrence. Claims by the Customer for damage to the object(s) or equipment upon which the Services were performed, are governed by Article V paragraph 6.

- Claims to guarantee are subject to:
 - the repaired or revised product has been used unwisely;
 - the instructions of the manufacturer for use and/or the instructions or notes given by TPN for similar reasons have not been followed;
 - third parties have carried out the repair of the defects.
- The guarantee period as set down in paragraph 2 will not be extended after the defects have been remedied.
- Should parts, supplied and not assembled by TPN, prove to have been wrongly assembled by the Customer or by third parties, no guarantee is given.
- The liability of TPN is confined to performance of the guarantee obligations described in this article. With the exception of gross negligence and willful misconduct on the part of TPN's managerial and senior supervisory personnel and with the exception of the provision of paragraph 2, all liability of TPN, such as liability for interruption of business, loss of profit, consequential loss, and loss as a result of liability vis-à-vis third parties, is excluded. In no event shall the total aggregate liability of TPN exceed the price allocable to the Services performed by TPN giving rise to the claim. Nothing in these conditions will limit TPN's liability for death or personal injury caused by his negligence, fraud or fraudulent misrepresentation or for anything else that cannot be limited or excluded as a matter of law.

- Where TPN supplies in connection with the Services goods or materials supplied by a third party, TPN does not give any warranty, guarantee or other terms as to their quality, fitness for purpose or otherwise, but shall, where possible, assign to the Customer the benefit of any warranty, guarantee or indemnity given by the party supplying the goods or materials to TPN.
- The Customer is obliged to hold harmless and indemnify TPN with reference to all claims of third parties for compensation of damage for which the liability of TPN in relationship with the Customer has been excluded in these conditions.

Article VI - Disputes and applicable law

- Any dispute arising out of or in connection with the agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be one. The seat, or legal place, of arbitration shall be London. The language to be used in the arbitral proceedings shall be English.
- The substantive law of England will be applicable to all agreements to which these conditions are applicable in full or in part, unless this is departed from in writing and signed by both parties, without reference to the UN Convention on Contracts for the International Sale of Goods.