



**WEESGAARD**  
**MECHANICAL SUPPORT APS**

**GENERAL TERMS**

**AND CONDITIONS**

**Amended as at October 2018**

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## **1. Scope**

- 1.1 Any delivery from Weesgaard Mechanical Support (WMS) is subject to these General Terms and Conditions, being binding on all deliveries between the parties, thus superseding all agreements and customs inconsistent with the contents hereof, including any terms and conditions drafted and submitted by the Customer, unless otherwise provided by the order confirmation submitted by WMS.

## **2. Formation**

- 2.1 WMS is not bound by any statements issued by WMS until the date when WMS sends its order confirmation, at the earliest, irrespective of the designation thereof. Until such order confirmation has been communicated to the Customer, WMS is entitled to withdraw any such statements.
- 2.2 If the Customer deems that the order confirmation submitted by WMS differs from the Customer's order and therefore implies a change, which the Customer is not prepared to accept, the Customer is obligated to inform WMS that the Customer is not prepared to accept any such change. In that case, the Customer shall give notice thereof to WMS within 3 days, as the Customer is otherwise bound by WMS's order confirmation, which forms the basis if evaluating, whether the agreement is duly performed.

## **3. Authority**

- 3.1 No independent person/company, such as an agent, a representative or a broker, is authorised to bind WMS without a written agreement to that effect.

## **4. Prices**

- 4.1 Unless otherwise agreed, all prices are stated exclusive of VAT, customs, freight, delivery, and public duties.
- 4.2 WMS reserves the right to adjust the prices, if WMS can substantiate increases in salaries and wages, prices of materials, public duties or other costs.

4.3 Further, WMS reserves the right to charge extra payment for extra work due to the Customer's requests for corrections and changes in the repair work to be performed by WMS after WMS's commencement of the work, or due to non-performance of the agreement in a continuous process caused by the Customer's conduct in other respects.

4.4 Likewise, the price is based on the current exchange rates in force at the Customer's placing of the order. Thus, WMS reserves the right to adjust the price accordingly prior to payment in case of any exchange rate fluctuations.

## **5. Terms of delivery**

5.1 Delivery will be effected at the time and place agreed with the Customer, however, subject to delays or hindrances caused by the conduct of any subcontractors, force majeure events beyond the parties' control, or deviations from an agreed plan of delivery. If a time and place of delivery has not been agreed, delivery will be effected at the time and place determined by WMS.

5.2 WMS shall notify the Customer in case of any delay in delivery. In case of delay in delivery lasting more than five days, the Customer is entitled to an agreed penalty of 1% of the estimated price for each full week of delay, however, not exceeding 20% of the contract sum. In addition to this, the Customer has no other remedies in case of delay, e.g. no possibility of claiming compensation due to any operating loss, loss of profits, or any other indirect loss or consequential damage.

5.3 Should the Customer fail to take delivery at the date of delivery or fail to perform its duty of collection in respect of spare parts subject to service or repair by WMS at its own workshop, WMS is entitled to terminate the agreement and claim damages. Further, WMS is entitled at 10 days prior notice to sell off or store non-collected spare parts for the Customer's account. Such storing will be at the Customer's own risk.

5.4 Any spare parts delivered may only be returned if agreed in advance in writing and, if so, for the Customer's account. Pallets, boxes, cases, or other packaging to be separately debited will not be credited.

5.5 If the parties agree on any changes or additional work during the process of repairing, the delivery time will be extended or the delivery date postponed by the time spent on preparing and performing any such work.

## **6. Terms of payment**

6.1 Unless otherwise agreed, payment must be made within 8 days from the invoice date.

6.2 In case of overdue payment, interest of 2% for each month entered into will be added, counting from the due date until payment has been effected.

6.3 On the forwarding of prompt notes, a dunning charge of DKK 100.00 per prompt note will be charged, and WMS is further entitled to demand payment in full of its legal costs and expenses, and thus not only the maximum charges under the Danish Interest Act.

6.4 The Customer is not entitled to set off the purchase price or any part thereof, and any notice of default given by the Customer under clause 9.1 will not entitle the Customer to withhold the purchase price.

6.5 The spare parts delivered by WMS are subject to a retention of ownership, according to which WMS is entitled to take repossession of the spare parts sold in case of the Customer's breach – in full or in part – of its payment obligation. All costs incurred in connection with any such repossession are payable by the Customer.

## **7. Warranty / Liability**

7.1 If a manufacturer or a producer of a spare part resold by WMS to the Customer issues a warranty in its own name to be relied upon by the Customer, the manufacturer or producer will be solely liable for such warranty obligation. Thus, the Customer is not entitled to set up a claim against WMS due to any such warranty issued by a manufacturer or a producer.

## **8. Force majeure**

- 8.1 WMS is not liable for any non-performance of WMS's contractual obligations, provided WMS can substantiate that such non-performance is due to circumstances beyond WMS's control, such as, but not limited to, war, warlike events, fire, strikes, lockouts, bans on exports or imports, embargoes, delayed or defective deliveries of materials from sub-suppliers, production standstills, shortages of energy or transport facilities.
- 8.2 In that case, WMS is entitled to extend the time of delivery correspondingly or to terminate the agreement. As soon as the hindrance has been removed, either party will be bound by the agreement, unless previously terminated by WMS. Either Party is entitled to terminate the agreement in case of a hindrance lasting more than three months.

## **9. Defects etc.**

- 9.1 If the Customer intends to assert a defect in a spare part delivered or repair work supplied, which defect has been or should have been established by the Customer, the Customer shall without undue delay and within five days upon supply of such repair work or receipt of such spare part complain in writing to WMS, stating the nature of the defect. The Customer has the burden of proof that any such defect asserted by the Customer in the spare part delivered or in the repair work supplied was present at the time of delivery or at the time of supply. If the complaint concerns a defect for which WMS is not liable, WMS is entitled to compensation for any work performed and any costs incurred by WMS due to the complaint.
- 9.2 Remedying of defects established under clause 9.1 will be completed, at WMS's option, either by repair of the defect or by a replacement delivery. The Customer is not entitled to any other remedy for breach, including termination of the agreement. Thus, the Customer is not entitled to compensation or damages for any cost or loss incurred or inflicted on the Customer in connection with the repair or the replacement delivery.
- 9.3 However, the Customer is entitled to request a third party to perform the repair work for WMS's account, if the defect has not been remedied within a reasonable time according to the above provisions, and provided such repair work is performed reasonably and sensibly and upon at least 10

days' prior notice to WMS. WMS's liability for such repair performed by a third party is limited to the direct costs incurred in relation to the repair, and the liability for the repair can never exceed the price fixed by WMS in the order confirmation. Alternatively, the Customer is entitled to affirm the contract in respect of the repair work and demand a proportionate reduction in the purchase price, however, not more than 10%. Thus, the Customer is not entitled to repudiate the contract or demand compensation, including compensation for any operational loss, loss of profit or any other indirect loss or consequential damage due to defects in the spare parts or the repair work.

- 9.4 If the Customer fails to invoke a defect within 6 months upon receipt of a spare part or delivery of repair work, the Customer forfeits the right to assert the defect. If the spare part repaired or delivered and assembled or incorporated as part of another marine part belonging to the Customer is utilized more intensively than agreed or presupposed on the formation of contract, this period will be reduced proportionately.
- 9.5 Repair work does not comprise ordinary wear and tear or failures, damage, defects or the like due to incorrect handling or overload of the vessel. The duty to repair will likewise lapse, if the ordering entity disregards any directions from the yard or the sub suppliers in respect of service, maintenance or the like.
- 9.6 Upon WMS's replacement of defective parts, the original parts will become WMS's property without separate payment to the Customer.

## **10. Product liability**

- 10.1 Product liability is governed by the current rules of Danish law in force at any time subject to the limitation of liability provided by these General Terms and Conditions.
- 10.2 WMS is only liable for personal injury caused by the supply delivered or received by WMS, provided such injury is proved to be due to an omission or neglect on the part of WMS or others subject to WMS's responsibility.

- 10.3 WMS is not liable for any damage to real property or chattels caused by spare parts delivered or repair work performed by WMS. Further, WMS is not liable for any damage to products manufactured or kept by the Customer or for damage to the Customer's products of which WMS's supply forms part.
- 10.4 WMS is not liable for any operating loss, loss of profit or any indirect loss or consequential damage, including payment of agreed penalties or other penalties caused by WMS's supply of defective spare parts to the Customer or performance of insufficient repair work for the Customer, unless the Customer can prove that WMS has acted grossly negligently or intentionally.
- 10.5 The Customer shall indemnify WMS from any claim for damages concerning product liability set up against WMS by any third party to the extent that WMS is not liable to the Customer under these General Terms and Delivery.
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- 10.6 The liability for Weesgaard Mechanical Support ApS is limited to DKK 10,000,000 for all claims advanced during a calendar year, however, at a maximum DKK 2,000,000 per damage.  
Damage means any physical deterioration. Several physical deteriorations for the same cause will be regarded as one single damage

## **11. Intellectual property rights**

- 11.1 WMS will not warrant for infringements of third party rights, including infringement of patent rights and intellectual property rights, caused by spare parts delivered and assembled.

## **12. Sub suppliers**

- 12.1 WMS is entitled to use sub suppliers in connection with the fulfilment of its obligations under these General Terms and Conditions, always provided that WMS is liable for the services provided by any such sub suppliers to the same extent as WMS is liable for its own services.

### **13. Amendments**

- 13.1 WMS reserves the right to amend these General Terms and Conditions. The current version is always available on [www.weesgaardms.com](http://www.weesgaardms.com).

### **14. Product information**

- 14.1 The technical specifications and other dimensions stated in any catalogue material supplied are intended for information only, and WMS assumes no liability for any errors in such material. All information and data stated in such material, including price lists, are only binding if explicitly agreed between the parties.

### **15. Choice of law and venue**

- 15.1 Any dispute arising out of or in connection with deliveries from WMS must be settled pursuant to Danish law without regard to any principles of private international law specifying any other choice of law and without regard to the Convention on Contracts for the International Sales of Goods (CISG).
- 15.2 Any dispute arising out of or in connection with supplies delivered by WMS, which cannot be settled amicably, must be brought before the District Court of Hjørring, Denmark.

Hirtshals, October 2018