



## General Terms and Conditions of Sales and Delivery

### 1. APPLICATION

1.1. These General Terms and Conditions (the "Terms") shall, unless otherwise expressly agreed in writing, apply to all sales of products and parts (the "Products") by BUKH A/S (the "Supplier").

Supplier's offers are non-binding until Supplier has received and confirmed a purchase order issued by Buyer in compliance with these Terms (any such confirmed purchase order "Contract"). The execution of the purchase order is subject to any changes which Supplier from a technical point of view deems necessary. Prices confirmed by Supplier are subject to price increases resulting from changes in trade conditions, duties, rates of exchange, rates of raw material supplies and similar conditions.

1.2. Conflicting or additional terms shall only be valid if they have been expressly agreed in writing. Supplier hereby expressly disclaims Buyer's standard or special terms, except if expressly approved by Supplier in writing as described above. These Terms shall form an integral part of the Contract. Buyer may not change or cancel any purchase order after it has been received by Supplier unless Supplier has agreed in writing to such change or cancellation. In the event Supplier agrees to change or cancel a purchase order, such change or cancellation is subject to Buyer's payment of Supplier's incurred expenses.

### 2. PRODUCT INFORMATION, DRAWINGS AND OTHER DOCUMENTS

2.1. All details concerning the Products in catalogues, prospectuses, circular letters, advertisement, illustrated material hereunder but not limited to dimensional sketches, price-lists and other Product information are approximate. All such information and data are only binding to the extent they are - by specific reference - included in the Contract.

2.2. Buyer shall supply to Supplier, where applicable, all technical specifications necessary for Supplier to perform according to the Contract. Buyer remains solely liable for the information supplied and shall compensate Supplier any and all loss incurred by Supplier, as a result of the information, documentation and guidelines provided.

### 3. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

3.1. Neither party shall copy or disclose to a third party any document or data provided by the other party without the prior written consent of the other party or use them for purposes other than those for which they were provided. Intellectual property rights associated with the Products or any document or data provided by Supplier in connection therewith shall remain Supplier's property. Buyer shall defend, indemnify and hold harmless Supplier against all claims, losses and damages, including reasonable attorneys' fees, arising out of or resulting from any reuse, modification, reproduction or publication of Supplier's intellectual property documents or data.

3.2. The Buyer may not use the trademark BUKH, or any other trademark belonging to Supplier in; advertising, marketing or in any other way without the prior written consent of Supplier.

### 4. DELIVERY, ACCEPTANCE AND RETURNS

4.1. All references to trade terms shall be interpreted in accordance with: Incoterms 2010, and the Products shall be deemed sold "Ex works" unless otherwise explicitly agreed in writing. Partial shipment is allowed unless otherwise agreed in writing between the parties.

4.2. Supplier will endeavor to deliver the Products within any stipulated or quoted delivery period. However, any date or period for delivery stipulated or quoted shall be deemed to be an estimate only. Supplier



shall not be liable for any delay in the delivery of the Products.

- 4.3. Unless otherwise agreed by the parties in writing: Packaging materials are not included in the price of the Products and shall not be returned to Supplier. Prices shown in price lists and catalogues shall refer to unpacked goods.
- 4.4. Prices shown in offers and agreements shall include the cost of such packaging and/or protection required under normal conditions of transport to prevent damage to or deterioration of the goods prior to the arrival thereof at the destination specified in the agreement.
- 4.5. Buyer shall be deemed to have accepted the quantity and quality of the Products delivered by Supplier as being in accordance with the Contract unless Buyer in writing has notified Supplier of any shortages or damage within 14 days following the delivery of the Products. No return of Products will be allowed by Supplier. Buyer shall not be entitled to withhold payment of all or any of the price of the Products whilst any claim is being investigated by Supplier.

## 5. PAYMENT AND RETENTION OF OWNERSHIP

- 5.1. Unless otherwise expressly agreed, payment shall be made to Supplier in accordance with the terms set forth in Supplier's invoice and in such currency as designated by Supplier. Payment shall be made in full without any set off, counterclaim or deduction. Buyer shall pay interest on overdue payments from the date of maturity until the actual date of payment at the rate of three percent (3 %) above the central bank of Denmark's lending rate per month. Supplier may change the interest level with one (1) months written notice to Buyer.
- 5.2. Buyer shall pay Supplier all costs related to the collection of overdue amounts including reasonable attorney's fees. If the Buyer fails to pay on time, and the failure is not due to any act or omission on the part of Supplier or due to circumstances set forth in clause 9, Supplier shall be entitled to suspend or terminate the Contract by written notice to Buyer, and such remedies shall

not be exclusive of Suppliers additional rights under contract law.

- 5.3. Title to the parts shall pass to Buyer only when payment in full has been received by Supplier. Buyer shall at the request of Supplier assist Supplier in taking any measures necessary to protect Supplier's title to the Products. Buyer must notify Supplier of any seizure, attachment or any other disposal or intervention by any third party immediately. Buyer must keep the Products insured against fire and damage risks, for the total value of the Product's purchase price until Supplier has received payment in full. The retention of title shall not affect the passing of risk, which passes in accordance with the: Incoterms2010 delivery term.
- 5.4. Contractor shall have a lien for its claims arising from any respective agreement between the parties on any item it has acquired possession of under any such agreement. This lien may also be enforced for claims arisen from prior contract's the parties have entered, or from prior deliveries of replacement parts, or from prior other performances.
- 5.5. Supplier may at its own discretion as a precondition for delivery of Products, request (i) prepayment and/or (ii) that Buyer pays or provides security covering any unpaid amount already owed to Supplier.

## 6. WARRANTY

- 6.1. Supplier shall refund Buyer its purchase price or repair or replace, at its sole discretion, any defect in the Products which appears during the warranty period as described in clause 6.4 as a result of defective material or manufacturing, provided that any replaced Product upon Supplier's request be returned to Supplier, within one (1) month of Supplier's request, at Buyer's cost or undergo sufficient inspection from Supplier in accordance with clause 6.8. Supplier reserves the right to improve any Product without assuming any obligation to modify or in any way alter any previously manufactured Products. For warranty regarding a BUKH V8 Engine certain further conditions apply, see clause 6.3. For warranty



regarding specific Volvo Penta products consult Clause 6.5.

6.2. Buyer shall immediately take appropriate steps to prevent any defect from becoming more serious. In the interest of a rapid claims settlement and a proper preservation of evidence all warranty claims with respect to this warranty shall be made in writing immediately after discovery of such defect during the warranty period. Buyer shall have the responsibility of establishing that its claim is covered by this warranty. Replaced Products shall become Supplier's property. Delivery of replaced or repaired Products will be at the sole expense of Buyer. The Products must be carefully stored until such time as Supplier decides whether Supplier will require the return of the Products or an inspection of the Products. Any Products shipped by Buyer for inspection or repair must be shipped with transportation charges prepaid.

6.3. The warranty for a BUKH V8 engine is only valid when Buyer purchases from a dealer authorized by Supplier to distribute BUKH products in the country in which the sale occurred. The warranty for a BUKH V8 Engine shall apply only to pleasure craft and light-duty craft applications. The warranty does not cover any other application unless Supplier prior to the sale has given its explicit written approval hereto. Pleasure craft is, for the purpose of this warranty, defined as a recreational planning craft used only and exclusively for pleasure and recreation. Light duty craft is for the purpose of this warranty defined as a planning hull vessel used in any law enforcement, commercial or professional entertainment activity, or used in any enterprise or venture in which revenue in any amount is generated directly or indirectly. It is a condition for the continuation of the warranty for a BUKH V8 Engine, that the BUKH V8 Engine is taken to an authorized BUKH Service Dealer after 100 hours of engine operation, but no later than 150 hours for required checks and adjustments. Buyer must retain a copy of the dealer's service work order as evidence of the completion of this requirement. Completion of this service requirement is Buyer's expense only.

6.4. The warranty period for the Products begins on the date of dispatch from Supplier (sold Ex Works, Incoterms 2010), and ends twelve (12) months from the date of dispatch or after five hundred (500) running hours, whichever occurs first. The warranty period in respect of Products which have been repaired or replaced under the warranty shall expire six (6) months following the date when (i) the repaired or replacement Product is placed in service or (ii) upon the expiration of the warranty period applicable to the originally supplied Product as set forth above, whichever occurs earlier. The warranty for repaired or replacement Products shall be subject to the same terms, conditions and limitations of liability as those applicable to the originally-supplied Products. Under no circumstances shall the warranty period of any Products (whether as originally supplied or as repaired or replaced) extend beyond twelve (12) months following the date of commencement of the original warranty period as stipulated above in this Clause 6.4.

6.5. The above in Clause 6.4 described warranty does not apply for Volvo Penta products subject to this Clause 6.5. Supplier's warranty does not extend to Volvo Penta products (i) IPS 350, 400, 500, 600 or (ii) IPS 800, 900, 1200, if the products are sold for governmental or commercial use. Such products are sold with no warranty from Supplier. For Volvo Penta petrol/gasoline engines the warranty period for the products begins on the date of dispatch from Supplier (sold Ex Works, Incoterms 2010), and ends six (6) months from the date of dispatch or after four hundred (400) running hours, whichever occurs first. The warranty period in respect of Volvo Penta petrol/gasoline engines which have been repaired or replaced under the warranty shall expire three (3) months following the date when (i) the repaired or replacement Volvo Penta petrol/gasoline engine is placed in service or (ii) upon the expiration of the warranty period applicable to the originally supplied Volvo Penta petrol/gasoline engine as set forth above in this Clause 6.5, whichever occurs earlier. The warranty for repaired or replacement Volvo Penta petrol/gasoline engines shall be subject to the same terms, conditions and



limitations of liability as those applicable to the originally-supplied Volvo Penta petrol/gasoline engines. Under no circumstances shall the warranty period of any Volvo Penta petrol/gasoline engine (whether as originally supplied or as repaired or replaced) extend beyond six (6) months following the date of commencement of the original warranty period as stipulated above in this Clause 6.5.

- 6.6. Supplier shall not be liable for any defect due to or arising in connection with: (1) any materials, components, tools, designs or software provided by Buyer; (2) negligence or willful misconduct of Buyer; (3) Products, accessories or attachments other than those supplied as Products by Supplier; (4) improper service work, installation, tune-ups or alterations carried out by Buyer or by any third party hired by Buyer; (5) normal wear and tear; (6) use of unsuitable material or consumables by Buyer hereunder but not limited to fuels, oils, lubricants or coolant additives; (7) improper or insufficient maintenance, abnormal operations or storage; (8) engine cooling systems overheating or engine overheating or any use, service or operation of the Products which is not in conformity with manuals, instructions or specifications provided by Supplier or which is otherwise not in accordance with normal industry practice.
- 6.7. Supplier's warranty obligation does not include any cramage, electricity, scaffolding, docking, diving, sub-sea work, towage costs, demounting or mounting costs and expenses of Supplier's personnel or representatives, and all such costs and expenses shall be at the sole expense of Buyer when applicable.
- 6.8. The warranty in this section 6 shall not apply in respect of any Products (i) supplied by the Supplier as samples or prototypes for test or evaluation purposes; (ii) where all or part of the products are supplied to the Supplier by a third party nominated by the Buyer or (iii) where all or part of the Products have been subject to any unauthorized repair or replacement, modification or alteration. The warranty in this section 6 is further applicable to the first Buyer of the Products only.

- 6.9. Any and all costs and expenses associated with Suppliers inspection of the Products hereunder but not limited to: transportation charges and/or travel time, labor charges, accommodation charges, material and needs for special equipment are the responsibility of Buyer and Supplier may at its sole discretion demand payment in advance before initiating any inspection of the Products. If after Supplier's warranty investigation it is found that Buyer does have a warranty claim within the scope of these Terms, then Supplier shall reimburse Buyer any reasonable costs and expenses for such inspection, repair or replaced component or other service work subject to this section 6.
- 6.10. This warranty is in lieu of any and all other warranties, guaranties, obligations and liabilities arising by law, custom or otherwise, express or implied including warranties, guaranties, obligations or liabilities against non-conformity or defects. Buyer hereby waives all other remedies, warranties, guaranties and liability claims express or implied, arising by law, custom or otherwise – including without limitation fitness for purpose, merchantability or satisfactory quality.

## **7. SUPPLIER'S LIABILITY**

- 7.1. In no event shall Supplier be liable for any indirect, incidental, special, or consequential damages, however caused or arising including but not limited to: loss of any actual or anticipated profits or revenue, loss of anticipated savings, loss of orders, loss of sales, depletion of goodwill or damage to any property including damage to goods owned by Buyer. Further, Supplier is to the fullest extent possible under applicable law not liable for any form of personal injury (including, but not limited to, loss of life, health, well-being etc.) and product liability.
- 7.2. This limitation of Supplier's liability shall apply to any liability for breaches of Supplier's obligations under or in connection with the Contract, whether based on warranty, failure of or delay in delivery or otherwise.
- 7.3. If Supplier provides technical information or acts in any advisory capacity and such information or



advisory activity is not included in the scope of the Contract such information and/or advisory activity is carried out at the exclusion of any and all liability.

- 7.4. Supplier's total liability to Buyer shall, regardless of the nature of the liability or claim, under all circumstances be limited to an amount equal to the Contract price.

## **8. EXPORT CONTROLS**

- 8.1. Supplier delivers the Products to Buyer in accordance with the applicable export controls or restrictions imposed on the sale between Supplier and Buyer in the jurisdiction of Supplier. Buyer undertakes that the Products and all related technical information, documents and materials are not in any following sale by Buyer or any third party directly or indirectly contrary to export controls or restrictions.
- 8.2. Buyer undertakes that the Products will not by Buyer or any later third party be used in connection with or re-sold for purposes associated with any chemical, biological or nuclear weapons or in support of any terrorist activity. If the Products by the Buyer or any third party are re-exported Buyer shall upon Suppliers request furnish Supplier with all the relevant documents relating to export control laws, regulations and restrictions, such as, but not limited to, end-user certificates, in form and substance specified by Supplier, documenting compliance with export control sanctions.

## **9. RELEASE FROM LIABILITY - FORCE MAJEURE**

- 9.1. Neither Supplier nor Buyer shall be liable for any failure or delay in performing its obligations hereunder, or for any loss or damage resulting therefrom, caused by or arising from an event of force majeure ("Force Majeure"), which includes without limitation, acts of God, war, riot, embargos, acts of civil or military authorities, fire, flood, accidents, strikes, failure of a subcontractor to provide manpower, materials or goods caused by an event that qualifies under this clause 9, epidemics, unusually severe weather affecting either party, or causes beyond their control.

- 9.2. Either party hereto wishing to invoke any circumstance referred to in clause 9.1 shall in writing notify the other party without undue delay of the existence of such a circumstance and likewise of its termination. The party invoking Force Majeure shall, at the request of the other party submit certification by the proper authority confirming the Force Majeure occurrence.

- 9.3. Following a party invoking Force Majeure, the parties shall promptly consult in good faith on the possibilities to adapt the Contract to the altered conditions in a way which is fair and just for both parties.

- 9.4. If a Force Majeure event continues for more than three (3) consecutive months either party may terminate the Contract by notifying the other party hereof in writing without prejudice to the rights of either party up to the date of termination. The party invoking Force Majeure shall at the request of the other party supply such information as described in clause 9.2.

## **10. DUTIES, TAXES, FEES AND COMPLIANCE WITH LAWS**

- 10.1. Buyer shall pay, where applicable, all duties, withholding and other taxes, customs fees and charges. Under no circumstance is such costs the responsibility of Supplier. All such documentation or approvals which are required by the applicable law in accordance with clause 12, and any applicable modifications of the law, shall be the responsibility of and paid by Buyer.

## **11. GENERAL AND SEVERABILITY**

- 11.1. Buyer shall not assign or otherwise transfer any of its rights or obligations hereunder whether in whole or in part without prior written consent of Supplier. Any such unauthorized assignment shall be null and void.
- 11.2. If a clause of these terms is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the remainder of the clause and of all other clauses of these Terms shall not be affected thereby. Furthermore, the waiver





by either party of a breach of any provision of these Terms shall not be construed as a waiver of any subsequent breach.

## **12. GOVERNING LAW AND ARBITRATION**

- 12.1. The Contract shall be governed by, construed and interpreted in accordance with the laws of the Kingdom of Denmark to the exclusion of any conflict of law rules which would refer the matter to another jurisdiction.
- 12.2. Any controversy, claim or dispute between the parties hereto arising out of or related to the Contract shall be submitted to Arbitration for final and binding arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce and in accordance with the Danish Act on Arbitration of 1972. The arbitration proceedings shall be in the English language and the arbitration tribunal shall be seated in Copenhagen, Denmark.

## **13. ENTIRE AGREEMENT**

- 13.1. These Terms, plus the additional agreed upon terms of the Contract (relating only to price, time and location for delivery, technical specifications and quantity of Products to be delivered) contain the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings relating to such subject matter. Any service work to be provided by Supplier to Buyer shall be in accordance with Supplier's General Terms and Conditions of Service Work. If a provision of these Conditions is at variance with necessary requirements of applicable law, then these Conditions shall be deemed to be amended to the minimum extent necessary to comply with such applicable law.