



January 2004

Terms & Conditions, January 2004

1.0 Validity of these

Terms and Conditions

1.1 An order for delivery of work, i.e. products, materials, services, equipment, tools, personnel, etc., from a company within the **Aalborg Industries Group**, hereinafter referred to as **AI**, presupposes acceptance by the Buyer of these Terms and Conditions, regardless of the form in which the order is given. These Terms and Conditions are valid until otherwise notified to the Buyer by AI.

1.2 Price lists for service assistance, tools, etc. are subject to special terms and shall be enclosed with and form an integral part of these Terms and Conditions. In case of discrepancy between them, the price lists shall prevail.

1.3 These Terms and Conditions are divided into two main sections:

I GENERAL CONDITIONS, articles 2-8

II TERMS FOR ASSISTANCE BY AI'S PERSONNEL, articles 9-15

I GENERAL CONDITIONS

2.0 Invoicing

2.1 The invoice for the work will be forwarded as soon as possible after completion of AI's work and shall be paid by the Buyer within 30 days of the date of invoice.

2.2 Work or products delivered by AI shall remain the property of AI until paid for in full to the extent that the applicable law permits such retention of property.

2.3 If payment is not received on the due date, interest will be charged from that date until payment is effected. Interest shall be added to the invoiced amount on the basis of LIBOR for USD plus 6% p.a.

2.4 If the Buyer wishes to transfer the order to a third party, such transfer requires AI's prior acceptance. In this situation, the Buyer shall remain liable for payment to AI.

3.0 Delays

3.1 If AI is delayed in delivery or in the work for reasons caused solely or partly by the Buyer or any of his representatives, employees, officers, subcontractors, or agents, AI shall not only be allowed the necessary extra time but also compensation for extra costs that AI may incur.

3.2 If AI is delayed in delivery or in the work by its own fault, AI shall be liable for compensation or liquidated damages only if such written agreement has been stipulated directly in the Contract entered between AI and the Buyer. Liability for damages does not include consequential or indirect damages, irrespective of the nature of such damages. In no event shall the indemnity exceed 7.5% of the contract sum. The Buyer

is not entitled to any other remedies and may not cancel the contract due to delays on the part of AI.

4.0 Liability against defects

4.1 All agreements shall be made on the basis of the limited liability provisions set forth herein. Other or more extensive liability, including the right to cancel a contract or claim damages beyond the extent stated herein, shall be valid only if a written agreement stating the nature and extent thereof has been entered before acceptance of delivery of the work and if the price is adjusted to include the costs of appropriate additional insurance or additional exposure.

4.2 AI's liability for defects in materials delivered shall be limited to procuring and supplying replacement materials free of charge.

4.3 For repair work and other work, AI's liability for defects shall be limited to repair of the defect in question. AI shall cover only the direct costs of labour and materials for such repair. AI disclaims any other cost, whether direct, indirect, consequential, or otherwise. Payment for travelling time, waiting time, travelling expenses, hotel, and meals shall be for the account of the Buyer and shall be invoiced accordingly.

4.4 AI shall be liable for damage only if caused by gross negligence or intent on the part of AI's personnel. AI's liability shall be limited to repair of the direct damage and shall cover neither consequential costs nor indirect loss, irrespective of the nature of such loss. In no event shall AI's aggregate liability arising out of a contract exceed the total value of the contract or the equivalent amount in local currency. In no event can the amount exceed the amount of the contract, the maximum being DKK 10 million. The Buyer agrees to indemnify AI with respect to any liability in excess of this amount.

4.5 AI shall make its best effort to pass on to the Buyer all manufacturers' warranties for machinery and equipment procured by AI for the work. In no event shall AI's warranties/liability for machinery and equipment procured by AI be more extensive than the manufacturer's warranties.

4.6 Where AI has merely supervised the commissioning of the equipment and has not carried out the installation/repair, AI shall incur no liability in respect of damage caused by defects in connection with such installation/repair. AI shall be liable only for damage directly related to gross negligence or intent on the part of AI's personnel with a view to improper commissioning procedures.

4.7 AI assumes no liability for defective materials or workmanship, loss, or damage once the work has been accepted by the representative of the classification society or the Buyer. In no event shall AI be liable unless the defective materials or workmanship are detected and presented to AI in writing within thirty (30) days of the Buyer's detecting the defects, or the work has ceased for whatever reason, or products have been returned to AI, whichever occurs first.

5.0 Force majeure

5.1 In case AI is hindered by an event of force majeure from carrying out the agreed work within the agreed time, then AI shall be allowed the necessary extra time from the point in time when the event of force majeure ceases. AI shall not be liable for loss, damage, or delay caused by an event of force majeure.

5.2 Force majeure shall be taken to include, but not be limited to, acts of God, strikes, lockouts, general disturbance, major traffic disturbance in international transportation, inclement weather conditions, and other circumstances beyond AI's control.

6.0 Product liability

6.1 Unless other statutory provisions apply, the following shall govern AI's product liability:

6.2 AI shall be liable for personal injury only if it is proved that such injury was caused by negligence on the part of AI or others for whom AI was responsible.

6.3 AI shall not be liable for damage to property occurring whilst AI's products are in the Buyer's possession. Nor shall AI be liable for damage to products manufactured by the Buyer or to products or services of which the Buyer's products form a part.

6.4 In no event shall AI be liable for loss of production, loss of profit, or any other consequential damages or indirect loss.

6.5 In no event shall AI's liability exceed DKK 10 million.

6.6 To the extent that AI incurs product liability to a third party, the Buyer shall indemnify AI as far as AI's liability has been limited by the four preceding paragraphs.

6.7 The above limitations in AI's liability shall not apply where AI has been guilty of gross misconduct.

6.8 If a claim for damages as described in this clause is lodged by a third party against AI or the Buyer, that party shall forthwith inform the other party thereof in writing.

6.9 AI and the Buyer shall be obliged to let

themselves be summoned to the court or arbitration tribunal that examines claims for damages lodged against one of them on the basis of damage allegedly caused by AI's work or products.

7.0 Disclaimer

7.1 AI disclaims any liability that is not covered by these Terms and Conditions. AI specifically disclaims all warranties of merchantability and fitness of AI's work or products for a particular purpose.

8.0 Venue and applicable law

8.1 All deliveries from AI shall be subject to CISG. Any dispute between the parties regarding a situation arising out of or in connection with an agreement governed by these Terms and Conditions shall be subject to the law of the country in which the contracting AI company is domiciled without giving effect to the principle of conflict of the laws thereof. Any dispute shall be settled by the commercial court of the country in which the contracting AI company is domiciled.

II TERMS FOR ASSISTANCE BY AI' PERSONNEL

9.0 Working hours – time sheets

9.1 A normal week comprises 5 working days and 2 weekend days. A normal working day comprises 8 working hours, and hours exceeding 8 working hours shall be considered as overtime hours.

9.2 All working hours on weekend days and AI personnel's national holidays shall be considered as overtime hours.

9.3 AI personnel can only undertake working hours exceeding 12 hours per day or work on Sundays against the Buyer's representative's written approval. Reasons for overtime hours exceeding 12 hours per day and written approval shall be given on the time sheet.

9.4 The Buyer or his authorised representative is requested to follow the progress of the work closely.

9.5 Time sheets showing the time during which AI's personnel have carried out work for the Buyer shall be filled in daily and shall be countersigned by the chief engineer/ work foreman or any other authorised representative of the Buyer.

9.6 If the Buyer's representative fails to countersign the time sheets, or if the representative does not approve of the time sheets that have been filled in by AI's personnel, the Buyer's representative or the Buyer himself shall immediately inform the AI company responsible for the job by telex, telefax, E-mail, or telegram of the reason for the refusal. If a time sheet has not been countersigned in accordance with this article, or if the Buyer has not given due notice of the unapproved time sheets to the relevant AI company, then AI shall be entitled to reject any objections regarding invoices based

upon time charged to the Buyer.

9.7 The effective working time is defined as the time from the commencement of work by AI's personnel until they leave the job, less the time spent on meal breaks.

9.8 If AI's personnel are not provided accommodations on board a ship where they are carrying out a job, the working time starts at the time AI's personnel leave their hotel and ends at their return to the hotel.

10.0 Waiting time

10.1 Waiting time caused by lack of work due to circumstances beyond the control of AI's personnel shall be invoiced at the rate valid for normal working hours. AI's personnel are prepared to undertake other kinds of work than originally intended in order to compensate for waiting time.

10.2 Waiting time shall be charged daily between 8 a.m. and 8 p.m. A maximum of 10 hours of waiting time can be charged per day.

11.0 Allowances and travelling and transport expenses

11.1 Travelling, hotel, allowances, and other expenses paid by AI, including telephone calls, telefaxes, etc. shall be invoiced to the Buyer at cost plus 15% overhead charges.

11.2 Travelling time shall be invoiced at the rates for normal working hours with max. 12 hours/day.

11.3 Accommodation shall be of a reasonable standard.

12.0 Conditions when staying on board a ship, at a building site, or similar

12.1 Accommodation shall be of a reasonable standard. AI's personnel shall have access to shower with hot and cold water.

12.2 AI's personnel shall have purchasing facilities for daily requirements such as food, beverages, etc. AI's personnel shall have access to a refrigerator.

12.3 Payment for beverages etc. bought on board the ship or at the site should preferably be settled with AI's personnel before they leave.

13.0 Permits, licences, and certificates

13.1 It is the sole responsibility of the Buyer to advise and, whenever necessary, to obtain permissions, permits, passes, licences, or certificates from the appropriate authorities or classification societies for work to be carried out by AI.

14.0 Tools and equipment

14.1 If requested, AI shall supply tools and equipment, subject to a separate agreement.

14.2 Rental of tools from an AI company shall be charged from the day that the tools leave that company until they are received back at the same company.

14.3 After use, AI's tools shall be packed in AI's tool box(es) under the supervision of the Buyer or his representative. Any shortages, damage, etc. shall be noted and the tool box(es) locked.

14.4 The Buyer shall arrange for transportation of the tool box(es) to their point of origin. The Buyer shall arrange for insurance against loss or damage.

14.5 The tools shall be received by AI no later than 90 days after termination of the work. If the tools are not received within this time, they shall be considered lost and shall be charged to the Buyer. Damaged tools shall also be charged to the Buyer.

14.6 Upon request AI shall supply industrial gases at the Buyer's expense. If the Buyer does not specifically request AI to supply such gases, the Buyer shall be expected to supply them.

14.7 Provided no other arrangements are made, the following supplies and services are not included in AI's work and shall be made available to AI's personnel:

- Assistance for transport of materials to and from the work site.
- Necessary scaffolding.
- Overhead cranes, blocks, fall wires, and shackles.
- General assistance for cleaning, etc.
- Supplies of electricity, compressed air for working and personnel protection equipment, water and fuel, and necessary lighting.

15.0 The Buyer's liability and insurance

15.1 The Buyer shall pay compensation and indemnify AI in case of damage to AI's property or injury or death of personnel employed by AI or any third party when and to the extent that such injury or death is caused by the Buyer's negligence, whether direct or indirect. Such negligence may be constituted by lack of necessary instructions concerning the work to be carried out by AI's personnel.

15.2 The Buyer is obliged to inform AI on any material containing asbestos. AI cannot in any way, whatsoever, be held liable for the contents of any such material, including for any financial consequences thereof or consequences of safety or as regards time. The Buyer undertakes to indemnify AI for all costs, expenses and consequences caused by any such contents of asbestos.

15.3 The Buyer is responsible for removal, disposal of, or the consequences of the presence of dangerous, poisonous or otherwise polluting materials.

15.4 Where the Buyer establishes or is covered by a Builder's Risk Insurance, ship repairer's legal liability insurance, or other general liability insurance, AI and AI's work shall be covered by such insurance and subrogation against AI shall be waived.



Aalborg Industries is one of the world's leading marine boiler manufacturers and quite possibly the longest globally operating After Sales organisation for boilers. The Aalborg Industries Group supplies and services deck and engine room equipment such as boiler plants, economizers, heaters, heat exchangers and inert gas systems.

The mission of Aalborg Industries is to fulfil the need for high quality heat and steam generating solutions, including maintenance and related accessories.

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