

GENERAL TERMS AND CONDITIONS OF SALE, DELIVERY AND PAYMENT

OF the private company with limited liability
Bengi Engine Repair & Trading B.V.
Einsteinweg 14 3208 KK Spijkensse
registered at the Chamber of Commerce under number 24256038

SEPTEMBER 2024

ARTICLE 1: APPLICABILITY

- a. These terms and conditions apply to all offers, sales and deliveries by Bengi Engine Repair & Trading B.V. (with registration number chamber of commerce 24256038), hereinafter referred to as Bengi, to a third party, to all activities executed by Bengi by order of a third party, and to all agreements in the broadest sense of the word entered into by Bengi with a third party.
- b. These terms and conditions apply in and outside the Netherlands, regardless of the place of residence or registered office of the parties involved in any agreement, and regardless of the place where the agreement has come about or should have been implemented.
- c.1. Bengi has various activities in the field van diesel engine technology. The character of the different activities means that these terms and conditions are composed of a common part and a particular part, being the appendix.
- c.2. Provisions have been added to the appendix with respect to repairs and maintenance pertaining to several articles in these terms and conditions. To the extent these provisions depart from what has been included in this regard in the common section, the deviating provisions of the appendix shall prevail.
- c.3. Several provisions of the appendix include distinctions when compared to what has been generally determined in the communal section. These distinctions should be read inter alia as examples, but they are not limited thereto, which do not preclude the additional effect of the matters argued by Bengi in the communal section. Nor do they limit the rights of Bengi where these are not described in these terms and conditions.
- d. If the other party applies other general terms and conditions such as purchase conditions, these will not bind Bengi, these will not apply and are hereby expressly rejected by Bengi. By way of the applicability and non-voidability of these general terms and conditions the other party expressly waives its own general terms and conditions, for example purchasing conditions.
- e. Any deviation from these terms and conditions used or allowed by Bengi at any time to the benefit of the Other party can never be construed as the latter's right to appeal to it later or to claim the application of such deviation for him/her as an established fact.
- f. If the Other party takes note or could have taken note of these general conditions in another language than the Dutch language and differences in interpretation arise from the respective versions, the Dutch version will prevail over the version in the foreign language, unless Vexxon expressly waives this in writing.

ARTICLE 2: OFFERS

- a. All offers and quotations are non-committal, unless explicitly stated otherwise. They have been made to the best of Bengi's knowledge and are based on data that may have been provided on the request for an offer.
- b. The specifications provided by Bengi on websites, in images, catalogues, brochures or drawings or in any other way with respect to size, capacity, performance, colour, material structure, finish or results should be regarded as having been provided as estimates and as having been provided non-committally.
- Bengi is not held to comply with these specifications and therefore does not accept any liability for any incorrectness in these data.

ARTICLE 3.1: ORDERS/AGREEMENTS

- a. An order is understood to mean: every agreement with Bengi, regardless of whether it undertakes to execute activities or make staff, material or space available or carry out any other performance whatsoever, in the broadest sense.
- b. All agreements entered into with Bengi will only become binding upon a written confirmation by Bengi or due to Bengi having commenced the execution of the order. Any supplements or changes to the aforementioned agreements will only become binding for Bengi after and in so far as these have been accepted and confirmed in writing by Bengi. The other party will be deemed to have accepted changes or supplements to agreements entered into with Bengi, if the other party has not objected in writing against these changes and/or supplements within eight days after they have or could have taken cognizance of these changes and/or supplements. The other party is deemed to have knowledge of the said changes and/or supplements and to have accepted these at the moment at which Bengi has commenced the activities to which these changes and/or supplements are related.
- Only the Board of Directors and possibly those explicitly authorised by the Board of Directors to enter into agreements on behalf of Bengi are allowed to do so.
- c. Unless explicitly agreed on otherwise in writing, Bengi is entitled at all times to have part of the order or the entire order executed by a third party, without the need for permission of the other party, on the understanding that these terms and conditions also apply in the favour of this third party, provided that Bengi authorises such third party in writing – even afterwards, if necessary – to appeal to these terms and conditions without this authorisation causing any obligations for Bengi.
- d. Bengi is entitled to alienate and/or encumber the Agreements made with the other party without requiring the other party's consent. The other party is not permitted such actions.
- e. In instances in which Bengi has agreed with the other party to supply a service to the other party, that service is subject to a best efforts obligation.
- f. Contract extras are executed by agreement, unless the contract extras are the consequence of an alteration/adjustment to the work to be executed and were agreed previously and/or if, in Bengi's opinion, the contract extras are necessary for a thorough execution of the work that it is to execute. In such cases, Bengi is entitled to charge the other party for the costs of that work at Bengi's usual rates.
- g. Unless expressly otherwise agreed in writing, the other party is, in order to allow for the proper fulfilment of the work by and/or on the part of Bengi, responsible for, including but not limited to, the required: permits, approved drawings, insurances, tools, equipment, raw materials and such like. Should the other party fail in this either wholly or in part and this failure is to blame for a reduced performance of and/or on the part of Bengi, then the other party is liable for both direct and indirect loss. The other party indemnifies Bengi against all claims by third parties in this respect.
- h. Where Bengi and/or the third parties it has engaged carries out work for the other party on an hourly basis and submits worksheets and/or timesheets and/or has these signed off by the other party (he/she who is present at the workplace on behalf of the other party and may usually be deemed to be sufficiently competent by Bengi), the work related and performed on this basis is deemed to have been carried out and agreed.
- If there is no one available from and/or on the part of the other party to sign off and Bengi submits to the other party, whether or not in writing, worksheets and/or timesheets, the work related to such is deemed to have been carried out in a correct manner.
- i. In instances in which Bengi executes work for the other party outside the Netherlands, the other party shall be held liable for all levies, fines, taxes and social security contributions that are imposed on Bengi or on the third party engaged by Bengi, regardless of which government authority imposed it, and shall, at Bengi's first request and within the term set by Bengi, pay the relevant amounts to Bengi or into the bank account of the relevant authority specified by Bengi.

ARTICLE 3.2: GOOD FAITH, PUBLIC ORDER AND GOOD MORALS

- a. When conducting business with the other party, Bengi wishes not to become involved in any way in money laundering, corruption, terrorism and/or in transactions that are subject to embargos of the state of the Netherlands, the European Union and/or other friendly nations; neither directly nor indirectly. By the formation of agreements between Bengi and the other party, during which the other party could, at that time or prior to such, have taken note of these general conditions, the other party expressly notifies Bengi that the aforementioned circumstances are not in existence and that it is also not involved in such, neither directly nor indirectly. The other party also notifies in the aforementioned manner that the performance and/or goods delivered by Bengi shall not be used by the other party and/or on its behalf in aforementioned circumstances, neither directly nor indirectly.
- b. If at any time the other party becomes aware, or has a reasonable suspicion, that it is or is becoming involved in the circumstances as referred to in this article under a., the other party is obliged to notify Bengi of this immediately. If at any time Bengi becomes aware, or has a strong suspicion, that in respect of any agreement between it and the other party it is becoming, or threatens to become, involved in circumstances as set out under a., Bengi is entitled to terminate and/or suspend the agreements entered into with the other party either wholly or in part and to cancel any agreements still to be entered into. Bengi is also entitled to sanction the right to cancellation, termination and/or suspension in a manner as referred to in clause 10.b.
- c. Bengi is entitled to report the knowledge it obtains and/or has obtained in respect of the aforementioned circumstances or in the event of a reasonable suspicion of such circumstances to the competent authorities and to provide those with all the relevant information, including the information it has obtained under a previously agreed duty of confidentiality. In that event, Bengi cannot be held liable in any way by and/or on behalf of the other party; neither directly nor indirectly.

ARTICLE 4: LIABILITY

- a.1. Except for the provisions of Article 9 of these terms and conditions, Bengi is not liable for any damage caused either directly or indirectly by the items delivered – including extra work – not being in compliance with the agreement, unless this is due to Bengi's intent or gross negligence. Consequently, Bengi also does not accept any liability in the event of serious calamities, such as but not limited to fire, water damage and any outside contingency, such as war and earthquakes.
- a.2. Bengi will not be liable in any manner whatsoever for the manner of use of the goods delivered and any consequences ensuing therefrom; neither to the delivery itself, nor to other goods/items, persons and/or livestock, either directly or indirectly.
- a.3. The other party indemnifies Bengi in this matter for all claims by third parties.
- b. To the extent that the other party, or the third party engaged by it on the basis of collaboration and/or the rendering of assistance, is involved in the performance of the transaction between Bengi and the other party, Bengi is in no way or form liable for any loss caused on the part of the other party and/or the third party engaged by it, including not towards any ultimate client of the other party.

- c. If Bengi should be liable for any other reason for any damage under the agreement, the damages payable will not exceed the invoice amount (exclusive of value added tax) with regard to the respective goods and/or services, with a maximum of EUR 25,000.00 (in words: twenty five thousand euros).
- d. A claim under these terms and conditions does not suspend the other party's payment obligation towards Bengi.

ARTICLE 5: PERIOD AND LOCATION OF DELIVERY

- a. The periods of delivery mentioned in the offers, confirmations and contracts are to the best of Bengi's knowledge and will be complied with as much as possible, but they are not binding for Bengi.
- b. If these periods are exceeded due to whatever cause, the other party will not be entitled to damages, dissolution of the agreement or non-compliance with any obligation arising from them from the respective agreement or from any other agreement whether or not connected with this agreement.
- c. If the delivery period is exceeded by a wide margin, at the discretion of Bengi, Bengi will enter into further consultation with the other party.
- d. Delivery is ex Bengi company or any other location to be decided by Bengi.
- e. In instances in which Bengi must render a service, at any time and at any location, to the other party, or commission that service, the other party is responsible for a proper, safe work environment which is equipped for that service provision, including all the required mains services for the period that Bengi carries out its work to the extent desirable. Should, in the view of Bengi, that not be, or insufficiently, provided, Bengi is entitled to suspend its work and charge the costs of the delay to the other party. It is also entitled to provide a correct suitable work environment itself so that the service can be carried out. In that case, it is entitled to invoice the costs it incurs to this end, including its own costs, to the other party.
- f. Provision of a proper, safe work environment that is equipped and ready for that service provision by the other party includes the removal, or commissioning the removal, of asbestos and other pollutant materials for the sake of the good health of the person who for, and on behalf of, Bengi executes the work for the other party. The other party should also arrange the removal of the materials that are left by Bengi and that cannot/will not be used by it as waste, at the other party's expense.
- g. If the goods or services are not received by the other party on delivery to the other party by Bengi, they will remain available for the other party for 21 (twenty-one) days, at the other party's risk and expense. Throughout this period, the goods will be stored at the other party's expense.
- After the period mentioned above, the total amount that would be payable for purchase or compliance, increased with the costs and interest, could be claimed from the other party, even without delivery of the said goods or services. The payment will then be deemed made as damages to Bengi.
- f. If the other party does not comply with any obligation arising from this agreement or any other agreement concluded with the order or does not do so in time, Bengi, upon informing the other party in writing that they are in default, without judicial intervention, will be entitled to suspend the execution, without Bengi being held to pay any damages.
- Note: To the extent that the provisions e. and f. mentioned above in this article, as well as the provision of Article 3.1.g. have a discrepancy in the content, then these discrepancies are to be considered integrated into each of the here provisions mentioned.

ARTICLE 6: TRANSPORT AND TRANSPORT RISK

- a. The choice of the means of transport is for Bengi to decide.
- b. The transport of the goods ordered from Bengi is for the account of the other party.
- c.1. As from the moment of dispatch, all goods ordered/purchased from Bengi, including any goods to be returned by the other party, travel at the other party's risk. Also if costs of carriage to the delivery address have been agreed on, the other party will be liable for any damage sustained during transport.
- c.2. All the correspondence and documents to be sent by and/or on the part of Bengi with the other party and/or with third parties on behalf of the other party, are from the moment of dispatch at the risk of the other party, irrespective of the delivery conditions relating to the goods and/or services to be delivered by Bengi as agreed with the other party. The other party must ascertain that the correspondence derives from Bengi. Bengi cannot be held liable in any way by, and/or on the part of, the other party for damage and/or changes to and/or corruption of the content of the correspondence sent by or on the part of Bengi. Nor can Bengi be held liable in any way by or on behalf of the other party in connection with improper use of personal data by the carrier, the fact that it has become clear that the carrier secured these data insufficiently and/or did not destroy these data on time.
- d. The goods will be delivered only to the ground floor. If goods are to be delivered at another location than at ground-floor level, the additional costs and risks are to be borne entirely by the other party.
- If at the time of delivery the other party is not present or does not appear to be able to receive the goods or is otherwise in default to receive the goods, Bengi will be entitled to convert the delivery into an obligation for the other party to collect the goods at the address provided by the carrier after the latter has informed the other party by leaving a written message to such effect.
- e. At arrival or receipt of the goods, the other party has to check the condition of the goods. If it then becomes apparent that the goods or materials have sustained damage, they have to take all measures to obtain damages from the carrier. By signing the receipt provided by or on behalf of Bengi, the other party declares they have received the goods in good condition.

ARTICLE 7: PRICES AND COSTS

- a. Bengi fixes a price or fee for every order individually. This price or fee is exclusively intended as the amount to be paid for the performance to be executed by Bengi, including the normal costs involved. The prices mentioned in the offer are based on the cost price factors, such as, but not limited to, rates, wages, taxes, rights, expenses, cargo et cetera then known. In the event of an increase of any of these factors, Bengi will be entitled to change the offered (selling) price accordingly.
- b. Therefore, the price or fee does not include any levies imposed by the government or other bodies, including fines, insurance premiums etc.
- c. Bengi is entitled to demand down payments, or a deposit or security (in the form of a bank guarantee) in advance.
- d. Bengi reserves the right to charge shipping costs, as well as travel, parking and/or subsistence expenses.

ARTICLE 8: TERMS AND CONDITIONS OF PAYMENT

- a. Unless explicitly agreed on otherwise in writing, payment of invoices sent by Bengi must be made within 8 (eight) days upon invoice date, without deduction of discounts and without any form of compensation.
- b. Bengi is entitled to charge a credit limitation surcharge of at least 2%, but only if this is explicitly stated in the invoice. Deduction of this surcharge from the invoice amount will be allowed, if the invoice amount is paid within 8 days upon invoice date.
- c. All payments, without deduction or settlement of debt, are to be made at the offices of Bengi or into a bank or giro account to be designated by Bengi.
- d. Bengi shall be entitled to, in the event the other party fails to make timely payment of the amount due for one or more partial deliveries in whole or in part, invoice the other party for the remaining part of the goods not yet delivered in accordance with the agreement and demand payment in advance, before Bengi, after receiving payment of all outstanding invoices to the other party, is obliged to deliver the relevant goods to the other party. Even if a different payment and delivery condition was agreed with the other party in the original agreement.
- e. Discounts can only be granted upon mutual consultation between Bengi and the other party. Unless explicitly agreed on otherwise in writing, these are one-off discounts. With subsequent transactions no appeal can be made to previous discounts.

ARTICLE 9: COMPLAINTS

- a. Any complaints about the delivery of goods, the services provided and invoice amounts, must be submitted to Bengi in writing by registered letter within eight days upon receipt of the products, services or the respective invoices, with the facts to which the complaints are related carefully stated. The other party's right to complain lapses with respect to the goods and/or services used, edited and/or processed by or on behalf of the other party.
- b. If the complaints submitted do not comply with the provisions above, they can no longer be received, and the other party will be deemed to have approved the delivered goods and/or performed services. If in Bengi's opinion a justified complaint has been submitted, it will have the right to pay to the other party a sum in damages to be decided in mutual consultation, or to proceed to making a new delivery while keeping the current agreement unchanged, under the other party's obligation to return to Bengi the incorrect or faulty good(s) delivered carriage paid, at the discretion of Bengi.
- c. Bengi will only be held to take cognizance of complaints submitted, if at the moment at which the complaints are submitted the other party involved has integrally complied with all their existing obligations towards Bengi, regardless of what these obligations consist of and from whatever agreement they arise.
- d. Return shipments insufficiently packed or bearing insufficient postage will be refused by Bengi. All return shipments from buyers or clients are for their account and risk.

ARTICLE 10: CANCELLATION/DISSOLUTION AND SUSPENSION

- a. If the other party is or remains in default in any way with respect to complying with their obligations regarding deliveries or activities executed or to be executed by Bengi previously, or pursuant to other obligations, Bengi has the right to suspend its obligations towards the other party or to cancel/dissolve the underlying agreements in whole or in part, without being held liable by the other party in any way and without prejudice to the rights to which Bengi is entitled.
- Bengi will also have this right, if the other party is declared bankrupt, has petitioned for suspension of payment, the Debt Rescheduling Private Individuals Act (Wettelijke Schuldsanering Natuurlijke Personen – WSNP) is declared applicable, other forms of debt supervision or winding-up of the company or business activities occurs, or if – to the standards of Bengi – these circumstances threaten to occur. All claims Bengi has on the other party will then be immediately due and payable.
- b. If the other party wishes to terminate/cancel the contract(s) that they have entered into with Bengi, then Bengi is also entitled to demand fulfilment of the contract(s) entered into; or, at the discretion of Bengi, the other party will owe termination costs of 100% of the agreed market value or transaction value and, on cancellation, will owe cancellation fees of at least 30% of the market value or the transaction value, all of which also at the sole discretion of Bengi.
- c. Bengi will be entitled to refuse the assignment provided by and/or on behalf of the other party, to stop the execution thereof, to suspend or to dissolve the agreement with the preservation all other rights accruing to Bengi, if Bengi considers this appropriate for itself at any time, without the possibility of being held liable by and/or on behalf of the other party. Appropriate moments are, for example but not limited to, Assignments: that are in breach of any legislation and regulations,

in conflict with accepted moral principles, incite hatred, discrimination, racism, are offensive by their nature, the manner of the supply of data entails a (digital) business risk unacceptable to Bengi.

ARTICLE 11: COMPENSATION IN THE CASE OF NON-PAYMENT OR LATE PAYMENT

If payment of the invoices sent by Bengi has not taken place within 8 (eight) days upon invoice date, the other party will be deemed to be legally in default and Bengi will have the right to charge to the other party interest on the full payable amount as from the expiry date equal to the statutory interest rate with a minimum of 1% per month or a part of this, without prejudice to the other rights to which Bengi is entitled, including the right to recover all costs under the claim, both judicial and extrajudicial costs, the latter of which are fixed in advance at 15% of the amount to be claimed, with a minimum of EUR 250 (in words: two hundred and fifty euros), all of the above without notice of default.

NB: If the legislator has set the extrajudicial collection costs to be charged to the other party by law, the other party will owe extrajudicial collection costs in accordance with the relevant provisions of the law.

ARTICLE 12: RETENTION OF TITLE

a. As long as the other party has not made full payment to Bengi for goods, parts and installations delivered to them by Bengi and/or activities executed for them by Bengi, these goods and/or materials, which are for the other party's account and risk, will remain the undisputed property of Bengi.

b. If a other party does not comply with any obligation from the agreement with respect to the goods sold and/or activities executed, Bengi, without any notice of default being required, has the right to take the goods or materials back, in which case the agreement will be dissolved without any judicial intervention, without prejudice to the right of Bengi to claim compensation at law or extrajudicially for any damage suffered or yet to be suffered by Bengi, including loss suffered, lost profit, interest, transport costs etc.

c. Bengi reserves the right to actually retain goods, tools, materials, vehicles, money, negotiable instruments, (financial) documents et cetera which it has obtained from the other party under whatever title, until the other party has fully complied with their financial and other obligations towards Bengi.

d. For transactions with a other party established in a country where prolonged retention of title applies, Bengi has the right to declare the prolonged retention of title as it applies in the respective country applicable at any moment of its choosing.

ARTICLE 13: FORCE MAJEURE

a. In the event of force majeure Bengi is no longer held to comply with its obligations towards the other party. Force majeure includes such events and situations which have a clearly identifiable and direct influence on the company Bengi, such as, but not limited to, serious interruptions of its production process, war (also outside the Netherlands), riot, epidemic, fire, traffic disruption, strike, exclusion, loss or damage during transport, accident or sickness among its staff, import restrictions or other limitations imposed by governments etc. Bengi will be discharged from its obligations, regardless of whether force majeure occurred in its own company or elsewhere, such as in the companies of suppliers, carriers, wholesalers etc.

b. In the event of impediments to executing the agreement due to force majeure, Bengi will be entitled, without judicial intervention, to suspend the execution of the agreement for a period not exceeding six months, or to dissolve the agreement in whole or in part, at the discretion of Bengi. The other party will receive a written notice of such decision made by Bengi.

ARTICLE 14: INTELLECTUAL PROPERTY RIGHTS, DESIGN PROTECTION

a. The intellectual property rights to all products manufactured, services provided etcetera by Bengi (also for the benefit of the other party) belong to Bengi. The use or alternative use of these rights, designs, choice of materials, images, descriptions and/or ideas of Bengi is strictly prohibited, unless Bengi has granted explicit approval in writing and all conditions stipulated by Bengi in this respect have been fully complied with.

b. If the other party does not comply with the provisions as set out under 14a, Bengi will be entitled, without any further notice of default and/or judicial intervention being required, to claim a fine of at least EUR 11,500 (in words: eleven thousand five hundred euros) per day or a part thereof as long as this non-compliance continues.

ARTICLE 15: WARRANTIES

a. Bengi will exclusively grant a warranty in accordance with the provisions of the warranty clause, if and insofar such provisions have been delivered together with the products. In such cases, the warranty will only take effect after the other party has informed Bengi of his request in writing by registered letter.

b. If a warranty is provided by Bengi but if no warranty clause has been provided, the warranty term will not exceed 6 (six) months after delivery of the respective goods. The other party will also need to inform Bengi of their request in writing by registered letter.

c. The warranty includes repair or replacement of the goods delivered, or full or partial crediting of the contested goods, such to be decided by Bengi. Outside contingency can never lead to Bengi being held to provide any warranty.

d. The goods accepted for repair, whether under warranty or not, will in all cases remain at the risk of the other party with Bengi or with a third party engaged by Bengi for this purpose.

ARTICLE 16: CONSIGNMENTS ON APPROVAL

Only upon prior written confirmation by Bengi to the other party, the goods delivered by or on behalf of Bengi can be considered consignments on approval for shows, exhibitions, trade fairs and/or other purposes to be indicated by Bengi. These general terms and conditions also fully apply to goods on approval and on consignment.

ARTICLE 17: APPLICABLE LAW AND COMPETENT COURT

a. All offers, assignments and contracts to be entered into with Bengi are governed by Dutch law. Nevertheless, Bengi is at liberty to be able and entitled to rely at any time on the applicable law of the country in which the other party is established. In such a case, contrary to the provisions set out under b, the dispute will be submitted to the court that is competent *ratione materiae* in the other party's jurisdiction. If the nature of the transaction(s) so warrants, Bengi is able and entitled to rely at any time on the Vienna Sales Convention. It is not necessary for Bengi to notify the other party of its choice in advance.

b. All disputes will be submitted to the district Court of Rotterdam that is competent *ratione materiae* or to another competent judicial authority, at the discretion of Bengi.

c. In derogation from 17.a. and b., all transactions/agreements with an other party established in the United Kingdom will be expressly governed by Dutch law and all disputes will be subject to the judgment of the Court in the District of Rotterdam with subject matter jurisdiction.

d. In the event that other party is summoned by a third party at another court and / or under another jurisdiction, other party hereby waives the right to summon Bengi in indemnification before that court and to that law, so that the jurisdiction of the court and law chosen by Bengi in any case will have the upper hand.

ARTICLE 18: LOCATION AND AMENDMENTS OF THESE GENERAL TERMS AND CONDITIONS

a. These terms and conditions are filed with the office of the clerk of the Rotterdam district court.

b. Bengi is entitled to amend these General Terms and Conditions. The General Terms and Conditions as amended by Bengi apply vis-à-vis the other party with effect from 30 (thirty) days after the other party has been informed of the amendment in writing, unless the other party informs Bengi in writing within this period to object to the amendment. In the latter case the unaltered General Terms and Conditions between Parties will remain in effect until the completion of the assignment or the termination of the agreement, but not for longer than 6 (six) months after the end of the aforesaid period of 30 (thirty) days. If the agreement continues thereafter, the amended General Terms and Conditions will apply thereto from that time.

CONCLUDING PROVISIONS:

These terms and conditions have been prepared and filed for the benefit of Bengi by [De Incassokamer B.V.](#) and have come about under the applicability of its current and future general terms and conditions of sale, delivery and payment, with due observance of Book 6, Title 3 of the Dutch Civil Code.

These general terms and conditions are also subject to the © copyright of De Incassokamer B.V.

Appendix General:

a. Bengi refers to it provisions of Articles 1.c.1. to 1.c.3. inclusive on the scope of applicability.

b. The activities included in the Appendix are:

1. Repairs/maintenance

Appendix 1: Repairs/maintenance

1.1 Repairs are understood to mean the execution of work for the purpose of repairing faulty equipment, software and functionalities.

Maintenance is understood to mean the execution of work for the purpose of ensuring that the equipment, software and functionalities work as well as possible.

1.2 The work done by Bengi for repairs and maintenance is subject to a best efforts obligation based on the knowledge and means available to Bengi for the solution of the questions and/or problems related to the product type, remotely or otherwise.

1.3 Insofar as the goods delivered for repairs and/or maintenance by Bengi and/or the third party/parties engaged by Bengi contain information-carrying parts and/or the information processing of other goods is affected, Bengi can never be held liable for any loss of information before, during or after the repairs and/or maintenance.

The same applies to whether these function properly or not and/or to an incorrect influencing. Bengi can never be held responsible by and/or on behalf of the other party for the storage of the information from the information-carrying goods, neither before, during nor after the work executed.

1.4 In instances in which the removal of software and/or data has been agreed with the other party, or if that is deemed necessary by the other party for the sake of the work to be executed by Bengi, that removal shall be carried out on the basis of the knowledge and means available to Bengi. Bengi cannot be held liable in any way by and/or on behalf of the other party if, at any time later, it emerges that it is impossible to recover the removed software and/or data fully or partially with the means and knowledge available at that time.

1.5 The other party should arrange adequate storage of the aforementioned information prior to the shipment of the goods that are to be repaired or to which maintenance is to be carried out.

1.6 The other party should, in the event of loss or the omission of the necessary information on the information-carrying parts, send them immediately to Bengi at Bengi's first request.

1.7 While carrying out repairs and/or maintenance work on site, Bengi can also never be held liable for damage to, for example but not limited to, equipment, furniture, ships and buildings that is the direct and/or indirect consequence of the work executed for the other party by and/or on behalf of Bengi, unless it involves wilful conduct or gross negligence. Bengi can never be held liable by and/or on behalf of the other party if the repairs and/or maintenance rendered do not have the desired effect.

1.8 In all cases the other party bears the risks for the goods accepted for repair and/or maintenance by Bengi at Bengi's premises or at those of a third party it has engaged. The other party should arrange adequate insurance that covers every form of direct and indirect damage, such as, but not limited to, fire, water damage, loss and theft.

1.9 Bengi has the right to carry out the repairs and/or maintenance at its own discretion, without having to consult the other party in that matter, even if the costs of the repairs and/or maintenance are substantial in proportion to the new value and/or a replacement product and even if they exceed that value in an incidental case.

1.10 Although Bengi is entitled to choose, as it sees fit, the replacement parts for the repairs and/or maintenance and to charge them the other party without it being required to submit this to the other party for assessment, even if those replacement parts are not original and/or new. In this matter, Bengi is also entitled to charge the other party for costs made externally. The ownership of the replaced parts is automatically transferred to Bengi during repairs and/or maintenance and Bengi can and may use them freely without it being required to notify the other party of this, unless this has explicitly been agreed otherwise or if Bengi relinquishes this right.

1.11 The other party is obliged to arrange the clearing up, removal and disposal of the waste products, materials, oils, packaging etc, left behind by, or on behalf of, the other party without Bengi being charged for those costs.

1.12 Bengi is always entitled to charge the costs of an examination into the possibilities and impossibilities of repairs and/or maintenance, for example, but not limited to, if it emerges from the examination that the costs of repairs and/or maintenance will be disproportionately high, that the repairs and/or maintenance are no longer possible or that the repairs and/or maintenance are not to be carried according to instructions given by and/or on behalf of the other party.

1.13 If Bengi ascertains that the goods delivered or presented for repair and/or maintenance cannot be repaired and/or maintained within limits that are reasonable to it and the other party has not received the returned goods in question within the reasonable term of 4 (four) weeks after being notified of this, Bengi is entitled to destroy, dispose of, recycle or alienate the goods in question, the costs of which shall be reimbursed by the other party.

1.14 The right specified in 1.13 of this appendix also applies to goods returned to the other party that are not received by the other party after repeatedly being presented by Bengi.

In such cases, Bengi also has the right to alienate those goods for any acceptable offer and/or to convert them into cash in another manner and to use the proceeds from them to reduce the damage it has incurred.

1.15 In instances in which Bengi carries out repairs and/or maintenance on site, the other party should ensure that the work environment at that site is sufficiently equipped to guarantee thorough and quick progress of the repairs and maintenance to be carried out by and/or on behalf of Bengi. This includes, but is not limited to, such things as a suitably equipped work space, including heating, lighting, the necessary electricity, sanitary facilities, suitable communication facilities, the presence of an adequate crane and/or other appropriate lifting gear for the work.

1.16 In instances in which Bengi agrees with the other party to carry out repair and/or maintenance work on site for the other party, that work shall be carried out on working days (Mondays to Fridays) between 7:45 a.m. and 4:30 p.m., unless it has been explicitly agreed otherwise in writing. In that case Bengi has the right, regardless of the reason, to have the repair and/or maintenance work that is to be carried out by or on behalf of it carried out and/or continued outside those hours. In that case, a higher hourly rate of 150% applies to working days, of 175% to Saturdays and 200% to Sundays.

As a departure from the provision above, Bengi is also entitled to make a new appointment for repairs and/or maintenance.

In both cases the other party cannot make any claim for compensation, nor for damage incurred directly and/or indirectly.

1.17 Bengi is entitled to charge the other party for costs, including travel expenses incurred and the costs due to lost time, if Bengi, in its opinion, was not given sufficient opportunity, due to the other party's actions, or actions on the part of the other party, to carry out its repair and/or maintenance work at the agreed time.

1.18 If the time and/or the location of the repair and/or maintenance work that is to be carried out create travel, parking and/or subsistence expenses, such at Bengi's discretion, Bengi is entitled to charge the other party for those expenses.

In the case of work carried out abroad, the other party shall bear, in addition to the above, the expense and risk for charges, duties, taxes, fines, etc imposed by any government authority of the country in question.

1.19 In the event of early termination by the other party, the other party is obliged to fulfil the financial obligations for the remaining period and/or the remaining work that is to be carried out arising from the previously concluded Agreement, without the other party being able to derive any rights from it.

1.20 The repair and/or maintenance work agreed with the other party shall be carried out conscientiously by and/or behalf of Bengi, where the aim shall be to complete the work within the promised term. If that term is exceeded, regardless of the circumstances, the other party cannot make any claim for compensation, nor for damage incurred directly and/or indirectly.