



GENERAL TERMS OF PAYMENT AND DELIVERY ENGINE SERVICE NEDERLAND, WEHL

The following terms are applicable to all sales and deliveries of matters and services carried out by Engine Service Nederland in Wehl, Netherlands (to be further defined as ESN, and other finite forms) on behalf of the commissioner, customer and/or purchaser (to be further defined as purchaser). Deviations from these terms are only valid if confirmed by us in writing.

Article 1. Agreement

Delivery;

1. All offers and quotations are merely indicative. All prices are based on delivery ex-works and/or ex-warehouse ESN, or carriage paid, and are exclusive of packaging, V.A.T., and other government charges applicable to the sale or delivery.
2. It is explicitly agreed that purchaser's general terms are not applicable to the sales, repairs and other agreements between both parties, unless it has been explicitly agreed in writing. Undertakings in word by, and arrangements with subordinates of ESN do not bind purchaser, unless he has confirmed these in writing afterwards.
3. If purchaser should refuse to accept the matters offered to him, all costs (i.e. costs of freight and storage) as a result of this, will be at the expense of purchaser.
4. The period needed to repair and/or the length of time needed to carry out work is only indicated on request.
5. The agreed term of delivery is a presumptive date for sales, repairs as well as other agreements. When the presumptive date in the agreement has passed by three months or more, purchaser may declare ESN liable in writing. If ESN has still not delivered one month after proof of default, purchaser has the right to annul the agreement by registered post without judicial intervention.
6. Exchange products are only sold when old products of the same make, type and composition are handed in, showing no external, visible damage and of which the vital components, such as the block or head can be revised in a normal way, and which includes the issued deposit cheque.
7. On the basis of safety and environmental grounds, old products and/or components that are to be handed in must be packed safely and completely free from cooling fluid and oil. Under no circumstances shall we accept liability for any damage as a result of these regulations not being observed.
8. The means of transport shall be determined by ESN. Business travel is always at the purchaser's risk, no matter whether carriage is paid or not, and no matter whether it takes place from or to our domicile. Insurance can be taken out on request of and at the expense of purchaser. Regulations, which are included in the carrier's terms, cannot devalue what has been determined in this clause.



9. Exchange products are packed in standard packagings. The transfer of the old product has to take place in the same standard packaging. The supplied packagings will remain in full possession of ESN and must be returned to us intact. A deposit scheme is applicable for some of our packaging, analogous to those described in clauses 14 and 15 of article 1.
10. Delivery by us is "ex-workplace ESN" (Doetinchem, Netherlands) at all times.

Prices;

11. If assembly of the product to be supplied is agreed with ESN, the price shall include the agreed assembly scope and the product shall be ready for operation upon delivery at the place stated in the offer, including all costs, yet excluding VAT.
12. Price changes as a result of changes in rights, taxes, duties, factory or import prices and/or exchange rates may be passed on the agreed purchase price at all times. After having been informed of this change, purchaser is entitled to annul the agreement if the increase of the agreed price by ESN occurs within three months after concluding the agreement. The annulment has to take place in writing within one week after notification. ESN is then entitled to compensation for the costs made, set at 1% of the agreed purchase price.
13. For agreements other than the sales agreement, the agreed price is indicative. If the indicated agreed price will be exceeded by more than 20%, or when exceeding of the price is imminent, ESN will contact purchaser in order to discuss the additional costs. Purchaser is in that case entitled to annul the agreement, compensating ESN for the work already carried out by us.
14. Deposit money will be charged upon the purchase of an exchange product, unless otherwise agreed. The amount charged as a deposit is a symbolic amount and does not correspond to the actual value of the old component. If an old product is handed in while damaged, as described in clauses 6 and 7 of article 1, the higher costs will be at the expense of purchaser and additional costs will be charged.
15. If purchaser has not handed in the old product meant in clause 6, within 1 year after the purchase date of the exchange product from ESN, we will no longer be obliged to credit the charged deposit and/or additional costs.
16. Exchange products are packed in standard packagings. The old product has to be returned in the same standard packaging. Supplied packagings remain in full possession of ESN and must be returned without any damage. A deposit scheme is applicable for some packagings, analogous to what is described in clauses 7. and 8. of article 1.
17. Delivery by us is "ex-works ESN" (Doetinchem, Netherlands) at all times.



Article 2. Payment

1. The debts of purchaser to ESN are considered as debts payable at the address of the payee.
2. Unless otherwise agreed the payment to ESN must be transferred within 30 days after the date of invoice to a bank account to be determined by us.
3. Payment by purchaser must occur in "Euros", unless otherwise agreed.
4. If purchaser does not pay at the agreed time, ESN shall be entitled to charge the interest rate legally set in the Netherlands on the amount due, increased by 2% on an annual basis, starting one month after the agreed term of payment. For this, the remaining part of the month starting at the date the payment should have been made, is considered as the entire month. The increase of the amount due is considered a term, under which we have granted postponement of payment, without lapsing the obligation to pay at the agreed time.
5. If purchaser remains in default of paying the amount due after injunction, ESN shall be entitled to increase this amount with the collecting charges. These collecting charges comprise both legal and non-legal expenses. Non-legal expenses include all expenses charged to us by lawyers, solicitors, bailiffs and all others we availed ourselves of for the recovery of the amount due. The non-legal expenses are determined at a minimum of 15% of the amount due or a minimum of € 70,00.
6. Irrespective of our lien, ESN will be free to demand a temporary or partial payment for carrying out repairs. If purchaser is a natural person, who does not do business in the practice of a profession or company, the prepayment regarding the components shall not amount to more than 50% of the purchase price.
7. If, after carrying out repairs commissioned to ESN and notifying this to purchaser, the engine involved and/or other objects handed in for repairs or revision is not collected within a fortnight or so much longer than agreed in writing between both parties, after sending the notification, we are entitled to charge for the storage costs in accordance with the tariffs valid within our company and/or on site.
8. Replaced materials or products will only be put at the disposal of purchaser, if this has been requested explicitly upon the order for repair. In other cases, these materials will become our possession without purchaser being able to lay claims upon them in any way.

Article 3. Warranty:

1. We give a warranty for a period of 12 months after the date of invoice, such to a maximum of 2,000 operational hours of the engine or 100,000 kilometres run by the engine, whatever maximum is reached first, on exchange engines revised by us and completely revised engines commissioned to us on behalf of the so-called BOVAG-revisionary warranty, which terms are stated in the related revisionary order and the BOVAG certificate of warranty that is part of this and is issued at the purchase of an exchange engine or completely revised engine. In any case a free specimen will be put at purchaser's disposal upon his initial request.



2. A maximum exchange warranty of three months applies to the supplied used engines by ESN. For new engines and other new products the warranties of the manufacturer of these engines and/or products apply. Components, which we obtain from third parties or work that is carried out by third parties by our order, are not subjected to any warranties other than those that have been given by these third parties. Irrespective of what is stated in this clause, the rights, which a natural person not dealing in the practice of his profession or company should be entitled to, are left pursuant to imperative legal terms in book 7 of the Civil Code.
3. Unless otherwise agreed in writing with purchaser prior to the agreement, direct purchasers of us can only call upon the warranty terms stated by us in this article. Third parties, irrespective of their capacity, are under no circumstances authorised to refer to these warranty clauses.
4. We commit ourselves to improving partial revisions carried out by us or work carried out by us free of charge, if this does not fall under clause 1 of this article, when purchaser can prove that it has been carried out wrongfully, such with the restriction stated in the 6th clause of this article.
5. We commit ourselves to replacing or recovering components produced by us, of which purchaser can prove that they are of inferior quality, such with the restriction stated in the 6th clause of this article.
6. Under all circumstances our liability amounts to a maximum of the amount paid or due to us by purchaser for the work and deliveries involved, plus the compensation paid or due regarding the building-in or extension of the engines. Ultimately, the maximum number of hours needed for building-in and extension applies with regard to the latter aspect, as is prescribed by the original manufacturer of the engine involved, at an hourly rate set by ESN. Our liability ends as soon as the engines processed by ESN or parts of these are subjected to repairs or changes without our permission.
7. The warranty does not cover defaults that occur due to, or partially or entirely result from:
 - a. purchaser's dismissal of operating and maintenance instructions or other use than the intended provided use.
 - b. defaults, which are not due to material and/or construction faults, such as defaults as a result of common wear, internal and external contamination, rust and paint damage, transport, frost, overheating, overloading and/or dropping of the product.
 - c. assembly/installation or repairs by third parties without written permission of ESN – including purchaser.
 - d. materials or matters used and applied at the request of purchaser;
 - e. materials and/or matters that have been provided to ESN by purchaser for treatment or processing;
 - f. built-in electronic components;



- g. damaged engines as a result of failing and/or wrongful use of the electronic components and/or the electronic peripheral events.
8. If ESN replaces components/products to fulfil its warranty obligations, the replaced components/products will become possession of ESN. The original warranty period will not be extended upon replacement.
 9. The warranty obligation lapses at all times, if purchaser does not strictly comply with or has not strictly complied with his obligation to pay. Purchaser is not authorised to refuse payment based on the fact that ESN has not yet, or not fully or will not fully, fulfil its warranty obligations.

Article 4. Acceptance and complaints

1. If purchaser should have complaints about the quality of the supplied matters, he has to report this to us in writing immediately, yet ultimately within 8 days after signing the receipt of the matters, stating the invoice number and possible order number. In case the default of the matter could only come to light at a later stage, purchaser will have to report this upon detection. This all under penalty of dissolution of the right to claim for shortcomings.
2. If purchaser wishes to claim for the matter, he has to allow for ESN to inspect the matter or have it inspected. If the claim is founded, the costs of the inspection and the return of the matter will be at the expense and risk of ESN. If the complaint is not founded, the costs of the inspection and return are at the expense of purchaser. This all under penalty of dissolution of the right to claim for shortcomings.
3. The return of matters will be at the expense and risk of ESN, only when we have explicitly given prior written permission.

Article 5. Liability

1. The liability of ESN is restricted to observing the warranty obligations described in article 3 of these terms.
2. ESN is not liable for damage to purchaser, such as trading loss, other indirect losses and damages as a result of liability towards third parties.
3. Therefore, ESN is not liable for:
 - breaching of patents, licences or other rights of third parties as a result of the use of given details due to or by the purchaser,
 - damage or loss, by whatever cause, of raw materials, semi manufactures, models, tools and other matters that were put at our disposal by the purchaser.
4. Purchaser is obliged to compensate ESN or indemnify ESN against third-party liability for damages, for which the liability of ESN is excluded in these terms in the relation with the purchaser.



Article 6. Retention of ownership

1. In case of a sale, the supplied matter will remain in possession of ESN for as long as purchaser has not fully paid the amount due in accordance with the sales agreement.
2. The risks, however, will be transferred to purchaser under all circumstances as soon as we have delivered the matter or matters to purchaser.
3. For as long as the matter is not transferred in possession to purchaser, purchaser will be obliged to take out all possible legally prescribed insurances with regard to the use of the matter as well as an insurance for full or partial loss (hull insurance). Furthermore, purchaser is obliged to maintain the matter supplied at his own expense.
4. ESN will not be obliged to any indemnifications of purchaser for his liability as owner of the matter. On the other hand, purchaser will indemnify ESN against claims that third parties may have upon ESN, and which could be related to the retention of ownership made.

Article 7. Lien

1. In case of repairs ESN can assert a lien on the matter, if purchaser will not fully or partially pay for the costs of the work, also if it concerns costs of work we carried out before on the same or on a different matter. ESN will not assert a lien if purchaser can provide adequate (substitute) security.

Article 8. Force majeure

If it concerns a matter of force majeure on the part of ESN, as a result of which we cannot fulfil our obligations, the observance of these obligations will be postponed for the length of the force majeure event. ESN will notify purchaser of the issue as soon as possible. ESN is not liable for possible damages, which may arise for purchaser.

1. Force majeure is understood to mean; each circumstance, whether foreseeable or not, that cannot be accounted to ESN, and due to which we are fully or partially precluded to observe our obligations or due to which observance cannot be desired from ESN within reason. This includes: war or similar situations, revolt, sabotage, boycott, strikes, occupation, blockade, damage or disturbance of ESN installations and/or at our suppliers, transport problems, telecommunication disturbances, government measures, natural disaster, fire or explosion.

Article 9. Sale and purchase

If upon sale of a new engine and/or other matter, purchaser remains using the old engine and/or other matter in anticipation of the delivery of the new engine and/or other matter, the last-mentioned engine and/or other matter will initially be in possession of ESN after the factual delivery to us has taken place. The matter will be completely at purchaser's expense and risk for as long as he shall remain using it.

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austauschmotoren

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Article 10. Conciliation of differences

1. The Dutch law applies exclusively to all agreements between ESN and purchaser.
2. All differences which may arise from, or as a result of an agreement as meant in these terms, as well as from or based on agreements that shall be the result of such an agreement, will be brought before the Zutphen (Netherlands) court, if they cannot be solved in mutual agreement. To the exclusion of the afore, ESN will reserve the right to bring the difference before and in accordance with the adjective regulations of the Nederlands Arbitrage Instituut in Rotterdam (Netherlands) (= Dutch Arbitration Institute).

Article 11. Contradiction with legal provisions

1. Should any of these terms of delivery and payment not be legally applicable or contradictory to the public order or law, the term involved only shall be considered as not stated, yet the remaining terms will remain in force. ESN will reserve the right to change the contested term into a legal one.

Article 12. Authentic language

1. If these terms of payment and delivery are issued in a different language than the Dutch language, the Dutch version of these terms will be decisive in case of any doubt.

Doetinchem, 05-04-2004.

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