WHISPER POWER BV GENERAL TERMS AND CONDITIONS OF SALE AND SUPPLY

1. APPLICABILITY
1.1 These Terms and Conditions shall apply to all our offers, deliveries and services, such as engineering, service, repair and maintenance. They form part of all contracts of purchase and of other legal relationships, in which Whisper Power is acting as supplier and/or contract party, except if and insofar as we shall agree in writing to render these Conditions completely or partly inoperative.
1.2 Conditions to the contrary can only be made in writing. Verbal arrangements or promises are not binding.
1.3 The applicability of these Conditions excludes the applicability of any own terms and conditions of the other party.
1.4 These General Terms and Conditions may refer to:
   - We, us, the contractor, or Whisper Power = Whisper Power B.V.
   - The other party, the principal or the client = the party with whom Whisper Power has concluded an agreement in accordance with the stipulations of par. 1.1
   - Generator: equipment driven by a combustion engine, to generate electrical current, or any other device, of which a combustion engine is a vital component, such as a hydraulic aggregate, a compressor, etc.

2. OFFERS; FORMATION OF A CONTRACT OF SALE
2.1 All our offers and prices set out in our official price-lists, brochures and suchlike are without engagement and subject to alterations without prior notice, unless explicitly agreed otherwise between parties.
2.2 A contract of sale is only established and shall take effect after a written confirmation on our part. If and when we have already made a beginning with the performance of our duty, on the basis of a verbal agreement, but with no written contract available yet, these terms and conditions are also applicable, fully in accordance with article 1.1.
2.3 Without prejudice to the stipulations in par. 5.8, we shall execute, following instructions in writing by the other party, all modifications to the order indicated by him, provided that they are reasonably feasible and with the right to Whisper Power to charge any resulting additional costs, and/or adjust the delivery period accordingly.
2.4 By additional work is meant everything that Whisper Power delivers and/or installs in consultation with the principal, whether confirmed in writing or not, during the performance under the agreement, which exceeds the quantities explicitly laid down in the contract or in the order confirmation, or if we perform more or other activities than explicitly laid down in the contract or order confirmation.
2.5 Verbal promises made by, or arrangements made with subordinate employees of Whisper Power are only valid if and insofar confirmed by us in writing.

3. PRICES
3.1 All our prices invoiced in Euro currency, exclusive of VAT and of other charges applied by law and relevant to the sale and supply, for delivery ex works, packed or unpacked, as the case may be. When prices are quoted or agreed in other currencies they will be charged in Euros against the exchange rate on the date of invoicing.
3.2 Alterations in cost-determining factors after entering into a contract and relating to the goods to be supplied, will entitle us to pass on the extra charges, related to such alterations.
3.3 Any changes to custom duties, taxes and/or governmental levies, relating to the goods to be supplied, which might take effect after the completion of the contract, will be passed on to the client.
3.4 Labour hours are charged against our standard rates for normal working and travel hours that are in our pricelists or offered otherwise. 50% extra will be charged for overtime (after
18.00 to next morning 06:00). 75% extra will be charged for working/ travelling in the weekend from Friday night 18.00 to Saturday night 00:00). 100% extra will be charged for work/travel on Sunday and according to Dutch law officially recognized holidays. (Sunday/holiday morning 00.00 to next morning 06:00)

4. DRAWINGS, CALCULATIONS, DESCRIPTIONS, MOULDS, PATTERNS, TOOLS, ETC.
4.1 All data, described or depicted in catalogues, pictures, drawings, measurements and weights, etc. are not binding, unless they are explicitly integrated into an agreement, signed by both parties, or into a written order confirmation issued by Whisper Power.
4.2 All offers, made by Whisper Power, as well as any drawings, calculations, data programs, descriptions, patterns, moulds and/or tools, etc., prepared or handed over by us, will remain our unrestricted property, irrespectively of whether or not the cost thereof has been charged to the client. All information, which forms part of the foregoing, or upon which manufacturing and construction methods, products, etc. are based, remain the exclusive property of Whisper Power, even if a fee for these has been charged by us to the client. The client guarantees that no information, mentioned here above, shall be copied, made known to third parties or used in whatever respect, unless it serves the purpose of the agreement and written permission is granted by Whisper Power.

5. DELIVERY TIMES, DELIVERY, PACKING AND MINOR ORDER COSTS
5.1 Delivery periods and delivery schedules, indicated by us, only serve as an indication and not as deadline, unless otherwise explicitly agreed upon in writing. No exceeding of any delivery period shall entitle the other party to claim damages in compensation or to dissolve the contract.
5.2 The delivery period shall commence once we have received all information required for the correct performance of the agreement and after receipt of the instalment payment, if so agreed upon.
5.3 Delivery of goods is made ex works Drachten, The Netherlands. If and when the parties have agreed upon another delivery address for the actual transfer, the goods are transported at the expense and at the risk and peril of the other party, even if the transportation mode is prescribed by Whisper Power. Factual delivery is always made during normal working hours.
5.4 As regards the delivery time, the product is deemed to be delivered when it is available for transfer of ownership to the principal, or at least can be placed within his power and when the client has been informed of this, without prejudic to the obligation accepted by Whisper Power to comply with the assembly/installation commitments, if any.
5.5 Without prejudice to the provisions set forth elsewhere in these conditions, with regard to the extension of the delivery time, the delivery time is extended by the duration of the delay arising on the part of Whisper Power, as a result of the failure of the client to comply with any of the obligations arising from the agreement or with any form of co-operation to be required from him with regard to the implementation of the agreement.
5.6 In the event that the other party fails to accept the delivery within the agreed or set out time limit we are entitled to charge interest and warehousing costs.
5.7 If the client refuses to take receipt of the goods offered to him, all costs deriving from this (including freight and costs of warehousing) are payable by him.
5.8 In the event of cancellation of the agreement or not taking delivery of the goods by the client, he shall have to pay 10% of the agreed purchase price immediately to Whisper Power, without prejudice to our right to claim additional full compensation from the client for the damage caused by the cancellation, related to disbursed costs and loss of profit.
5.9 Packaging, deviating from standard, may be charged by us to the other party.
5.10 If a minor order is concerned – this to be decided exclusively by Whisper Power – administration and handling cost will be charged to the client, in addition to the cost of packing and freight. This type of cost will be stipulated in the invoice as “minor order costs”. The height thereof and the threshold values are made public in our price-lists.

6. ASSEMBLY/INSTALLATION/SERVICES
6.1 The client is responsible vis-à-vis the contractor for the correct and timely implementation of all arrangements, facilities and/or conditions that are necessary for setting up the product to
be assembled and/or the correct operation of the product in assembled state, except if and insofar as this work is carried out by or on behalf of Whisper Power in accordance with data and/or drawings made by ourselves or made on our behalf.

6.2 If a service of whatever nature is performed within the premises of Whisper Power, all costs of transportation and any other costs incurred outside the boundaries of our premises, as well as all risks regarding the goods to be installed, repaired or overhauled, shall be borne by the client.

6.3 Without prejudice to the provisions made in par. 6.1, the client shall in any event make sure, at his own risk, peril and expense, that:

a. The work can be executed in a room which is sufficiently protected against weather influences, properly cleaned, well illuminated and having a connection to the piped water system, if so required. The room in question must be closable and the client shall make sure that all prescriptions concerning safety, fire prevention, etc. are fully complied with;

b. The personnel of Whisper Power, as soon as they have arrived at the place of installation, can commence their work and continue performing their work during normal working hours and also beyond normal working hours, if Whisper Power deems this necessary, provided we, the contractor, shall informs the client about this in good time;

c. To assume all costs occurring in the case that employees of Whisper Power or of its subcontractors cannot begin with their duties immediately upon arrival or are forced to interrupt the work, or shall have to continue their work in overtime;

d. The access roads to the place of installation are suitable for the requisite transport;

e. The designated place of installation is suitable for storage and assembly;

f. The necessary lockable storage sites for equipment, tools and other matters will be present;

g. The requisite and usual auxiliary workers, auxiliary equipment, additives and industrial materials (fuel, oil and lubricants, polishing and other small materials, gas, water, electricity, steam, pressurized air, heating, lighting, etc) as well as the normal measuring and testing equipment which belongs to the business of the client, shall be made available to the contractor in good time, free of charge and in the right place;

h. The supply, at first request by Whisper Power, of auxiliary manpower, free of charge;

i. To assume all costs related to such work as: dismantling of pipelines, exhaust lines, stairs, flights of steps, etc. which might be required for the proper execution of the job, as well as the assembly and repositioning of the foregoing after the repair. Furthermore: to ensure that all necessary safety and precautionary measures have been taken and are maintained, in order to comply with the applicable government regulations with reference to assembly/installation;

j. At the start of and during the assembly all requisite products will be present in the correct place;

k. All required safety and precautionary measures are taken and maintained, as well as those measures required by the appropriate government regulations, with reference to the execution of the work entrusted to Whisper Power;

l. Adequate insurance is arranged – this to the satisfaction of Whisper Power and maintained at least for the duration of the work to be done – against all sorts of damage resulting from accident or fire, that may occur during the preparation or the execution of the work to be done, as entrusted to Whisper Power.

6.4 As regards the assembly/installation time, article 5 is likewise applicable.

6.5 If the product, after assembly or installation, displays negligible shortcomings, in particular those which barely affect the anticipated use of the product, if at all, it does not preclude delivery on time. Whisper Power is engaged to remedy such shortcomings as soon as practicable.

6.6 If and when we shall be forced, on account of too short time allowed by the client for the proper execution of the work, or on account of any other reasons for which we, the contract party cannot be blamed, to accept auxiliary manpower from the client, Whisper Power may have to decline the responsibility for the results of the performed services.
6.7 Any damage and the related cost, which may occur due to the fact that the provisions of this article are not or not timely complied with, shall be borne by the client.

7. PAYMENT, EXIGIBILITY, INTEREST AND COLLECTION COSTS

7.1 Full payment for the goods shall be made at one of the following moments, whichever comes first:
  a. On delivery;
  b. Within the term mentioned on the invoice; in the event that goods are purpose-made for the other party, payment shall be made before we can start the manufacturing process.

7.2 If parties have agreed upon supply and delivery on account, payment shall be made after receipt of the invoice in accordance with the order confirmation and the invoice and without discount and/or suspension. Set-off is not allowed.

7.3 The indicated terms of payment shall be observed in full, also when non essential components of the delivery are lacking, not obstructing the use of the delivered items.

7.4 In case of overdue payment of any invoice, the statutory interest pursuant to article 6:119a BW (Dutch Code Civil) (trade interest) shall be payable as of the date of default, or in case of consumer purchase: the statutory interest pursuant to article 6:119 BW. If the other party is in default, all our other claims against the client are immediately payable. The latter holds good even if the other party will be declared insolvent, will be granted suspension of payment, as well as in the event of amalgamation or winding-up or death (in case of a person).

7.5 Extra judicial collection costs will be charged to the other party in conformity with the ‘Rapport Voor-Werk II’ (Report For-Work II = Dutch standard), such with a minimum of €115.-- per claim.

7.6 Each payment made by the other party shall always serve to settle first the extra judicial collection costs due, the court costs and the interest due and thereafter in (part) settlement of those invoices which have been outstanding for the longest time, notwithstanding any instruction to the contrary by the other party.

7.7 The other party can only object to an invoice within the term of payment.

7.8 Prior to making first or continuing deliveries we reserve the right, for business reasons, to require payment in advance or to be provided with adequate security in a form as chosen by us and, in case of non-payment of the required prepayment and/or if we cannot obtain the required security, to suspend or to decline the performance of the contract or to cancel the contract insofar not yet carried out, by way of a simple written notification, without prejudice to our entitlement to full compensation.

7.9 Whisper Power is entitled to dissolve the contract without further exhortation once the client fails to fulfil his obligations arising from the agreement in the strictest fashion.

8. QUALITY AND ACCEPTANCE; COMPLAINTS

8.1 Except in the case that Whisper Power has made explicit reference to a quality standard, the goods supplied do not have any special properties or characteristics. This stipulation also applies in the case that our brochures or general documentation refer to specific characteristics, such as noise level, exhaust emission standards, certificates and the like. If special properties will be required in the case of a specified supply and delivery, this is to be included explicitly in the agreement of purchase and supply.

8.2 The client is obliged to test the goods upon arrival for completeness and the presence of visible damages.

8.3 Complaints are only accepted by us if they are lodged with us immediately, in any case within 14 days after receipt of the goods, respectively within 14 days during which he defects reasonably should have become manifest. Thereupon the goods in question must be returned to us as soon as practicable and at the expense of the client so that we shall have the opportunity to establish the validity of the complaints.

8.4 We do not accept complaints of whatever nature, until the client has fulfilled all of his obligations towards us. Such complaints will never allow the other party to omit or postpone payment for other or more goods than those to which the complaints are related.

8.5 In case the client requires any further investigation into the (alleged) complaints outside our own premises, he shall be obliged to refund us the cost involved.
8.6 Without prejudice to the provisions of Article 8.3 any claims and defences of the other party, based on the argument that the goods supplied were not in conformity with the agreement, shall at any rate be rendered null and void after the lapse of one year after delivery, unless otherwise agreed upon in writing.

8.7 If the transferred goods are not up to standard, Whisper Power is only obliged to deliver the missing part(s) or, as the case may be, repair or replace the goods supplied, such at our exclusive discretion. Every other or further liability is expressly excluded.

9. FORCE MAJEURE
9.1 Force majeure is the title of all circumstances which are beyond our control and for which we cannot be blamed, and/or any other reasons for which the (further) fulfilment of the contract cannot reasonably be required from us.

9.2 Force majeure is considered to be, among other things, but not limited to these: state of war or siege, measures taken by the authorities, declaration of mobilisation in The Netherlands or in the country of origin of any goods to be supplied, requisition of stocks, radical change in exchange rates, strikes, lockouts, reduction of production owing to shortage of raw and ancillary materials, flood, fire, interruptions in transport and other circumstances, which seriously hamper the production and/or supply and delivery.

9.3 In the event of force majeure we are entitled - at our discretion - to dissolve the agreement without judicial intervention, in so far it concerns any uncompleted part, or to extend the agreed delivery period for the duration of the force majeure. In neither situation are we liable to pay any damages.

10. LIABILITY; INDEMNIFICATION
10.1 We shall not be made liable for any damage that cannot be attributed to gross negligence or wilful intention on our part or which is the result of conditions for which we cannot be held accountable.

10.2 Whisper Power is not liable for damage resulting from gross negligence or wilful intention of auxiliary workers or unsuitability of goods of whom or of which we make use during the fulfilment of the agreement; or for the exercise of rights by a third party towards the client, with respect to breach of contract by him of an agreement concluded between the client and the third party, relating to any delivered goods; or strike, illness, obstacles concerning importation, exportation or transportation, nonfulfilment by suppliers of their obligations, breakdown in the production, natural or nuclear disasters and (threat of) war.

10.3 Our liability to pay damages shall never exceed the nominal value of the invoice of the goods supplied, about which damages are claimed. Nor shall we be liable for damage to business or consequential damage whatsoever.

10.4 The client shall indemnify, respectively compensate us, for all claims lodged by third parties with respect to the sold goods.

10.5 The provisions in this article shall be without prejudice to our statutory liability pursuant to mandatory provisions.

10.6 We stipulate and reserve all legal and contractual defence which can be invoked to disclaim our liability against the client, also insofar our employees and persons not under our control are concerned, for whose conduct we could be held legally liable.

11. WARRANTY AND RETURN OF GOODS
11.1 In regard to products which are not made by us, Whisper Power only guarantees these products to the same extent as warranty is given to ourselves by the supplier.

11.2 Without prejudice to the constraints outlined here below, Whisper Power vouches that the products made and supplied by us are in compliance with the specifications and free from defects. This warranty is valid during a period of 24 months following the date of delivery of the product. Exceptions: (1) It if concerns batteries: the warranty period is limited to a period of maximum 24 months following the date of delivery of the product from the factory/warehouse or the number of charge/discharge cycles as indicated on the data sheet of the relevant batteries, whatever comes first. For 2 volt cells and Lithium ION batteries we offer different warranty terms, system/application dependent. Ambient temperatures around
the battery never may exceed 40°C, we recommend 25°C as a working temperature. (2) If it concerns a WhisperPower generator set, an aggregate or any other device of which a combustion engine is a vital component, our warranty period shall be 24 months, or, alternatively, be valid during a period of time until a limit of 1.000 hours of operation (in the case of a 3000 rpm generator and a 1-cylinder variable/adjustable rpm generator (such as our Piccolo model or Scalino mobile/land model)), (3) respectively of 2.000 hours of operation (in the case of a 1500 rpm generator and adjustable rpm generator with multiple cylinders (such as the Genverter multi cylinder range of products)) has been reached, whichever comes first.

11.3 Whisper Power offers an extension of the warranty conditions for generator sets, if an authorized maintenance contract is concluded with a service organization, also authorized by Whisper Power. In such case, the warranty period will be extended to a period of 5 years after the date of delivery of the goods in question. This service is subject to following additional conditions:

a. A written agreement concerning the aforementioned maintenance contract, stating the serial number and the purchase date;

b. Approval by Whisper Power of the way of installation and commissioning;

c. The exclusive use of installation components, supplied or approved by Whisper Power;

d. Dependent on the operation conditions, limitations may be set upon the guaranteed number of hours of operation;

e. The accessibility to a maintenance log, which clearly shows that all prescribed maintenance duties have been executed in accordance with the relevant directives.

11.4 Claims with regard to non-visible defects or defects which are covered by warranty, must be submitted immediately after their discovery, but in any event within the guarantee period referred to in paragraphs 11.1, 11.2 and 11.3, in a written, specified notification by the client to Whisper Power. Legal claims pursuant to this matter must be submitted within a year’s time after the claim has been submitted in good time to us, on pain of the claim ceasing to be valid.

11.5 Paragraphs 11.1, 11.2 and 11.3 are likewise applicable to defects which are caused solely or largely by substandard assembly/installation by Whisper Power, or by third parties involved by us. If assembly/installation of the product by Whisper Power takes place, the periods referred to in paragraphs 11.1, 11.2 and 11.3 shall commence on the day on which assembly/installation has been completed by the contractor, on the understanding that in that case the period of guarantee terminates in any event when 30 months after delivery have elapsed, all in accordance with par. 5.4.

11.6 The defects coming under the guarantee referred to in paragraphs 11.1, 11.2 and 11.3 will be remedied by the contractor by means of repair or replacement of the defective part at the contractor’s premises or elsewhere, or by dispatching a part for replacement, this solely at the option of Whisper Power. All costs exceeding the sole obligation as described in the preceding sentence, such as transport costs, travelling and accommodation expenses, costs of investigation by an expert as well as costs for dismantling and assembly, but not limited to these, are to be paid by the client. Within the limits of an “accommodating plan”, with provisions as stipulated in par. 11.10, may Whisper Power be in the position to participate in these costs.

11.7 The principal will grant the contractor assistance in any disassembly and assembly work upon first request made by Whisper Power.

11.8 The client, after having received written permission from Whisper Power, may have a necessary repair carried out by a third party at the contractor’s expense, insofar as the cost thereof will be reasonable. The cost price level of the contractor is the determining factor, to establish whether or not these charges are reasonable. Following cost settings may serve as an indication: cost of labour for repair by a third party in a reasonable proportion to the defect, with a maximum of 4 hours at an hourly rate of maximum 50 Euro. The aforementioned fee may be revised periodically and made public by other means of publicity.

11.9 The third party who is allowed to carry out a necessary repair will be designated by Whisper Power in consultation with the principal. Repair by a third party in accordance with this paragraph of the article will only be possible:

a. Whisper Power is in the position to invoke the services of repair or service partners, authorized by us;
b. If there is a disproportionate difference between the necessary costs of transporting the product to the premises of Whisper Power and the costs of repair in situ;

c. If in connection with the circumstances of the client it cannot be required from him to have the repair carried out at the premises of the contractor.

11.10 “Plan of Accommodation” : Whisper Power has created a plan of accommodation, by virtue of which following allowances are granted to share in the cost, normally due to the principal, in the case of warranty repairs:

a. Return shipment free of charge: if a repair in the premises of Whisper Power is to be effected, the client shall send the generator or the defective component free of charge to Whisper Power, who will then return the repaired or replaced generator or part free of charge to the home address of the owner or the yard, but not free on board vessel. Return shipment will take place on the basis of standard shipping conditions, such as groupage and sea freight and, if possible, in combination with a regular dispatch of goods by Whisper Power to its distributors. Customs charges and import duties, if any, shall be borne by the client. An exception to the foregoing may be far-away destinations, when free delivery cannot reasonably be expected, on account of location, circumstances or excessive cost (example: far-off islands, remote areas, war countries, etc.). If the client is not situated in an area with a normal infrastructure, he and Whisper Power shall take counsel together regarding the transportation method and who will pay which part of the cost involved;

b. Solely in the case that Whisper Power and the client have agreed to execute a warranty repair in situ, whether or not with the aid of a third party, Whisper Power shall make an allowance for following types of cost: 1) Cost of labour for removing and reinstallation of the generator at an hourly rate of 50 Euro maximum and with a maximum of 4 hours if it concerns under deck machinery and of 1 hour if on deck machinery or a generator in a vehicle is concerned. 2) Travelling hours with a maximum of 2,5 hours and car expenses to a maximum of 0,25 Euro/km and no more than 150 kilometers distance altogether. These fares may be modified periodically and made public by other means than this document.

11.11 In any event, defects that do not come under the guarantee are those occurring, partly or in full, as the result of:

a. Failure on the part of the client to have due regard for operating and maintenance instructions or to exercise another form of use than is normally anticipated; unauthorized repairs, lack of maintenance or supervision, soiling, neglect and the use of inadequate or polluted fuel, lubricating oil or coolant; or defects resulting from the use of lubricating or cooling liquids which are not compatible with one another;

b. Defects which do not come under the heading of material and/or constructional faults, such as defects arising from normal wear and tear, internal and external contamination, rust and paint damage, transport, freezing, damage by water, overheating, overloading and/or dropping of the product;

c. Repair, if required, of parts which are subjected to normal wear and tear, such as but not limited to: impellers and seals of water pumps, oil, fuel and air filters, as well as maintenance materials, like oil, coolants and lubricants. If such components need replacement during repair works, they will be charged to the client;

d. Damage and defects resulting from accidents, extreme sea swell, adverse weather conditions, such as thunderstorms, strike by lightning and inundation;

e. Damage and defects resulting from derelict operation by means of an automatic start/stop device, even if such equipment has been supplied by Whisper Power or one of its authorized dealers;

f. Incorrect or defective installation by other parties than Whisper Power, including the client, however with the exception of the provisions in par. 11.5.;

g. Used materials or goods applied at the request of the principal; materials or goods which have been provided by the client to Whisper Power for treatment or processing;

h. Materials, goods, processing methods and constructions applied, following specific instructions by the client, as well as any materials or goods, supplied by or on behalf of the client.
11.12 As far as marine generator sets are concerned, additional restrictions are applicable concerning the use and the circumstances under which these generators are being operated:

a. The standard specifications of marine generators are based upon an ambient temperature of 25°C, atmospheric pressure at sea level (atmospheric pressure of 100 kPa) and a relative air humidity of 30%. If the generator is used in an ambient temperature of more than 40°C, from the foregoing deviating atmospheric pressure and/or higher relative air humidity, the maximum output of the generator must be reduced;

b. Not covered by warranty are those defects which result from water entering into the cylinders or the engine block, unless the damage is the direct result from a clear and obvious defect of the generator, to which warranty is applicable;*

c. Not covered by warranty are those defects which result from a clogged or improperly functioning anti-siphoning valve, a leaking gasket or seal of the water pump, loose hose clamps, too long start-up processes, condensation or outside influences;*

d. Not covered by warranty are those defects which result from water entering through the exhaust assembly, even if no obvious cause can be established and even if the generator and the exhaust system have been installed in accordance with the installation instructions.*

*Explanatory note concerning par. 11.12. b., c. and d.:

In the case of a “wet” exhaust system, as is common practice for (pleasure) craft, Whisper Power can never be held responsible for damage and defects resulting from (sea) water entering through the exhaust assembly. A wet exhaust system has an open connection between the engine’s cylinders and the exhaust system. By means of an absolutely professional installation and by strictly adhering to all required precautions in accordance with the installation instructions, the risk of water entering through this system is minimized but can never be altogether excluded. Among other things: extreme conditions at sea, extremely vehement movements and excessive heeling of the boat may be the cause of water entering into the engine, thus causing damage.

11.13 In regard to mobile generator sets, additional restrictions are applicable concerning the use and the area or circumstances under which these generators are being operated:

a. The standard specifications of marine generators are based upon an ambient temperature of 25°C, atmospheric pressure at sea level (atmospheric pressure of 100 kPa) and a relative air humidity of 30%. If the generator is used in an ambient temperature of up to 40°C and an altitude of up to 500 m, the maximum output of the engine must be reduced. In the case of a mobile generator set, used at an ambient temperature of more than 40°C and at higher altitudes, the maximum output must be reduced and provisions made which are beyond the standard specifications, such as larger cooling radiators, etc.;

b. If a mobile generator is supplied by an authorized dealer or distributor, an application test must be executed and assistance with the installation shall be offered and is to be accepted. If need be, solely for Whisper Power to decide, the generator set must be commissioned by the Whisper Power service organization;

c. It may be possible that Whisper Power is unable to grant warranty or provide service if a mobile generator, with or without the vehicle, is exported into a country where the conditions of use are largely deviating and/or in places where service is difficult to provide. Largely deviating conditions of use are e.g.: extremely high or low ambient temperatures, sandy and dusty conditions (deserts), areas with high altitude, vibrations or shocks (off-road applications) and military applications;

d. The supply of products for special applications and unusual conditions (so called “specials”) may be agreed upon in writing between Whisper Power and the client, after approval of the application by Whisper Power and when all required modifications have been executed, the warranty conditions modified, sufficient training has been given and a local service outfit is available.

11.14 In regard to warranty on repair work, spare parts and services, additional conditions are applicable. Whisper Power grants a warranty of 6 months on its repair and overhaul jobs, provided that the repair work shall include all processes, replacements, modifications and supplies, as are deemed necessary by Whisper Power and that the client has refrained from influencing in any way the nature or the execution of the work to be done. The warranty period shall commence after the tests, performed by us immediately after the repair or the overhaul, irrespectively of whether or not the product is re-commissioned immediately.
thereafter. Any defects occurring within that period of time and resulting from faulty materials applied or inadequate workmanship by Whisper Power or by personnel hired by us – all this at the sole discretion of Whisper Power – shall be remedied as soon as possible and under the same conditions as are stipulated in par. 11.5, provided that the defect(s) will be reported to Whisper Power in writing within 8 days from its/their first appearance of the defect.

No warranty claims shall be accepted if:

a. Injudicious use is made of the repaired or overhauled product;
b. The operation manual and or the instructions/indications by Whisper Power have not been adhered to;
c. Repair of the defects has been executed by unauthorized third parties.

11.15 The warranty period, stipulated in par. 11.13 shall not be extended after repair of the defect(s).
11.16 No warranty will be granted about components, supplied but not fitted by Whisper Power, in the case of an apparently faulty installation.

12. TRANSFER OF RISK AND OWNERSHIP; RESERVATION OF TITLE

12.1 As soon as the product is deemed to have been delivered in the sense of art.5, par 4, the client shall bear the risk for all direct and indirect damage, which may arise to or through the product, except insofar as the contractor can be held responsible. If the client, after being given notice of default, continues to fail to accept the product, Whisper Power shall be entitled to charge the client for the costs of storage of the product.

12.2 We reserve title to all goods supplied by us until the moment the client has paid to us: all that is due pursuant to the agreement in respect of the goods delivered or to be delivered or related work performed or to be performed pursuant to such agreement: all claims relating to the other party’s failure to fulfil such obligation(s), resulting from the agreement(s).

12.3 The other party is not entitled to a right of retention regarding costs of storage or to set off these costs against commitments he is due to perform.

12.4 In case the other party is in default in respect of the obligations referred to in par. 12.2, we are entitled to take back all the goods owned by us from the place where they are located.

12.5 Contrary to the provisions under paragraphs 12.2 and 13.1, the consequences by law of property of the reservation of title shall be governed by the law of the state of destination of the goods, in the event that this law contains more favourable provisions for Whisper Power, in respect of the reservation of title, than the Dutch law provides. In that case the reservation of title applies to all goods and all claims for which a legally valid reservation of title can be stipulated under the law of the country of destination.

13. APPLICABLE LAW; COMPETENT COURT

13.1 All agreements between the client and Whisper Power are governed by the laws of The Netherlands.

13.2 Applicability of the Vienna Sales Convention (CISG) is excluded.

13.3 The competent Court at Leeuwarden, The Netherlands shall have exclusive jurisdiction with regard to all disputes arising directly or indirectly from agreements to which these conditions are applicable, except in such cases when obligatory provisions prescribe otherwise, or in case we shall seek, in our capacity of plaintiff or applicant, the judgement of the competent court of the other party’s domicile.

14. GENERAL

14.1 If any of the provisions of these General Conditions shall prove to be invalid to a certain extent, the remaining provisions of the general sales conditions shall remain in full force and effect. Parties shall then endeavour to agree upon a valid and lawfully enforceable amended provision which shall, as far as possible, represent the intentions and the intended economic results, expressed in the provision(s) which has or have proved to be invalid.
DRACHTEN, The Netherlands, 24th August 2016

R.J. ter Heide
CEO Whisper Power B.V.

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