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Dokumentinformasjon

Dokumenteier	Salgssjef
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Dokumenthistorie

Endringsdato	Endret	Endring	Ny versjon
02.01.2018	TEK	Dokument opprettet	1.00
09.03.2022	TES	Oppdatert hele prosessen, ny mal	2.00
30.08.2023	TES	Incoterms and chapter 8 Baggerød's liability for defects	3.00

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1.INTRODUCTION

1.1 In these Terms and Conditions (T&C), Baggerød AS or any of its Affiliates is referred to as "Baggerød", and the "Customer" means the party or parties contracting products and / or services from Baggerød. "Products" and "Services" include all hardware, software, documentation, spare parts and services of whatever type, which Baggerød has agreed to supply either directly or through its authorized agents, suppliers or manufacturers.

2.GENERAL

2.1 No terms or conditions (whether contained in the Customer's Official Purchase Order or otherwise) shall be binding on Baggerød other than those set out herein, unless explicitly agreed to by Baggerød in writing.

2.2 If terms and conditions are included in Customer's Official Purchase Order and requested to be accepted by Baggerød, the Baggerød General Terms & Conditions will be the governing T&C if any contradiction or conflict between the T&C might occur, unless explicitly agreed to in writing.

3.FORMATION OF THE CONTRACT

3.1 The contract between Baggerød and the Customer shall be deemed to have been entered into when, upon receipt of a Customer Order (hereinafter referred to as "PO") from Customer, Baggerød has sent an Order Confirmation (hereinafter referred to as "OC") or other acceptance in writing within the time limit (if any) fixed by the Customer, or when the contract is signed by both parties hereto. The PO must be specific on the product specification, volumes and requested delivery date. All changes to what is defined in PO after PO award are to be considered as Variation Order as described in Article 8 Changes.

3.2 If Baggerød has fixed a time-limit for acceptance, the contract shall be deemed to have been entered into when the Customer has sent an acceptance in writing before the expiration of such time-limit. The contract will come into force when all related requirements in the contract are met.

3.3 Customer shall sign this Terms & Conditions and return to Baggerød. If the T&C are not signed and returned to Baggerød within three (3) business days immediately after the submission of the PO, the T&C shall be deemed as accepted by Customer.

3.4 If there are clarifications to be handled after PO award, the specific clarifications shall be clearly stated in the PO and the PO shall include an additional cost for such work. Baggerød will prepare the required drawings for Customer's comments and / or acceptance and two (2) revisions of the drawings will then be included in the Baggerød Scope of Work. Customer is entitled to comment to the first issue of drawings and as long as comments from Customer are incorporated into the next revision, Customer cannot add more comments to the drawings. Additional comments after two (2) revisions are to be considered as a Variation Order in accordance with Article 8 Changes.

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4. QUOTATIONS

4.1 Quotations are valid for a period of sixty (30) days from the date of issue unless explicitly offered otherwise by Baggerød in writing. A revision of the original offer supersedes the original offer.

5. PRICES

5.1 Unless otherwise confirmed in writing by Baggerød, prices quoted are FCA – Horten, Norway or other factories / logistical service points for Baggerød, always in accordance with INCOTERMS 2020. Carriage, insurance and other costs (if any) will be charged as extra unless otherwise offered by Baggerød and stated in the PO. Prices quoted apply only to the quantities or particular services specified in the quotation.

5.2 If between the date of the PO confirmation and delivery, the cost of the whole or any part of the Product or services is increased by reason of any rates, duties or taxes payable by Baggerød, Baggerød may increase the price accordingly. Since currency exchange rate may vary, Baggerød reserves the rights to adjust prices and invoices based on the current exchange rates at the time of invoice.

6. TERMS OF PAYMENT AND DEFAULT INTEREST

6.1 Baggerød standard payment term is by invoice sent by e-mail unless otherwise specified in written in the offer and confirmed in the PO. Payment is to be made in full based on the terms stipulated in the OC in the currency invoiced unless otherwise stated and agreed upon in the PO. Should the Customer fail to pay in full within the due date(s), Baggerød shall be entitled to suspend work and / or delivery of any goods to the Customer. Such action shall not prejudice any other remedy that Baggerød may have, hereunder terminate the contract with 14 days written notice. Payment shall not be deemed to have been effectuated before Baggerød's account has been fully and irrevocably credited. For payments that are overdue Baggerød will send a reminder with 1% of the total amount of the invoice added to invoice to cover administration cost and other costs related to delays in payment.

6.2 Unless otherwise stated in the PO, Baggerød is entitled to send Customer an invoice 10% of the contract total amount after PO award.

6.3 In the event that payment is not made in accordance with the OC, the Customer shall pay Baggerød interest at the rate of 3 months LIBOR plus 8 % per annum, until all outstanding amounts, including interest charges, are paid.

7. DELIVERY TERMS

7.1 Unless otherwise agreed in PO, any quoted delivery date or period shall refer to delivery FCA – Horten Norway and/or Langeme Lithuania in accordance with INCOTERMS 2020.

7.2 Unless otherwise agreed in PO, the delivery period shall run from the date of formation of the contract as defined in Article 3. Should delay in delivery be caused by any of the circumstances mentioned in Article 11 or by an act or omission of the Customer such as delay in payment, delay of any of Customer's undertakings according to this Contract, causing Baggerød a delay, and whether such cause occurs

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before or after the time or extended time for delivery, Baggerød shall be entitled to an extension of the delivery period as is reasonable having regard to all the circumstances of the case, but such extension shall not exceed the delay attributable to the Customer or to force majeure.

7.3 Baggerød is responsible for delivery fulfilment in accordance with delivery dates agreed in the confirmed PO. In the event a delay is likely to occur, Baggerød undertakes to notify the Customer of the possibility of such delay and do its best effort to avoid or minimize such delay. Baggerød shall however, not be liable for penalties or damages the Customer may incur as a consequence of a delay, unless agreed upon and clearly stated in the PO and never exceeding a maximum of 3% of the total contract amount. Buyer's remedy in the event of delay for which Baggerød is responsible or carries the risk, shall be Liquidated Damages only, and in such event the Liquidated Damages shall be calculated at a rate of [0,5%] of the value of the relevant part-delivery, for each commenced week of relevant delay for which Baggerød is responsible. Accrued Liquidated Damages shall await settlement until final account of the Contract. The remedy set forth in this provision shall be the sole remedy available for Buyer invoking monetary compensation due delay for which Baggerød is responsible under this Contract.

7.4 In case of delay in Baggerød's performance of his contractual obligations under the PO / contract is caused solely by the failure or delay in the Customer's performance of his obligations, and such failure or delay leads to increased costs for Baggerød; Baggerød shall be entitled to full reimbursement by the Customer for such increased costs.

7.5 Baggerød will notify the Customer of the date for delivery of the product. The notice will be given in sufficient time to allow the Customer to take such measures as are normally necessary for the purpose of taking delivery.

7.6 If the Customer fails to accept delivery on due date, he shall nevertheless make any payment conditional on delivery as if the product and / or services have been delivered. Baggerød shall arrange for the storage of the product at the risk and cost of the Customer.

7.7 The agreed delivery date defined in PO is based on the initially agreed design for the product(s). Any requested changes induced by Customer to the initially agreed design after PO award are entitled to be handled as a Variation Order with time and cost impact in accordance with Article 8 Changes, and such changes might affect the delivery date. Any practical or contractual impact such changes to delivery time due to requested changes by Customer might induce for Customer is Customer's responsibility. Baggerød is not responsible for any time and cost impact for Customer such changes might imply.

8.Liabilities

8.1 All claims against Baggerød, including defects, shortages and / or errors, must be made in writing, specify the defect(s), project number and the reason for the notification claim. Failure to make such claim constitutes full acceptance of the merchandise and waiver of all claims regarding defects, shortages and / or errors that could have been ascertained at the time of delivery.

8.2 Baggerød's liability for defects

Regardless of any other provisions of the Contract, save for the event of non-contractual performance caused due to Baggerød's willful misconduct or gross negligence, Baggerød's liability in respect of defects pertaining to each part-delivery under the Contract, shall be limited as follows:

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8.3 Baggerød shall only be liable for defects which appear to the product in the Contract, provided that the Product only has been used under conditions for which it is intended, and that Buyer has adhered to Baggerød's user manual(s) in respect of the Product.

8.4 Baggerød shall not be liable for defect(s) caused by circumstances for which Baggerød does not have responsibility or risk under the Contract e.g.:

- Defects due to faulty use
- Faulty maintenance
- Lack of maintenance
- Incorrect installation
- Faulty repair
- Modifications carried out without Baggerød's prior written consent.
- Normal wear and tear

8.5 Baggerød is entitled to, and has the duty to, carry out repair work in the event of defect(s) for which Baggerød is responsible. If Baggerød is not able to remedy the defect(s) within a reasonable time, Buyer is entitled to claim damage subject to the limitations of this Section - Baggerød's liability for defects.

Baggerød's liability for performing rectification work after delivery and thereby accumulating costs on Baggerød's hand, as well as Baggerød's liability for damages due to defect(s), shall under no circumstances together exceed 10% of the value of the applicable part-delivery.

8.6 Baggerød is under no circumstances liable for any costs relating to, consequential damage e.g. dismantling of other objects in order to obtain access for performing repair work.

9.CHANGES

9.1 No changes to the Contract hereunder will be valid unless verified in writing between both parties. Changes shall be introduced through change orders / variation orders duly signed by authorized representatives from both Baggerød and Customer.

9.2 Variation order(s) shall clearly state cost and time impact for the Order, and delivery date shall be re-evaluated or redefined accordingly.

9.3 The Customer acknowledges and agrees that no other terms, conditions or representations are incorporated unless specifically agreed to as a variation order or an amendment to the PO.

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10. CANCELLATION

10.1 No cancellation, suspension or variation by Customer of an order shall be valid unless agreed by Baggerød in writing. Such agreement shall be entirely at Baggerød's discretion and will only be given on terms which compensate Baggerød for any documented accumulated costs, minimum 15 % of Contract Amount.

11. TITLE AND RISK

11.1 Unless otherwise agreed, the product and / or services shall be deemed to be sold FCA in accordance with Incoterms 2020 as stated in Article 7, if not otherwise agreed in PO, and the risk shall pass accordingly.

11.2 Title to the product(s) supplied shall pass to the Customer when Baggerød has received full payment for the said product(s).

12. INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS

12.1 The product(s) made available to the Customer by Baggerød are subject to copyright, trademark and other rights of intellectual and / or industrial property and are protected by Norwegian and international laws. All such rights and intellectual property remain the property of Baggerød and consequently, absent a prior explicit consent by Baggerød, the Customer may not copy, reproduce or adapt, by himself or by means of a third party, publish, distribute, lend and / or transmit through any form the copyright materials and, in general, must restrain from performing any such activities that may constitute a violation of the intellectual and industrial property rights vested in Baggerød.

12.2 Any software supplied by Baggerød shall only be used for the operation of the hardware and solely in accordance with the purposes and instructions stated in the documentation (manual, descriptions, diagrams, etc.) supplied with the product. Any other use of the software shall be deemed improper and will constitute a violation of Baggerød's intellectual property rights.

12.3 In case of infringement of Baggerød's intellectual and / or industrial property rights by the Customer, the Customer shall compensate Baggerød for all documented loss sustained as a consequence of the infringement.

12.4 Baggerød will defend at its expense, any action brought against Customer to the extent that it is based on a claim that the use of Baggerød's Product infringes any patent or copyright, and Baggerød will indemnify the Customer from any cost, damages and fees finally awarded against the Customer in such action which is attributable to such claim. The Customer undertakes to notify Baggerød promptly in writing of any claim. Baggerød shall not be liable for any costs, damages or fee incurred by the Customer on such action or claim unless authorized in writing by Baggerød. Baggerød shall have no liability for any claim based upon; (i) the combination, being operation or use with any Baggerød product not supplied or specified by Baggerød, (ii) the alteration or modification of any Baggerød product if such alteration or modification was not made by Baggerød, (iii) the failure by the Customer or its end-users to use the most current version of the software provided by Baggerød, or (iiii) if the installation / commissioning is done by Customer without following the instructions in the manual(s) provided by Baggerød.

12.5 This Article 11 states the entire liability of Baggerød with respect to infringement of any intellectual property rights by Baggerød's product and Baggerød shall have no additional liability with respect to any alleged or proven infringement.

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13. CERTIFICATE OF WARRANTY

13.1 Baggerød warrants that all product hardware delivered under this Contract in all respects are in accordance with the specifications set out in this Contract and are free from defects (material and workmanship).

13.2 Unless otherwise specified in writing, Baggerød warrants that the product(s) will be free from defects in materials and workmanship for a period of 24 months from the delivery date, unless otherwise stated in the PO, or 12 months from installation of the product, whichever comes first, provided that the product is stored, operated and maintained under normal conditions according to the documentation, specifications, information and training (if any) furnished by Baggerød under this Contract. For software products embedded as a part of the product hardware, the warranty period is 3 months from installing the software. The Software shall be deemed to have been installed no later than 1 month from the date of delivery. Absence of errors in software is not warranted.

The guarantee requires the installation to be executed according to installation manual(s), piping and instrument diagram (P&I D) and / or other specifications from Baggerød. If such specifications are not present, Customer is responsible for contacting Baggerød for assistance. The guarantee is valid only if commissioning work is carried out by approved Baggerød service personnel and the installation manual(s) and the operation-, safety- and maintenance instructions (if any) provided by Baggerød are properly followed, and start-up approved by signature from ship owner's representative. Possible travelling and accommodation expenses for service personnel that are related to any claim that are not Baggerød responsibility are not included in any case and shall solely covered at Customers expense and an invoice covering the travel cost and manhours for personnel will be sent by Baggerød to Customer.

13.3 If a defect should occur that is not caused by Customer, Baggerød will replace the defect part in the product so that its performance is restored according to the agreed specifications. Customer must without undue delay give Baggerød notice of such defects, non-conformities or deviations from the specifications before the expiration of the applicable warranty period. Defective part of the product shall be returned to Baggerød at the Customer's cost. Baggerød undertakes to conduct failure analysis and remedy the defective product and return the remedied part to the Customer at Baggerød's cost within 30 working days from receiving such defective product part. Repaired / returned goods must be to the same address as delivered. The remedy may take the form of rectification, re-delivery or additional delivery as sole remedy. Possible travelling and accommodation expenses for service personnel are not included in any case and shall solely by at Customers expense or invoiced by Baggerød to Customer.

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13.4 Customer's exclusive remedy under this warranty or any implied warranty shall be limited to the repair or replacement, at Baggerød's option, of any defective part of the product or accessories, which are covered by this warranty. Repairs under this warranty shall only be made by Baggerød or by an Authorized Service Agent.

13.5 To obtain warranty service, the Customer must return the product or accessories post-paid, with proof of the date of original Customer, nature of defect, and Customer's return address to Baggerød. Baggerød will not be responsible for losses or damage to the product incurred while the product is in transit or is being shipped for repair. Insurance of product(s) is recommended, however that is to be arranged by Customer at Customer's cost.

13.6 The warranty does not cover the following:

- Wear and tear parts.
- Broken warranty seal.
- Any damage due to shipping, misuse, negligence, and tampering or improper use on the part of the Customer, his employees or any other person identified with or acting under the responsibility of the Customer.
- Servicing is performed or attempted by anyone other than Baggerød or an Authorized Service Agent.
- Opening of the Product by anyone other than Baggerød or an Authorized Service Agent will void this warranty.
- Defects caused by modification of the product without Baggerød's written approval or by inter-working product not supplied by Baggerød or by using spare parts other than specified by Baggerød.
- Installation / commissioning of product(s) is performed without thoroughly following manual(s) and instructions from Baggerød.

13.7 This written warranty is the complete, final, and exclusive remedy with respect to the quality of performance of all the goods and any and all warranties and representations. This warranty sets forth all Baggerød's responsibilities regarding the product(s).

13.8 Baggerød assumes no liability for any criminal / civil penalties resulting from illegal use of Baggerød's products under this Contract.

14. LIMITATION OF LIABILITY

14.1 Any liability of Baggerød to third parties for personal injury or death caused by the product and / or services or by any employee(s) of Baggerød or its subcontractor(s) shall be determined by applicable law.

14.2 Any liability of the Customer to Baggerød for damage to property or personal injury or death caused by the Customer by improper use of the Product or by acts of his employees shall be determined by applicable law.

14.3 The party in breach of the Contract shall take all necessary measures to mitigate the loss provided that he can do so without unreasonable inconvenience or cost. Should he fail to do so, the party in breach may claim a reduction in the damage.

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14.4 In the absence of gross negligence, Baggerød's aggregate liability under this Contract and / or any PO shall not exceed 25 % of the Contract or PO value. For the avoidance of doubt, Baggerød shall not under any circumstances be liable for consequential damages, such as, but not limited to; loss of profit, loss of revenue and loss of interest.

15. EXCLUSIONS

15.1 Except as expressly stated above and to the extent Baggerød has not exercised gross negligence or willful misconduct, all other warranty conditions, promises or representations of any nature are hereby excluded.

15.2 Except as set forth in Article 2 above or by mandatory law, all other expressed or implied warranties, including those of fitness for any particular purpose and merchantability, are hereby disclaimed and excluded.

16. FORCE MAJEURE

16.1 Without prejudice to any other provision of this Agreement Baggerød shall not be liable for any delay in or failure to perform any of its obligations hereunder if the delay or failure is due to causes beyond Baggerød's control, such as but not limited to: Acts of God, riots, wars, accidents, embargo or requisitions (acts of government), labor disputes or strikes, fire, flood, epidemic or quarantine restrictions, rebellion, insurrection or civil unrest or any other circumstance outside the control of Baggerød. In case of Force Majeure Baggerød shall promptly inform the Customer in writing and furnish all relevant documentation thereto.

17. GOVERNING LAW

17.1 These General Conditions of Sales are governed by Norwegian Law. Any and all court proceeding shall be brought before Tønsberg tingrett (the Norwegian Court in the city of Tønsberg), Norway.

Disputes shall be settled in accordance with the law of the country in which the court as defined, has its situate.