



TERMS AND CONDITIONS OF SALE, DELIVERY AND GUARANTEE

7-01.05



1. General

Unless otherwise agreed in writing these Terms and Conditions of Sale, Delivery and Guarantee shall apply to all orders and deliveries. The Buyer's own Terms and Conditions of Purchasing shall only apply if accepted in writing by the Seller. In case of dispute the Danish wording to prevail.

2. Quotations

All quotations are without obligation. The delivery time(s) stated in the quotation shall apply subject to the goods being unsold and subject to the delivery times stated by the Seller's suppliers remaining unchanged.

3. Orders

All orders will be considered an offer by the Buyer and will be accepted only by the Seller's issuing of an Order Confirmation. Order Confirmations will usually be issued on the day of receipt of the orders; however, in the event of parts being supplied to the Seller from abroad, the Order Confirmation will not be issued until the Seller has received confirmation of his order from his suppliers.

4. Scope of Delivery

The consignment will only comprise the goods and services specified in the quotation and the Order Confirmation respectively, including any equipment and/or services for future delivery.

5. Prices

Prices are firm and will be exclusive of taxes, VAT and duties. However, in the event of changes in VAT, customs duties and any other duties the Seller shall be entitled to adjust his prices accordingly.

6. Terms of Delivery

The terms of delivery are "ex works" unless otherwise agreed.

7. Delivery

The risk in the goods shall pass to the Buyer on delivery irrespective of whether or not any subsequent installation work or the like is to be carried out. Delivery and handing over of goods at the request of the Buyer shall always be at the Buyer's risk. In the event of a delay in delivery the Buyer shall only be entitled to cancel the order if the delay is essential; in any case it must exceed 4 weeks. In the event of a delay in delivery it is a condition that the Buyer submits a complaint immediately. However, the Seller shall incur no liability for delays in delivery due to strike, breakdown of transport means, lockout, force majeure and failure on the part of sub-suppliers to adhere to their delivery dates.

8. Trading-in

In the event of the trading in of used equipment the risk shall not pass to the Seller until the equipment has been physically handed over to the Seller. The owner shall deliver the used equipment in the same condition as on the date of conclusion of the deal. Any maintenance and repair costs until delivery shall thus be payable by the owner. In the event of any unpaid debts in traded-in equipment the owner shall repay any such unpaid debts prior to delivery to the Seller.

9. Terms of Payment and Ownership

The terms of payment shall be net cash on entering into the agreement. The goods shall remain the Seller's property until the price has been discharged in full. The Buyer shall not be entitled to withhold payment due to any possible counterclaims not accepted in writing by the Seller. If payment should not be made in due time, default interest will be charged on the overdue amount including any previously charged interest, costs, etc. from the due date at the rate of 1½% per month or fraction of a month.

10. Guarantee

10.1 New equipment

Seller extends a guarantee on all new material. The guarantee includes – unless otherwise stated – an obligation to remedy all deficiencies due to defects in the construction, the material or the production, by making repairs or replacement of the material.

Guarantee repairs will be carried out to the extent deemed necessary by the Seller in order to keep the plant in working order.

The guarantee only comprises defects which appear within 1 year from the date of start-up (signature on Caterpillar's "Service Engine Delivery Record"), however within a maximum of 18 months from the date of delivery. After this date, the Seller has no responsibility for defects to the material or any part thereof.

The guarantee does not comprise repair of defects due to causes arisen after the risk has passed to the Buyer.

Conditions:

The Seller's guarantee shall only be in force if:

- 1) The plant is used solely for the tasks and services for which it is intended and together with equipment approved by the Seller only.
- 2) The service specified is carried out by the Seller.
- 3) The Seller's lubrication instructions are complied with.
- 4) The part(s) covered by the guarantee is/are returned to the Seller's address within 30 days of the date of replacement.
- 5) Caterpillar's "Service Engine Delivery Record" has been signed simultaneously with start-up.
- 6) Repairs and service work are carried out by the Seller or in accordance with the Seller's instructions.

Guarantee Limitations:

During the guarantee period the Seller shall not be liable for costs relating to the following:
7) Transportation of the plant or the equipment in which it is installed, including berthing.
8) Trouble-shooting if the faults are not caused by faulty materials or workmanship covered by the guarantee.

9) Repairs and replacement of parts necessitated by ordinary wear and tear.

10) Extra costs in connection with overtime work.

11) Extra costs in connection with getting access to the plant.

12) Travel expenses and transport costs outside Denmark (DK). In this connection Greenland and the Faroe Islands shall be considered to be located outside Denmark.

13) Damage caused by insufficient maintenance, fire, water damage, repairs and service carried out by third party, failure to modify the plant in accordance with the Seller's instructions as well as use or installation considered by the Seller to be incorrect.

10.2 Spare Parts

Spare parts delivered by the Seller are guaranteed for a maximum period of 6 months from the original date of purchase; the guarantee covers replacement of faulty materials and workmanship.

Conditions:

The Seller's guarantee shall only be in force if:

- 1) The spare parts delivered are used solely for the tasks and services for which they are intended.
- 2) The part(s) covered by the guarantee is/are returned to the Seller's address within 30 days of the date of replacement.

Guarantee Limitations:

During the guarantee period the Seller shall not be liable for costs relating to the following:

- 3) Trouble-shooting.
- 4) Transportation/freight.

10.3 Service Guarantee

Service work is guaranteed for a period of 3 months from the date of approved handing over. The guarantee comprises replacement of the faulty service work, i.e. wages/salaries.

Conditions:

The guarantee only comprises wages/salaries and materials directly relating to the obligation to carry out repair, and is, moreover, conditioned upon:

- 1) The plant is used solely for the tasks and services for which it is intended.

Guarantee limitations:

During the guarantee period the Seller shall not be liable for costs relating to the following:

- 2) Trouble-shooting, if the faults are not caused by defects covered by the guarantee.
- 3) Extra costs in connection with overtime work, transportation, lay-off/severance pay, allowances, costs due to disclosure or accessibility of defect parts, etc.
- 4) Replacement/repair of possible damaged components.

10.4 Used equipment and consumables

Used equipment and consumables (various filters, spark plugs, etc.) are not covered by the Seller's guarantee.

11. Limitation of Liability

A. Product liability:

With regard to product liability the provisions of Danish law shall apply at all times. However, the Seller shall not be liable for any loss on operations, lost earnings or any other economic consequential loss. The liability for damage to property shall not exceed DKK 10,000,000.00 per instance of damage.

To the extent that the Seller should incur product liability to third party for the goods sold to the Buyer, the Buyer shall indemnify the Seller to the same extent that the Seller's liability is limited according to these Terms and Conditions of Sale, Delivery and Guarantee. The Buyer shall accept that any legal proceedings instituted against him shall be brought before the forum that deals with a possible product liability lawsuit against the Seller.

B. General:

The scope of the Seller's guarantee shall be restricted to the express provisions of the guarantee terms and conditions. Apart from this the Seller shall have no other obligations. The Buyer shall thus not be entitled to demand modifications to previously supplied plant due to ongoing design developments. The Seller shall not under any circumstances be liable for defects recognised after the end of the guarantee. The Seller shall not be liable for any costs relating to work carried out by third party at the Buyer's request irrespective of whether or not such work is considered to be covered by the guarantee. The Seller's liability to the Buyer for defects and delays shall never extend beyond the Seller's rights against his supplier(s) of the goods in question. This means that Seller's liability is limited to the Seller's rights against his supplier.

The Seller shall not be liable – either Seller is liable according to the principles of product liability or for defects/delays - for any loss on operations, lost earnings or any other economic consequential loss. The Seller's liability shall not exceed DKK 10,000,000.00.

12. Disputes and Governing Law

Any disputes arising out of or in connection with the agreement shall be settled by arbitration in accordance with the rules and regulations pertaining to arbitration in the Seller's country, unless one of the parties should wish the dispute settled with the ordinary courts. In that case such wish shall be submitted in writing within 14 days after he has been informed about the complaint. If the complainant wants the dispute to be settled with the ordinary courts, the complaint will be sent directly to the court.

Arbitration proceedings shall be in accordance with the rules and regulations applicable in Denmark. All disputes shall be settled in accordance with Danish law and the language to be used shall be Danish.

Pon Power A/S
Baltorpbakken 14
DK- 2750 Ballerup
Tel.: +45 36 88 01 00
Fax: +45 36 88 01 01

Pon Power A/S
Øresundsvej 9
DK- 6715 Esbjerg N
Tel.: +45 76 14 64 00
Fax: +45 76 14 64 01



ISO 9001 CERTIFIED COMPANY