

WEST-MARINE A/S - TERMS AND CONDITIONS OF SALE - 2023

1. APPLICABILITY & SCOPE

All deliveries of products and services ("Products") from WEST-MARINE A/S ("WEST-MARINE A/S") to any customer ("Customer") shall be governed exclusively by these Terms and Conditions of Sale ("Terms and Conditions"). WEST-MARINE A/S deliveries to Customer's is expressly conditioned upon Customer's acceptance of these Terms and Conditions and no addition to or modification shall be binding on WEST-MARINE A/S unless expressly agreed to in writing.

2. ORDER CONFIRMATION

WEST-MARINE A/S shall not be deemed to have accepted a purchase order until written confirmation of the order from WEST-MARINE A/S has been sent to Customer or WEST-MARINE A/S has received written, timely and unconditional acceptance from Customer corresponding to WEST-MARINE A/S' quotation.

3. TERMS OF DELIVERY AND DELAY

Risk of Loss: Unless otherwise expressly agreed, delivery terms shall be EXW (Ex Works), as per latest INCOTERMS Edition, with risk of loss passing to Customer when ready for dispatch at WEST-MARINE A/S' warehouse. Customer will be informed about readiness for dispatch.
Responsibility: WEST-MARINE A/S shall not be responsible for damage incurred during transportation. Claims for lost or damaged shipments shall be filed directly to the carrier by Customer. WEST-MARINE A/S shall not be liable for any damage occurring as a result of late delivery or lost shipments. Any discrepancies in shipment must be reported within 5 working days of receipt. An accepted purchase order that is scheduled to be shipped within the quoted lead time can discretionary by WEST-MARINE A/S be postponed up to a maximum of 60-days without consent from the Customer. WEST-MARINE A/S shall under no circumstances be liable for delay of any kind. The Customer waives its rights to remedies in event of WEST-MARINE A/S' delay, including any penalties, delay damages or other liabilities. Solely to the extent a court decision finds the abovementioned Customer waiver inapplicable WEST-MARINE A/S's liability in event of delay shall be limited to the following: In the event of a delay of a firm delivery date, the Customer shall be entitled to claim liquidated damages equal to 0.5 % of the value of delayed part of the purchase order for each full week of delay as the Customers sole and exclusive remedy for delay. Provided further, the total amount of liquidated damages under any purchase order is limited to 5% of the value of the delayed part of the purchase order.

4. PRICES

All WEST-MARINE A/S prices are exclusive of VAT, carriage, tariffs, charges, other duties, etc. Prices are not including installation costs unless expressly agreed to in writing.

5. PACKING

Sufficient packing is included in the offered price and will not be credited if returned.

6. PAYMENT TERMS

Subject to credit approval by WEST-MARINE A/S, payment terms are net cash unless otherwise agreed. Should WEST-MARINE A/S fail to approve Customer's credit or should WEST-MARINE A/S revoke its approval of credit for any reason whatsoever, the terms of payment at WEST-MARINE A/S' option, shall be full advance payment prior to shipment. WEST-MARINE A/S reserves the right to withhold any and all shipments if Customer's account is past due. The purchase price shall be paid in full without regard to any setoffs claimed by Customer. In case of late payment as per the invoiced payment terms, WEST-MARINE A/S is entitled to receive default interest rate on overdue payment amounting to the at any time valid official bank rate plus 9% p.a.

7. RETENTION OF TITLE

The delivery will remain the 100% property of WEST-MARINE A/S until full payment has been received. WEST-MARINE A/S is furthermore permitted to withhold the delivery until full payment has been received.

8. TAXES

Customer agrees to provide WEST-MARINE A/S with its assigned tax exemption number. Customer agrees to pay, in addition to the purchase price, all applicable sales, use, excise, value added or other similar taxes.

9. PRODUCT ALTERATIONS

Provided that no agreed technical specification is changed, WEST-MARINE A/S reserves the right to make alterations to Products without notice.

10. WARRANTY

WEST-MARINE A/S warrants that all Products will be free from defects in design, materials or workmanship for a period of 12 months from the date of delivery. The warranty and the warranty period for any delivered design, Products and materials shall be compliant with and cannot exceed the warranty and warranty period as provided by the original Maker of such design, Products and materials however under no circumstances exceed a warranty period of 12 months from delivery.

Under this warranty, WEST-MARINE A/S' full and exclusive obligation shall be to repair or replace any Product, that according to WEST-MARINE A/S' investigations during the warranty period is found to be defective in design, materials or workmanship, subject to Customer's forwarded claim (see § 11 below) within 12 months from delivery of the Product. If a Product or parts thereof prove to be defective, WEST-MARINE A/S is, free from liability, entitled to elect to 1) remedy the defect, 2) replace the Product with Product of a similar quality, or 3) cancel the relevant agreement and return the purchase price received on surrender of the Product delivered. The repair is to be carried out at WEST-MARINE A/S unless WEST-MARINE A/S considers it more appropriate to let the repair carry out at the buyer's or elsewhere. If WEST-MARINE A/S' investigations show that the Product has no defect, the Product is returned to the Customer. Freight and insurance shall be paid for by the Customer along with the cost incurred to carry out the investigation including the payment for time spent by West-Marine A/S. If a warranty related Product defect is found, WEST-MARINE A/S returns the repaired or forwards a replacement Product to the Customer and take over exchanged parts or the defect Product. WEST-MARINE A/S pays for freight and insurance. The Customer cannot make any further claims against WEST-MARINE A/S due to defect Products. WEST-MARINE A/S shall not be obligated to refund the purchase price, nor shall WEST-MARINE A/S be obligated to pay for any labor cost or other costs associated with the removal of the defective Products or the reinstallation of those Products. No warranty coverage will be provided for Products that have been altered, used for a purpose other than that for which they were designed or installed contrary to WEST-MARINE A/S' or makers instructions. WEST-MARINE A/S offers no warranties or representations, express or implied, as to the products, except as set forth above. WEST-MARINE A/S hereby disclaims all implied warranties, including but not limited to, implied warranties of merchantability or fitness for a particular purpose. In no event will WEST-MARINE A/S be liable for any lost profits or for any direct, indirect, incidental, consequential, punitive or other special damages arising out of or related to its Products regardless of whether such damages are sought based on causes of action sounding in tort, contract, negligence, strict liability or breach of warranty.

11. WARRANTY PROCEDURES

- To make a claim under the express warranty set forth in paragraph 9, Customer must:
- Notify WEST-MARINE A/S immediately of the alleged defect;
- Provide the part number, serial number, and description of the problem of the potentially defective Product;
- Obtain a Return Material Authorization reference from WEST-MARINE A/S, which shall be valid for 30 days;
- Return the potentially defective Product, insurance and freight prepaid, with the outside of the package bearing the required return reference to WEST-MARINE A/S,
- Include a written detailed statement of the reason why the Product is being returned; and
- Ship the Products free of extraneous equipment.

If a replacement Product is required, a Purchase Order must be provided to WEST-MARINE A/S to purchase the replacement product. Only an already established customer to WEST-MARINE A/S may order the replacement Product. An invoice will be created and mailed to the Customer upon shipment of the replacement Product. Provided the returned Product complies with the limited warranty and not physically damaged, WEST-MARINE A/S will credit the invoice for the purchased replacement Product.

12. NON-WARRANTY RETURNS

Subject to prior approval by WEST-MARINE A/S, unused standard Products can be returned within one (1) month of the WEST-MARINE A/S invoice date provided the Products are returned in original packaging and both Products and packaging are free from defects. The Products must be returned to WEST-MARINE A/S with insurance and freight prepaid. Products built or ordered to custom specifications or Products that have been modified by the customer cannot be returned for credit under any circumstances.

13. CHANGE ORDER REQUEST & CLAIMANTS DELAY

A delay caused by any kind of issue within the Customer's control, including but not limited to the Customer's change of configuration or specifications of requirements, delay in delivery of technical specifications etc., West-Marine A/S' delivery time is extended to reasonably account such delay. If delivery of the Product is obstructed due to Customer's inability of receiving or if Customer for other reasons refuses to take delivery of the Products at the agreed delivery time, the Products will remain in West-Marine A/S' warehouse or any other place notified by West-Marine A/S at the Customer's expense and risk. Furthermore, the invoice will be issued as if delivery has taken place and interest rate will be added.

14. PRICE ADJUSTMENTS

WEST-MARINE A/S reserves the right to adjust accepted prices for non-delivered Products in the event of alterations in rates of exchange, variations in costs of materials, sub-suppliers' price increases, changes in wages, state requisitions or similar conditions over which WEST-MARINE A/S has no or limited control. Prices for installation work, including turnkey project installation, has been given on condition that the Customer ensures that the work can be accessed without hindrance through the installation period of WEST-MARINE A/S's installers and that the work can be carried out without hindrance from the side of the work site. Additional costs arising due to any hindrance, delay or other adverse impact on WEST-MARINE A/S's performance, regardless on reason, is the sole responsibility of Customer and will be invoiced to Customer in addition to reasonable profit.

15. GROUP SET-OFF

WEST-MARINE A/S, and any other company in the WEST-MARINE A/S Group, shall be entitled to set-off own claims against the Customer, in the Customer's possible claims against any of said companies.

16. PRODUCT INFORMATION

Any information – whether originating from WEST-MARINE A/S or a WEST-MARINE A/S business contact – including but not limited to, information on weight, dimensions, capacity or any other technical data in catalogue descriptions, advertisements, etc., shall be considered informative, and are only binding if and to the extent, that explicit reference on this is made in offers and/or order confirmations. Specific demands from the Customer are only binding if and to the extent these have been confirmed by WEST-MARINE A/S in writing.

17. CONFIDENTIALITY & INTELLECTUAL PROPERTY RIGHTS

General obligations. The following information shall be considered "Confidential Information" for the purposes of the Conditions: (i) All information of WEST-MARINE A/S concerning employees, products, services, customers, suppliers, contractors, other third parties conducting business with WEST-MARINE A/S or other technical and commercial matters, (ii) the terms of an eventual separate Agreement, (iii) any information developed by reference to or use of WEST-MARINE A/S' information referenced above and (iv) any information which according to applicable law is confidential whether in written, oral or visual form disclosed by WEST-MARINE A/S to Customer in any relation. Such Confidential Information shall remain the property of WEST-MARINE A/S and shall not be given or disclosed to any third party without WEST-MARINE A/S's prior written consent. Customer shall only use the Confidential Information for the purposes needed and shall limit internal dissemination hereof.
Required Disclosure. Nothing in the above may however be deemed or construed to prevent Customer from disclosing any Confidential Information if such disclosure is for the purpose of complying with any law or court order.
Reference and advertising. Customer is not permitted without prior written consent from WEST-MARINE A/S to use WEST-MARINE A/S's name or any commercial relation with WEST-MARINE A/S or a company associated with WEST-MARINE A/S for the purpose of advertising or as a reference.
Industrial ownership. Any and all industrial and/or intellectual property rights including, but not limited to results, inventions, improvements, and know-how, whether patent able or not, relating to WEST-MARINE A/S's information, or use by the Customer of WEST-MARINE A/S's information, shall be the property of WEST-MARINE A/S. All material related to a purchase or general corporation, such as but not limited to, documentation, drawings and software handed over to or disclosed to the Customer shall remain the property of WEST-MARINE A/S, shall not be used by the Customer for any other purpose than the intended, and shall be securely archived by the Customer. Such material shall be marked by Customer as property of WEST-MARINE A/S. At the request of WEST-MARINE A/S the Customer shall return all documentation and material, including copies, received from WEST-MARINE A/S.

18. PRODUCT LIABILITY

Unless otherwise governed by mandatory legislation, the following applies: WEST-MARINE A/S shall not be liable for any damage to real property or chattels caused by the Product after it has been delivered and whilst it is in the possession of the Customer. Nor shall WEST-MARINE A/S be liable for any damage to products manufactured by the Customer or to products of which the Customer's products form a part. In no circumstances, the customer shall be liable to reimburse operating losses. WEST-MARINE A/S's information shall be the property of WEST-MARINE A/S. The maximum total liability which WEST-MARINE A/S may incur is limited to DKK 15 million in respect of each individual instance of damage. A series of accidents arising out of the same fault or act of negligence shall for this purpose constitute one single instance of damage. The sole and exclusive liability of WEST-MARINE A/S for each individual claimed product damage is limited to the amount paid by Customer for such claimed damaged Product. The Customer is obliged to enter into the same court or arbitration proceeding, which deal with a potential compensation claim process against WEST-MARINE A/S concerning the Product or service work in question. If WEST-MARINE A/S incurs liability towards any third party for such damage as described in the preceding paragraph the Customer shall indemnify, defend and hold WEST-MARINE A/S harmless. Customer shall indemnify and hold WEST-MARINE A/S harmless for all claims arising from any damage resulting from the use or operation of the Products because of any improper repair, maintenance or operation of the Products by Customer, the failure of Customer to adequately train personnel in the operation of the Products, Customer's failure to comply with applicable laws or regulations or otherwise. If a claim for damage as described in this clause is lodged by a third party against either WEST-MARINE A/S or the Customer, the respondent party shall immediately inform the other party thereof in writing. The Customer shall be obliged to let itself be summoned to the court or arbitral tribunal examining claims for damages lodged against one of them on the basis of damage allegedly caused by the Product.

19. SECONDARY DAMAGE

West-Marine A/S shall not be held responsible for any special, indirect, consequential, punitive or exemplary damage or loss, which might arise of any breach of warranty, faulty product, delayed delivery of the products, product liability, recall or otherwise, irrespective of the cause, including but not limited to, loss of production, loss of profit and loss of goodwill.

20. MANDATORY LIABILITY

Nothing in these Terms (including but not limited to the exclusions and limitations in clause 17 to 18) shall operate in order to exclude or limit the liability of either party to the other for death or personal injury arising out of its negligence, fraudulent misrepresentation or for any other liability which cannot be excluded or limited by law.

21. NOTICE OF CLAIMS

Claims or complaints as to defects of the Products or other claims shall be submitted in writing by Customer to WEST-MARINE A/S without undue delay.

22. RESTRAINT ON RESALE OF PRODUCTS, USE FOR CERTAIN PURPOSES AND SOLICIT OR ENTICE EMPLOYEES

Customer is not allowed to use or to resell the Products for purposes which have any connection to chemical, biological or nuclear weapons or for missiles which are capable of delivering such weapons. Customer is not allowed to sell the Products to persons, companies or any other kind of organization if Customer has knowledge of or suspects that said persons or entities are related to any kind of terrorist or narcotics activities. The Products may be subject to legal regulations and restrictions and may therefore be subject to restrictions in case of sale to countries/customers covered by export and import ban. These restrictions shall be observed in case of resale of the Products to such countries/customers. Customer is not allowed to resell the Products if there is doubt or suspicion that the Products can be used for the purposes mentioned in the preceding paragraph. If Customer receives knowledge of or suspects that the conditions in this clause have been violated, Customer shall immediately inform WEST-MARINE A/S.

Customer undertakes for itself and for the Customer's Group that neither Customer nor any Customer Group Company, shall, directly or indirectly, alone or with, through or as any manager, adviser, consultant, partner, employee or agent for any person, during the term of the Agreement and for 12 months thereafter solicit or entice away or endeavour to solicit or entice away from WEST-MARINE A/S any employee, who has worked for or with Customer under the Agreement or in connection with any other agreement between Customer and WEST-MARINE A/S (in each case without the prior written consent of WEST-MARINE A/S), whether or not that person would commit any breach of their contract of employment by reason of leaving the service of WEST-MARINE A/S, save that nothing in this clause shall prevent Customer from employing an employee in response to a general recruitment advertisement published generally or any general recruitment process carried out by a recruitment consultant which (in each case) is not targeted at such individual.

23. FORCE MAJEURE

No Party shall be liable for any failure to perform its obligations where such failure is as a result of Acts of Nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption or failure of electricity, and no other Party will have a right to terminate this Agreement under such circumstances.

24. PARTIAL INVALIDITY

If one or more of the terms and conditions in these Terms and Conditions or any part of a term is deemed invalid, unenforceable, illegal or inoperable, the validity, enforceability, legality or operability of all further terms and conditions shall not be affected or diminished thereby.

25. LAW, JURISDICTION & DISPUTES

Danish law applies. Any commercial contractual corporation with Customer and any non-contractual obligations arising out of or in connection herewith shall be governed construed and enforced in accordance with the laws of Denmark to the exclusion of any other law and without regard to any conflict of law principles.

Arbitration. Any dispute shall be subject to arbitration arranged by The Danish Institute of Arbitration in accordance with the rules of arbitration procedure adopted by The Danish Institute of Arbitration in force at the time when such proceedings are commenced. The venue for arbitration shall be Copenhagen and the proceedings shall be conducted in Danish language. The arbitral award shall be final and conclusive and binding on the parties.