

Standard Terms and Conditions of Sale and Delivery

These Standard Terms and Conditions form an integral part of all quotations and contracts for all goods and services to be provided by us and shall apply to any current or future business relationships. In deviation from the preceding sentence 1, these Standard Terms and Conditions shall not apply, but our Standard Terms and Conditions for Dock Work and Repairs shall apply instead in all cases where the contract entered into with us is for the performance of ship repairs, ship conversions, work on equipment or parts of ships and all other dock work. Agreements deviating from these Standard Terms and Conditions, including but not limited to conflicting terms and conditions of our customers (“Customers”) and collateral agreements require our express consent in order to be effective and to become an integral part of the contract.

1. Offer and conclusion of contract

1.1 Our quotations and cost estimates are subject to change.

1.2 Contracts and amendments or alterations of contracts shall not be deemed concluded with us unless and until we have accepted in writing the work/purchase order of our Customer, have agreed upon any request for supplements or changes with our Customer in writing, or have delivered the goods/performed the services ordered by our Customer. This shall apply *mutatis mutandis* to oral collateral agreements concerning a contract concluded with us, of which these Standard Terms and Conditions form an integral part.

1.3 All samples and documents (such as brochures, technical descriptions, drawings, illustrations, specifications, colors, measurements and weights) shall be deemed approximations only as customary in this industry. We are entitled to implement changes of both these samples and documents and of the delivery items and services – e.g. changes in design or of form, or deviations in color – to the extent these changes may be

deemed reasonably acceptable to our Customers. For standard products, the tolerances specified in the standard sheets shall apply.

1.4 We reserve all proprietary rights, copyrights and industrial property rights in and to the samples documents mentioned under Clause 1.3 above. Unless authorized in writing by us, said samples and documents may not be used by our Customer in any manner other than for the purpose of fulfillment of each of the contracts concluded with us, and may in particular not be reproduced or disclosed to third parties. They must be returned by the Customer to us without delay upon our request. The Customer’s right of retention or to withhold performance shall be excluded in this respect.

2. Prices and scope of performance

2.1 Our prices are net ex place of performance (Clause 5.1), exclusive of costs for transport, packaging and any other additional costs, which we will charge separately to our Customer. Pricing is such that title to any salvaged material shall pass to us should we so desire.

- 2.2 The statutory value-added tax is not included in our prices. It will be shown separately in our invoices at the rate applicable by law from time to time.
- 2.3 We are entitled to charge the price for items delivered or services performed that corresponds to the price charged to our other customers at the time we deliver the item or perform the service if a period in excess of four (4) months has passed between the conclusion of the contract and the delivery of the item or performance of the service.
- 3. Payments**
- 3.1 Our claims for payment from our Customer shall become due and payable upon taking delivery / acceptance of the items and services provided and upon receipt of our invoice by our Customer.
- 3.2 If we have agreed upon payment by installments with our Customer and if the Customer is late making an installment or in paying an amount equal to one installment or more, our entire claim for payment shall become due and payable immediately.
- 3.3 We are entitled to interest in the amount of 5% p.a. since the due date, and in the amount of 9 percentage points above the base rate as applicable from time to time since default. We reserve the right to claim further damages due to delay.
- 3.4 Any discounts, in particular cash discounts, are subject to an express agreement.
- 3.5 We will accept neither cash payment nor bills of exchange and checks
- 4. Time limits and dates**
- 4.1 Time limits and dates are binding on us only to the extent that they have been expressly agreed upon in writing with our Customer.
- 4.2 Any agreed-upon periods for the delivery of items and the performance of services shall start to run at the earliest at the date of our confirmation of order, but in no event prior to the provision by the Customer of the documents, authorizations, approvals, etc., to be provided by it, the clarification of all technical details and receipt by us of all payments that are due and payable. Subsequent changes of a contract shall extend the delivery and performance periods in accordance with the additional time required due to the change of the contract.
- 4.3 Any occurrence of force majeure or of other extraordinary circumstances, such as specifically labor disputes, acts of state, traffic disruptions and interruption of operations, regardless of whether they affect us, or our suppliers, or have occurred at the place of assembly, shall release us from our obligation to our Customer to make deliveries or perform services for the duration of the effects thereof, or indefinitely if they result in the impossibility to make deliveries or perform services. Should a contractual penalty have been agreed upon, this penalty shall under those circumstances not be deemed to have been incurred.

- 4.4 If the delivery period is specified in days, this shall mean business days (Monday through Friday).
- 5. Place of performance, taking delivery, acceptance and passing of risk**
- 5.1 The place of performance for our supplies and services is our registered office.
- 5.2 Our Customer must take delivery of contractually delivered items or accept contractually performed services, as applicable, at the place of performance without delay but no later than eight (8) business days after our request. Our Customer is therefore obligated to ensure that the personnel taking delivery and performing the acceptance is dispatched on time. The taking of delivery or acceptance, as applicable, shall be deemed to have been effected if the item delivered or the result of the service performed is put to use.
- 5.3 The risk of accidental loss, destruction or deterioration of the items delivered/services performed by us shall pass upon the Customer upon taking delivery/acceptance - where delivery agreements are concerned - but no later upon leaving our premises. This shall also apply to partial deliveries/partial services and also in cases where we have assumed additional services (such as the carriage or transfer). Items to be delivered and services shall be insured by us against transport risks only upon the Customer's express request and at the Customer's expense.
- 5.4 If the passing of risk to our Customer is delayed for reasons for which our Customer is responsible, the risk of accidental loss, destruction or deterioration of the items delivered/services performed shall pass to the Customer no later than upon expiration of the period agreed upon in Clause 5.2.
- 5.5 All delivery items / services that the Customer has not taken receipt of or accepted on time may be stored by us for the customary fee at the Customer's expense, and insured against theft, breakage, fire, water and other damages, unless the Customer provides proof upon our request within a reasonable period that it has taken out such an insurance itself.
- 5.6 Sea trials and test runs are carried out at the Customer's expense and the Customer shall also bear the risk of accidental loss, destruction or deterioration of the item delivered/service performed during the sea trial or test run.
- 6. Set-off and Retention**
- 6.1 The Customer may set off against claims asserted by us only with claims that are undisputed, have been established as final and conclusive, or are ripe for judgment (proven).
- 6.2 The Customer may assert a right of retention only to the extent that its claim is based on the same contractual relationship.

7. Reservation of title

- 7.1 We reserve title to goods delivered to the Customer and/or installed by us as ordered by the Customer (hereinafter "Conditional Goods") until we have received all payments that are due and payable under the business relationship with our Customer.
- 7.2 Our Customer shall be entitled to resell, process, mix or combine and subsequently sell Conditional Goods within the scope of extended reservation of title as long as this is done in the ordinary course of business. The Customer may not pledge the Conditional Goods nor transfer ownership thereto by way of security.
- 7.3 Any processing or remodeling of Conditional Goods shall be done by the Customer exclusively on our behalf. In cases where the Customer combines or mixes Conditional Goods with other goods which are not owned by us, we shall acquire co-ownership of the new product in proportion of the total value of this product, plus any expenses for the processing/manufacturing of the new product, to the invoiced value of the Conditional Goods. The new products resulting from such processing shall also be deemed to be Conditional Goods as specified herein.

- 7.4 The Customer shall assign to us in advance and as a security all claims and accessory rights it has in connection with the resale of Conditional Goods as well as any claims it may have against its insurers, and shall do so upon the conclusion of the contract of which these terms and conditions are an integral part. This assignment is hereby accepted by us to apply as of the conclusion of the contract of which these terms and conditions are an integral part. Where items are exported, the Customer shall also assign to us upon conclusion of the contract, of which these terms and conditions are an integral part, all claims the Customer is now or will be in the future entitled to in connection with the export against German and foreign banks, including but not limited to claims resulting from collections, letter of credit or letter of credit confirmations, as well as from bonds and guarantees. This assignment is hereby accepted by us to apply as of the conclusion of the contract of which these terms and conditions are an integral part. If the Conditional Goods are sold by the Customer with other goods not belonging to us, regardless of whether without or after processing, above claims shall be deemed to have been assigned to us proportionally, i.e. in the net amount charged by our Customer for the Conditional Goods. Above assignment shall not constitute a deferral of our claim for payment against the Customer.

- 7.5 The Customer shall retain its right to collect claims assigned to us. Our authority to collect the claims ourselves shall not be affected thereby. We agree, however, that we will not collect such claims for as long as the Customer is not in default of payment to us, no petition has been filed for opening insolvency proceedings on the Customer's assets or such proceedings were rejected due to lack of assets. If any of such events has occurred, the Customer shall provide us with all necessary information and documents for the collection of the claims assigned to us, and shall inform the various debtors of the assignment of the claims in writing.
- 7.6 Our Customer shall maintain the Conditional Goods in proper condition, store them separately and mark them as goods owned by us.
- 7.7 Upon the Customer's request, we shall reassign to the Customer our title to the Conditional Goods and the claims assigned to us by way of security to such extent as the value of the Conditional Goods exceeds the value of all claims we have against the Customer by more than twenty percent (20%).
- 8. Defects**
- 8.1 The Customer must notify us of any defect immediately upon its discovery.
- 8.2 The Customer must provide us with the opportunity to provide a cure within reasonable time, which, at our choice, may be through elimination of the defect, delivery of an item free from defects, or the production of a new item.
- 8.3 If the cure finally fails, or if such cure cannot be reasonably expected to be acceptable to us or the Customer, or if the cure is associated with disproportionate costs, the Customer may rescind the contract or reduce the agreed-upon price, without prejudice to claims for damages that the Customer may otherwise have.
- 8.4 Claims of the Customer against us for reimbursement of all additional costs incurred for the purpose of cure, including but not limited to transport charges, fares/toll, labor and material costs, are excluded to the extent that they are incurred by the object of the service/delivery being subsequently carried to a location other than the premises of the Customer, unless this carriage is consistent with the intended use of that object of delivery/service. Should work have to be done at a different location, the Customer must notify us thereof in a timely fashion - prior to the commencement of the work -, provide us with the opportunity to inspect the defects, and comply with our instructions to limit costs.

- 8.5 Customer shall have a right to legal recourse against us only to the extent it has not entered into agreements with its customers beyond legal warranty claims and rights. In addition to this the provisions set forth in Clause 8.4 above, sentence 1, shall apply accordingly to the extent of the Customer's right to recourse
- 8.6 In the event of defects that have been duly notified, the Customer may withhold payments only to the extent that is deemed reasonable in light of the nature of the defect.
- 8.7 The limitation period for defects in quality and in title is one (1) year, starting to run upon passing of risk. This shall, however, not apply if and to the extent longer periods apply pursuant to Sec. 438 (1) No. 2, 479 (1), 634a (1) No. 2, and 651 German Civil Code [*Bürgerliches Gesetzbuch*; "BGB"], the defect was maliciously concealed and/or any of the liability events specified under Clause 9.1 hereof apply.
- 8.8 Subject to Clause 9 below, our liability for defects in quality and in title is excluded for used items
- 8.9 Our liability for defects in quality and in title is also excluded, subject to Clause 9 below, if and to the extent the items delivered/services performed are subject to wear and tear or in the case of improper handling or use by the Customer.
- 8.10 Our obligation to pay damages shall be governed by Clause 9 below.
- 8.11 The provisions above do not provide for a reversal of the burden of proof at the Customer's disadvantage.
- 9. Liability**
- 9.1 Claims for damages and for the compensation of expenses (hereinafter collectively referred to as "Claims for Damages") of our Customer against us, regardless of the cause in law, shall be excluded unless such claims arise from the provisions of the Product Liability Act, the willful or grossly negligent breach of contractual or legal obligations by us, damage to health and bodily injury of the Customer caused by a breach of duty for which we are responsible, a warranty for the presence of a particular quality, or the violation of essential contractual obligations by us. Obligations that are essential to the contract are those the fulfillment of which allow us to properly perform our primary contractual obligations in the first place and in the observance of which the Customer may trust as a matter of course.
- 9.2 In the event of our violation of essential contractual obligations, the Customer's claim for damages against us shall be limited to the foreseeable damage typical of this type of contract; provided that no willful misconduct or gross negligence are involved, and that we are not liable for damage to health and bodily injury, or based on our warranty for the presence of a particular quality.

A loss or damage that must be typically expected when the essential contractual obligation has been violated is deemed typical of this type of contract/foreseeable.

9.3 Any violation of obligation hereunder by our legal representative or a person employed by us in the performance of our obligations shall be deemed equal to a violation of obligation by us.

9.4 Above Clause 8.11 shall apply accordingly with regard to our liability.

10. Data protection

10.1 The Customer agrees that, within the scope of our business relationship, we electronically store and process the Customer's data as required for handling the orders and the individual contracts, which storage and processing shall be done in accordance with the law.

11. Place of jurisdiction, applicable law and translations

11.1 The competent Local / Regional Court [Amtsgericht / Landgericht] at Bremerhaven shall have exclusive jurisdiction for any litigation between us and our Customer that may directly or indirectly arise out of the contractual relationship. We are, however, at our option, entitled to sue the Customer also before courts having jurisdiction over the Customer's registered office.

11.2 The laws of the Federal Republic of Germany shall govern without giving effect to the United Nations Convention on Contracts for the International Sale of Goods.

11.3 In the event these Standard Terms and Conditions are translated in any other language than German, their German version shall govern in the event of doubts as to their interpretation and/or in case of incompleteness.

12. Severability

12.1 Should any of the provisions contained in a contract entered into with the Customer, of which these Standard Terms and Conditions of Sale and Delivery form an integral part, be or become invalid, the remaining provisions of that contract shall remain unaffected thereby. In the place of that invalid provision, we shall agree on a provision with the Customer that corresponds to the closest possible extent to the purpose of the invalid one in a legally effective manner.