

Lloyd Werft Bremerhaven AG

General Terms and Conditions for Business with Companies

As at: 17 April 2012

1. Scope of Application

1.1 These Terms and Conditions form an integral part of any and all contracts we enter into with our suppliers and other contractors (hereinafter collectively referred to as "the Supplier"). In addition, these Terms and Conditions, as amended, also serve as a master agreement for any future contracts with Suppliers, without need for making express reference to these Terms and Conditions in each case.

1.2 Any agreement deviating herefrom (in particular conflicting terms and conditions of the Supplier or collateral agreements) will only become part of the relevant contract if we have given our express written consent.

1.3 Any references made to the applicability of statutory provisions are for clarification only. Therefore, the statutory provisions apply even without any such clarification, unless these Terms and Conditions provide otherwise or expressly exclude their applicability.

2. Offer and Conclusion of Contract

2.1 The Supplier shall submit any offers in writing and free of charge. Any such offers must be binding. In terms of quantity, quality, description, assembly, etc, the Supplier shall adhere to our request/call for tender and expressly and clearly point out, in writing, any deviations in its offers.

2.2 We only consider purchase orders and other declarations as being binding if we have given or confirmed any such order or declaration in writing. E-mails do not satisfy this requirement.

2.3 In derogation of section 127 of the German Civil Code (*Bürgerliches Gesetzbuch*; BGB), the electronic form is not deemed to be equivalent to the written form.

3. Prices

3.1 All prices are fixed prices exclusive of value-added tax.

3.2 The prices agreed with the Supplier are for the complete product or service and include the entire remuneration for any and all supplies and services to be rendered by the Supplier (including any certificates, drawings, assessments, etc, required, whether in German or in English) and must be delivered "freight prepaid" to the destination specified by ourselves. Where no such destination has been specified, our shipyard in Bremerhaven shall be the place of performance. The relevant destination shall also be the place of performance (obligation to be performed at the creditor's place of business).

3.3 Where the Supplier also makes use of our changing rooms and staff rooms, we will charge a cost contribution in the amount of 1% of the Supplier's net invoice amount minus any cost of materials. The Supplier shall credit this cost contribution when issuing the (final) invoice to us.

4. Dates and Deadlines

4.1 Delivery and completion dates are of the essence. The agreed delivery deadlines start running upon conclusion of the contract. Where no delivery or completion date has been agreed as part of the purchase order, the supply or service must be rendered forthwith.

4.2 Where the Supplier becomes aware of the fact that a deadline cannot be met, the Supplier shall notify us, in writing and without undue delay, of the reason for and the duration of the expected delay.

4.3 In the event of any such delay in delivery, we may exercise (Clause 4.4 below notwithstanding) the remedies available to us under the law without any restriction (exclusions and limitations of liability in particular).

4.4 The Supplier shall store any and all materials/goods that are our property, or have been supplied by us, free of charge and with all the due care of a diligent warehouse keeper and label any such materials/goods as our property. The Supplier, in its capacity as a warehouse keeper, shall insure any materials/goods supplied by ourselves for 110% of their value against damage and/or loss according to normal trade practice.

5. Contractual Penalty

5.1 Where the Supplier is in default, we may demand a contractual penalty of 0.2% of the net contract value per each working day of the default, as calculated in Bremerhaven, or part thereof.

The contractual penalty is limited to a maximum of 5% of the net contract value of the delayed delivery, even if more than one individual date or deadline has been missed.

5.2 The right to the contractual penalty may be asserted up until final payment. Accordingly, this right may be exercised by set-off against the Supplier's payment claim. The payment of the contractual penalty does not release the Supplier from the performance of its contractual obligations nor does it release the Supplier from any further obligation to pay damages (for default in particular); we expressly reserve the right to assert any such further claims.

6. Packaging, Dispatch, Taking Delivery/Acceptance and Transfer of Risk

6.1 The risk of accidental loss/destruction or deterioration of the deliverables will pass to us upon handover of the goods at the place of performance. Where the parties have agreed on formal acceptance, the transfer of risk will take place upon acceptance. The statutory provisions governing contracts for work and services will apply accordingly to acceptance.

6.2 On the day of dispatch of each shipment, the Supplier shall provide us with a written dispatch note (in duplicate), stating our purchase order number as well as the item number of our purchase order, the quantity and the precise description of the goods. The Supplier shall enclose a delivery note containing the same details with each shipment; the individual items in each shipment must be labelled with a description of the goods (labelling). In the absence of a delivery note or where the delivery note contains incorrect or incomplete details, we have the right, at the Supplier's cost, to refuse to take delivery.

6.3 The Supplier shall advise our incoming goods department at our head office in Bremerhaven, in writing, of any and all deliveries no less than 48 hours in advance. Goods will only be received from Monday to Friday, 7:00 a.m. to 1:30 p.m.

6.4 The Supplier shall insure, at its own cost, the replacement value of any parts completed under the respective contract, and provided ready for pickup, against accidental destruction/loss as well as accidental or culpable deterioration (through fire, theft, transport or storage risk in particular) until the risk transfers to ourselves (cf. Clause 6.1 above). Any claims existing or arising against third parties and/or insurers for damage, destruction or loss of the deliverable will be deemed to have been assigned to us, upon purchase order placement, as security for contractual performance by the Supplier.

6.5 We will only accept machinery, equipment, etc, whose contractually agreed condition can only be verified upon completion or commissioning of the successor component, upon successful installation and commissioning and, where applicable, acceptance by the competent agencies or organisations (e.g. classification society, SBG, DOT, etc). The commissioning of the deliverable during the course of acceptance of the vessel by the shipowner and the classification society as well as the coordination with preceding and subsequent components and work (*Gewerke*) are part of the Supplier's scope of supply.

6.6 The values determined by ourselves during the incoming goods inspection are decisive for any billing based on quantities, measurements or weight, unless the Supplier demonstrates that these values are incorrect.

6.7 Where we have agreed with the Supplier that dispatch shall be made to a third party instead of ourselves, the Supplier shall prove dispatch to such third party in a suitable form, e.g. by providing us with an acknowledgement of receipt, etc.

6.8 We are entitled to refuse to take delivery of deliverables and accept goods or services if an event of *force majeure* or any other circumstances beyond our control render taking delivery of the deliverable or acceptance of goods and services either impossible or unacceptable. Labour disputes are deemed to be *force majeure*.

7. Customer-Supplied Materials; Documentation; Accident Prevention

7.1 The Supplier is liable for the loss of or damage to any materials supplied by ourselves. Upon loss of, damage to or defects of any materials supplied by ourselves occurring, the Supplier shall immediately cease processing and notify us in writing.

7.2 Any materials supplied by ourselves will be processed on our behalf and will remain our property throughout the processing stages. Where materials supplied by ourselves are processed together with other materials, we will acquire co-ownership in the new product in proportion to the value of the materials supplied by ourselves to the value of all materials used in the production and the Supplier's input during the processing. To this extent, the Supplier shall keep the new product in custody on our behalf, free of charge. The preceding sentences apply *mutatis mutandis*, should our property cease to exist as a result of commingling, intermingling or joining.

7.3 The Supplier may only use any documentation, data or rights (such as licences and software) provided to the Supplier by ourselves for the processing of the offer and the rendering of the goods/services ordered. The Supplier shall treat any such item with all due care and protect them from unauthorised use (copy of confidentiality). This obligation shall survive the termination of the contract. Any such items (including any copies or reproductions) must be returned to us, without undue delay and without needing to be prompted, after our request has been processed or the ordered goods/services have been rendered.

7.4 Both prior to the commencement and the completion of the work, the responsible site manager of the Supplier shall contact our operating engineer in charge (the "Coordinator") and acknowledge our Coordinator in writing. Our Coordinator is responsible for eliminating any and all hazards. The Coordinator's instructions must be followed without undue delay. Any and all accidents must be reported to the Coordinator without undue delay. All work must be carried out in such a way as not to interfere with our workflow. The Coordinator will be in charge of coordinating the schedule for the goods/services to be rendered by the Supplier. The Supplier shall ensure that the work place is clean at all times. After completion of the work, the work place must be handed over to our Coordinator in a tidy and clean condition.

7.5 The Supplier shall ensure that all deliverables comply with statutory and international requirements for environmental protection and do not contain any materials that are hazardous to health. The Supplier shall strictly comply with any and all accident prevention and other safety rules that apply within our Company. This applies, in particular, to smoking bans, rules for the performance of so-called hot work (welding and heating) as well as protective measures for the processing and removal of asbestos and materials containing asbestos. To the extent that this is required, the Supplier's staff must wear appropriate protective clothing, with additional precautions also being taken when necessary. If applicable, the Supplier shall ensure that its subcontractors also comply with the same requirements.

8. Billing and payment

8.1 Upon rendering agreed goods/services, the Supplier shall provide us with original invoices (in quadruplicate), for each purchase order separately, stating the purchase order number including date, cost unit/account and commission number. Value-added tax must be shown separately.

8.2 The Supplier's invoices are payable 30 days from the rendering of the goods/services in accordance with the contract or – to the extent that a work product/service is to be completed – from acceptance of such work, and proper billing in accordance with the preceding Clause 8.1. Where the Supplier delivers early, the 30-day period will commence no earlier than upon the contractual delivery or completion date.

8.3 If we pay within 14 days after the due date within the meaning of Clause 8.2 above, a 3% early-payment discount on the net amount invoiced shall apply.

8.4 We do not owe any statutory interest payable as from the due date (*Fälligkeitszinsen*) under the German Commercial Code (*Handelsgesetzbuch*; HGB). This does not affect the Supplier's claim to default interest (*Verzugszinsen*). In the event of our default, the statutory provisions shall apply. In any case, default will only arise once the Supplier has issued a demand for payment.

9. Set-Off and Right of Retention

9.1 Without our prior consent, the Supplier is not entitled to transfer any of its rights and entitlements in relation to ourselves, in whole or in part, to third parties.

9.2 Any offsetting of counterclaims by the Supplier against our claims or the assertion of retention rights by the Supplier shall only be permitted if such counterclaims are undisputed, have been finally determined by enforceable court decision or have been ascertained to an extent that the matter is ready for court decision.

10. Defects and Breach of Duty; Availability of Spare or Replacement Parts

10.1 The Supplier shall ensure that the deliverable has the agreed quality, corresponds to the state of the art and that there are no inherent attributes that would impair or negate the value or the suitability of the deliverable for its customary or intended use under the contract entered into with ourselves. In addition, the Supplier shall ensure that the utilisation of the deliverable will not infringe third-party rights (patents or other industrial property rights in particular).

10.2 Where the deliverable is defective or for any other reason non-contractual, we shall have any and all statutory rights and entitlements without restriction (exclusions and limitations of liability in particular) with the proviso that the time limit for giving notice of defect pursuant to section 377 of the German Commercial Code (HGB) must be no less than eight working days, unless said defects are obvious. In the case of hidden defects (particularly those that only become apparent upon processing or commissioning of the deliverable), the time limit for giving notice of defect will only commence upon their discovery.

Our duty to inspect will be restricted to defects that can be ascertained during our incoming goods inspections by making an external assessment, including verification of the delivery documents, as well as by visual sampling during our quality assurance checks.

10.3 The period of limitation for material defects or deficiency in title is governed by the provisions of the German Civil Code with the proviso that the statutory periods are extended by a further 12 months.

10.4 Where supplementary performance is required, the Supplier shall also bear any additional expenses (transport, infrastructure, labour and material costs in particular) arising as a result of the subject matter of the delivery/service being subsequently relocated to a place other than the place of performance, provided that such relocation is in line with the intended use of the subject matter of the delivery/service.

10.5 To the extent that we have perused the assembly dimensions as well as the general technical specifications on the basis of the drawings provided to us and have released a sample of the deliverable for serial production, this will not exempt the Supplier from the contractual performance of any of its obligations. More specifically, our inspection does not extend to sufficient dimensioning and the proper selection of materials used.

10.6 During the Supplier's operating hours, our agents and the agents of our customers are entitled to request information on the contractual performance from the Supplier, to attend site tests and to perform tests themselves. Any costs for repeated tests caused by previously detected defects shall be borne by the Supplier.

10.7 The Supplier hereby guarantees the supply of spare parts for the deliverables at market conditions and prices for the duration of the standard lifetime of the relevant deliverable. Should the Supplier discontinue production of the relevant deliverable, the Supplier hereby guarantees that the successor products will be compatible with the discontinued products in terms of dimensions, performance and connections.

10.8 Where the Supplier intends to discontinue the production of the spare and/or replacement parts pursuant to Clause 10.7, the Supplier shall notify us without undue delay, but in any case no later than six months prior to any such discontinuation.

11. Liability, Indemnification and Liability Insurance Protection

11.1 Claims for damages or for reimbursement of expenses (hereinafter collectively referred to as "Claims for Damages") on the part of the Supplier vis-à-vis ourselves are excluded, unless any such claims are based on the provisions of the German Product Liability Act (*Produkthaftungsgesetz*; ProdHaftG), the deliberate or grossly negligent violation of contractual or statutory obligations by ourselves, injury to body or harm to health on the part of the Supplier as a result of a breach of duty attributable to ourselves, the warranting of a characteristic or property by ourselves or any breach of material contractual obligations on our part. In the event of a breach of a material contractual obligation, the Supplier's claim for damages against ourselves shall be limited to typical direct damages that are foreseeable, unless such damages are the result of intent or gross negligence, we are liable for injury to body or harm to health or we are liable for warranted characteristics or properties. Any breach of duty by our legal representatives or vicarious agents will be deemed to be a breach of duty by ourselves. The preceding provisions do not entail a reversal of the burden of proof to the detriment of the Supplier.

11.2 Where third parties assert a claim for damages against us as a result of a product defect, the Supplier shall indemnify us against any such claims if and to the extent that any such damage was caused by raw materials or sub-products supplied or services rendered by the Supplier.

Furthermore, the Supplier is obligated to reimburse us for any expenses and losses resulting from a third party asserting a claim against us, particularly in connection with a product recall carried out by ourselves. In such cases, we will notify the Supplier – where possible and reasonable – of both content and scope of the recall measures to be taken and provide the Supplier with an opportunity to make a statement. Any further liability of the Supplier under the law shall remain unaffected.

11.3 The Supplier shall take out third-party liability insurance, product liability insurance and environmental liability insurance cover of no less than €2.5 million – combined limit – per bodily injury/property damage, which also covers the risk of any processing damage as well as damage to items kept in custody by the Supplier but owned by ourselves or third parties.

12. Proprietary Rights

The Supplier shall be liable if third-party rights are infringed in connection with its deliveries/services. This does not apply if no fault can be attributed to the Supplier. Where a third party asserts claims against us in connection with such infringements, the Supplier is obligated to indemnify us, upon written request, against any such claims. This indemnification obligation of the Supplier extends to any and all expenses and losses we incur in connection with being subject to third-party claims.

13. Subcontractors

13.1 The Supplier may only use subcontractors for the performance of its contractual obligations in relation to us with our prior consent. The use of subcontractors does not release the Supplier from its obligations in relation to us.

13.2 When placing contracts with subcontractors, the Supplier shall ensure that any such subcontractors will also grant us the right to information and the performance of tests to the extent stipulated in Clause 10.6 above.

13.3 The Supplier hereby assigns to us any existing or future performance or supplementary performance claims or claims for damages vis-à-vis its own subcontractors or suppliers, for whatever legal reason, as security to the extent that any such claims assigned are related to any (purchase) orders placed by ourselves with the Supplier. Where the Supplier is in default of performing its obligations vis-à-vis ourselves, we will be entitled to assert any such assigned claims ourselves. Upon occurrence of its default, the Supplier shall be entitled to provide us with any and all documents and information required for the assertion of any such claims assigned for security purposes and, upon our request, notify the relevant subcontractor of the existing assignment.

14. Data Protection

The Supplier hereby consents to us electronically storing any data of the Supplier that may be required in connection with the business relationship and the individual contracts as well as to us processing and using this data in compliance with the statutory provisions for our business purposes.

15. Legal Venue and Applicable Law

15.1 Exclusive legal venue (also at an international level) for any and all disputes arising directly or indirectly from the contractual relationship between ourselves and the Supplier (including deeds, bills of exchange or cheques) is the local court (*Amtsgericht*) or the regional court (*Landgericht*), depending on the value in dispute, that has jurisdiction for Bremerhaven, Germany. However, we remain entitled to sue the Supplier, at our discretion, at the courts having jurisdiction at the Supplier's place of business or at the place of performance.

15.2 The contractual relationship is governed by German law, excluding the application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) or other conventions concerning the international trade of goods.

16. Severability

The invalidity of any provision of the contract concluded with the Supplier, of which these General Terms and Conditions are a part, does not affect the validity of any other provisions thereof.