

(Translation of:

„Allgemeine Geschäftsbedingungen (AGB) der H.A. Springer marine + industrie service GmbH“)

**Standard Business Conditions (= “AGB“) of H.A. Springer marine + industrie service GmbH**

**1. General Terms and Conditions of Business**

1.1.

These Standard Business Conditions shall be the basis for all present and future contracts for deliveries and services, advice and other additional services provided by H.A. Springer marine + industrie service GmbH.

1.2.

When orders are acknowledged or upon receipt of individual deliveries the party to the contract accepts our AGB - which thus become integral part of the contract.

1.3.

Conflicting conditions are thus rejected. These shall be valid only if accepted by us in writing. Even if we do not reject explicitly conditions demanded by the party to the contract and provide without reservation services according to the contractual obligations, conditions demanded by the party to the contract shall not become integral part of the contract.

1.4.

Our AGBs are on display in our business premises and can be inspected and printed from [www.Springer-Kiel.com](http://www.Springer-Kiel.com) or [www.Epocast.com](http://www.Epocast.com). If desired we dispatch them free of charge.

**2. Conclusion of Contracts, Subject Matter of Contracts, Requirement of Written Form**

2.1.

Our quotations are not binding for us; they are meant exclusively for the addressee mentioned in the quotation. We reserve all rights with regard to the documentation enclosed. Samples, pictures, drawings, weight indications enclosed shall not be binding, but instead, are merely approximative indications. While taking into account the legitimate interests of the customer we reserve all rights of modifications – especially with regard to execution and materials.

2.2.

A contract does not enter into force before we acknowledge the order in writing. Technical regulations which might be necessary for the execution shall be added with special reference to the written acknowledgement of the order.

2.3.

All agreements reached when the contract is concluded have to be laid down in writing in order to become integral part of the contract. Other agreements than those laid down in writing shall be null and void. Requirement of written form applies also to subsidiary agreements, warranties and subsequent amendments as well as to rescission of the contract.

2.4.

Contractual clauses usual in commercial practice which refer to the handling of the delivery shall be construed in each case according to the INCOTERMS issued by the International Chamber of Commerce in Paris which are in force when the contract is made.

### **3. Prices, Maturity, Credit Terms**

#### **3.1.**

Unless otherwise agreed, our deliveries are calculated on the basis of the prices indicated on the pricelists applicable on the day in question when the products are dispatched and which can be inspected in our business premises. If desired we dispatch the pricelists free of charge. If not agreed otherwise before in writing or in the acknowledgement of order, our quotations are meant „ex works“ plus packaging, delivery and execution plus the amount which corresponds to the VAT-rate valid at the time in question.

#### **3.2.**

Unless otherwise agreed payments for deliveries fall due within 14 calendar days without discount after receipt of invoice or arrival of other kinds of invoice documentation. Payments for services provided are payable immediately after receipt of invoice. The foregoing stipulations under item 1 and 2 respectively apply accordingly to invoices made out for partial deliveries and partial services. Payment is considered to be effected when one of our bank accounts indicated by us to this purpose is credited with the total invoiced price.

#### **3.3.**

Bills of exchange or cheques shall be accepted exclusively on account of performance and after previous written agreement – provided that the customer agrees to reimburse all the expenditures we will have to meet in connection with the negotiation of such bills of exchange. Supplementing item 3.2.: payment by bill of exchange or cheque shall be considered to be effected on the very day when we can dispose freely of the equivalent and reimbursement of any expenditure we had to meet in connection with the payment was effected.

#### **3.4.**

In the event of delayed payment or prolongation of payment we shall be entitled to charge interests of 8 % p.a. above the basis interest rate on the outstanding amount. Furthermore we reserve all rights to assert claims arising from the losses caused by the extended period of payment. During the delay in payment we are entitled to freeze further deliveries to the party to the contract. Should the case arise that inspite of a reminder of payment the remaining payments are not effected in full within a reasonable period of time set, we shall be entitled to can-cel other contracts with the party to the contract.

#### **3.5.**

If due to negligent conduct the party to the contract is at fault in complying with conditions of payment and / or if after the conclusion of a contract it becomes obvious that payments we rightfully can expect are put in danger because of the customer´s absence of solvency, we are entitled – without prejudice to our right to withdraw from the contract – to state the immediate maturity of all accounts receivable, regardless of the tenors of bills of exchange we might have accepted. Furthermore we shall be entitled to carry out outstanding deliveries only against payment in advance.

#### **3.6.**

The party to the contract shall be entitled to set off our claims only against undisputed, acknowledged cross-claims or against such cross-claims as were recognized by declaratory judgement.

#### **3.7.**

Likewise the right to refuse performance can be exercised only in the case of undisputed, acknowledged cross-claims or of such cross-claims as were recognized by declaratory judgement and only on the condition that it is founded on the same contractual relationship.

#### **4. Delivery and Default**

4.1.

Before the period of delivery indicated by us starts, it is imperative that the party to the contract has fulfilled its duties of assistance as defined by us, of adjustment and also that all technical details were discussed before in conclusion - for example by receipt of all technical documentation and information we needed from the customer.

4.2.

We reserve all rights to obtain in time and correctly supplies ourselves.

4.3.

All terms of delivery and time-limits for delivery which can be stipulated whether with or without binding force have to be laid down in writing. Terms of delivery shall start with the completion of the contract. If subsequent amendments are stipulated, modifications of terms of delivery and deadlines shall have to be stipulated again in writing, too, if necessary.

4.4.

The term of delivery shall be considered to be kept if either the goods to be delivered were dispatched from our premises before the term of delivery has expired or else if the notice of readiness for delivery was sent in time.

4.5.

We reserve the right to deliver part deliveries – provided that this procedure attends to the legitimate interests of the customer...

4.6.

Should the case arise that we overstepped a not binding time-limit or a not binding term for delivery by 3 weeks, then the party to the contract shall be entitled to invite us in writing to deliver within a reasonable period of time. It is not before this reminder that we start to be behind schedule. This does not apply to cases when this period of grace mentioned above is unappropriately long. To these cases the reasonably long period of grace shall be applicable.

4.7.

All liability for damages shall be excluded if we are in default because of slight negligence – unless such damages happen which affect lives, bodies and health.

4.8.

Alternatively we limit our liability for damages caused by default in cases of slight negligence to such damages as are typically foreseeable.

4.9.

In the events of Force majeure, revolts, strikes, lock-outs and serious disruptions of business operations, caused by no fault of our own, the time for delivery and time-limits as indicated under item 4.1. and 4.2. respectively shall be extended by the period of default in delivery caused by these circumstances plus a reasonable running-in period.

4.10.

Changes of orders will extend the time for delivery by the period of time necessary to carry out these changes plus an appropriate time period for reorganization.

4.11.

In cases of Force majeure and of lawful industrial disputes or strikes which affect us, our suppliers or other third parties who are of importance for the production of the goods or the performance of the services, the time for delivery shall be extended by the period of time the disturbances last plus an appropriate running-in period. The same applies to delays caused by shortage of means of transport and to interventions of authorities we cannot be held responsible of. About these circumstances we will inform the party to the contract as soon as we learn about them. A mutual right to withdraw from the contract can be exercised on the condition that the delay of delivery lasts more than 30 days for such reasons as mentioned previously.

**5. Dispatch, Passing of the Risk, Inspection of Incoming Goods, Obligation to Make Complaints in Respect of Defects Immediately on Receipt of the Goods, Acceptance after Inspection by Third Parties**

5.1.

Unless otherwise agreed the dispatch shall be „ex works Kiel“ and at the customer´s expense. In this case we are free to choose the method and the route of delivery. Supplementary costs which might arise if express delivery is desired shall be born by the customer.

5.2.

Notwithstanding possible obligations to carry out assembly works, risks pass over to the person entrusted with the delivery – at latest, however, when the commodities leave our business premises unless INCOTERMS provide otherwise.

5.3.

The party to the contract shall also be in the case of resale under the obligation to inspect the incoming goods immediately on delivery and - if necessary - to make complaints in writing in respect of defects – this at latest, however, 5 working days after receipt of the goods. This period of time is applicable likewise to hidden defects and starts with their detection. Open damages caused by transit or losses occurred during transit are to be documented by photographs if possible; at all events they have to be confirmed by certificate of damage issued by the post or railway organization respectively or by the forwarding agent. The certificates and, if it so happens, the photo documentation, too, are immediately to be passed on to us together with delivery number and invoice number respectively.

5.4.

Unless otherwise agreed an especially arranged inspection of the incoming goods for acceptance carried out by third parties and at the customer´s expense will take place on a day at our discretion. Otherwise the goods shall be considered to have been accepted at the end of a period of 12 working days from the day we proposed as inspection day.

**6. Warranty, Limitation Period**

6.1.

We guarantee that our products and services are faultless and state of the art if used and applied according to the stipulations of the contract or to their respective general use and destination.

6.2.

If individual parts of a whole set of similar parts should be found to be defective this does not mean that the customer can assert claims with respect to the other faultless parts.

6.3.

We don't assume any responsibility for defects and their consequences if these are the result of execution regulations sent in by the party to the contract (for example: specifications of the casting compound, drawings made by the partner to the contract, specifications of the materials to be used). We are not under obligation towards the party to the contract to draw his attention to such faulty execution regulations if these could not be detected by third parties who are not experts in these matters.

6.4.

In the event of a notification of defect given by the customer it is left at our discretion whether we opt on our own account for subsequent improvement or for consignment of replacement. If the second subsequent improvement or the second consignment of replacement, too, should come to nothing within a period of time of 6 calendar weeks from notification of defect, the customer is entitled to reduce the purchase price and to claim damages – except that the subsequent improvement or consignment of replacement cannot be performed within this period of time because of reasons the party to the contract is to be blamed for. This, for example, could be the case if the vessel in question was taken on charter for this period of time. In such a case the period of time needed for the rectification of defects or the consignment of replacement shall be extended accordingly.

6.5.

The partner to the contract shall be entitled to exercise a right to withdraw from the contract and to lay claim for damages instead of the whole performance unless the dereliction of duty isn't irrelevant.

6.6.

Unless longer periods of time were stipulated in writing the limitation period shall be 12 months. If our contractual obligation are limited to delivery this period shall begin to run with delivery; if we are under contractual obligation to provide maintenance services this period begins to run with the acceptance of the maintenance services provided.

## **7. Exclusion of Damages, Restrictions on Liability**

7.1.

If we are liable for compensation due to only a slight breach of essential obligations under a contract we shall restrict our liability for damages and that of our legal representatives or vicarious agents to such damages as typically might arise from the respective kind of contract and are foreseeable – except for the damages which affected lives, bodies and health.

7.2.

If we are liable for compensation due to only a slight breach of not essential obligations under a contract we shall exclude our liability for damages and that of our legal representatives or vicarious agents – except for the damages which affected lives, bodies and health.

7.3.

In all cases of liability for damages which are due to careless dereliction of duty no matter on which legal basis, our liability for damages shall be restricted to the damage foreseeable for us – with the exception of those cases where claims are based on provisions of the Product Liability Act.

7.4.

Furthermore we exclude liability for damages for us, for our legal representatives or vicarious agents in those cases where we are responsible for a slightly careless dereliction of a duty which cannot put in danger the purpose of the contract - neither by its character nor by its consequences – this with the exception of cases where the damages affected lives, health and bodies.

7.5.

The foregoing provisions are not applicable to claims based on the Product Liability Act.

7.6.

In cases where liability for damages is based on provisions within the meaning of § 823 German Civil Code (= „BGB“) about manufacturer’s liability (= „Produzentenhaftung“) we limit our limitation beyond the aforementioned stipulations to the compensation of our third party liability insurance. The sum insured stipulated in the insurance contract shall be typical for such kind of damages / contracts / matters. In cases where compensation payment for damages occurred is not paid at all or only a part, we restrict our liability to the amount covered which is stipulated in the insurance contract. If the insurance coverage does not correspond to typical kinds of damages / contracts / matters we shall limit our compensation payment to that sum of money which is typical for such kind of damages / contracts / matters.

7.7.

The party to the contract is under the obligation to inform us about foreign provisions which are of importance for delivery and performance. If the party to the contract fails to do so, we cannot be blamed for ignorance of the provisions stipulated under item 1.

## **8. Reservation of Ownership**

8.1.

We generally reserve the title of goods delivered until all payments fallen due to which we are entitled on the basis of contractual relationship entered our bank account. When goods are combined with objects which do not belong to us, we acquire a share of co-ownership in the new product and this in proportion to the share of the invoiced value of our goods in that of the other materials combined of which consists the final product. It is hereby stipulated that in cases when the combination of materials and objects yields a product in which the contribution of the party to the contract is the lion’s share, the party to the contract shall transfer a proportionate title of ownership in the new product. The party to the contract shall keep our co-ownership safe and free of charge for us. A resale shall be allowed only with our prior written consent. The party to the contract shall be under the obligation to draw the attention of purchasers to this stipulation.

8.2.

Furthermore we reserve the title of goods delivered as stipulated under item 8.1. hereinbefore until all the payments we are entitled to due to the contractual relationship are effected in full. This applies also to future claims. In all cases the party to the contract shall be under the obligation to keep the goods delivered safe with the diligence of a prudent businessman and free of costs.

8.3.

Under no circumstances neither the pledging of the reserved goods nor their transfer by way of security shall be admissible. In cases of pledging or transfer by way of security or other disposals by third parties we are to be informed without delay and claim for such cases the transfer of supporting documents which are essential for an objection.

8.4.

Furthermore the party to the contract shall be entitled to manufacture the products delivered in the ordinary course of business as long as the party is not in default. Already when making a contract with us the party to the contract assigns claims to us which might arise from the resale or other legal reasons against his customers to the amount which corresponds to the invoiced sum of the delivered and reserved goods.

8.5.

Neither the taking back nor the pledging by us shall be considered to be a rescission of contract. A right of retention shall be excluded.

8.6.

Amounts due recovered by the party to the contract from transferred claims are to be transferred separately to us so that offsets and / or setoffs with debit bank accounts can be avoided.

## **9. Storage of Dates and Data Processing**

We shall be authorized to process and to store customer data obtained during the contractual relationship always taking into account the pro-visions under the Data Protection Act (= „Datenschutzgesetz“).

## **10. Transfer of Contractual Rights**

The party to the contract is entitled only on the condition of our written consent to transfer rights and duties with binding force from the contract made with us.

## **11. Applicable Legislation, Place of Performance, Place of Jurisdiction**

11.1.

All the contracts are subject to the legislation of the Federal Republic of Germany. The provisions under the CISG shall not be applicable.

11.2.

The place of performance for both parties to the contract shall be Kiel (Federal Republic of Germany) unless otherwise agreed.

11.3.

Our registered office shall be the place of jurisdiction where all disputes which might arise from the contractual relationship shall be settled. This includes also legal actions on cheques and bill of exchanges. We shall be entitled to bring actions against the party to the contract at his general place of jurisdiction.

## **12. Requirement of Written Form, Current Version of the Standard Business Conditions**

12.1.

Amendments – in order to become effective - need to be stipulated in writing.

12.2.

That German version of the Standard Business Condition shall be applicable which was effective when the contract was made.

12.3.

If Standard Business Conditions did not become integral part of the contract - whether in part or in total – this shall not affect the validity of the remaining parts of the contract (§ 306 sect. 1 German Civil Code).

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