

I. General

- 1.) These terms and conditions for delivery apply to all - including future - contracts, deliveries and other supplies made by Otto Piening Schiffspropeller und Wellenanlagen GmbH (hereafter: PP). Ancillary agreement will only become part of the contract if PP has agreed to the incorporation expressly and in writing.
- 2.) Standard terms and conditions of the Customer are only applicable where PP has accepted these for the respective contract in writing.

II. Delivery, Delivery Time, Delay

- 1.) The delivery times and dates given by PP are not binding, unless PP has confirmed these in writing. PP does not give any warranty in respect of the timely transportation of any good supplied. Any time limits or delivery begin with the despatch of the order confirmation, however not before complete clarification of all aspects of the order and the technical clarification on the part of PP, as well as the provision of any documents, permits and releases as well as the receipt of any on account payments agreed respectively opening of letters of credit.
- 2.) Time limits for delivery and dates relate to the time of having the goods ready respectively despatch from the plant or warehouse. Such time limits are deemed to have been complied with on notification of the goods being ready for despatch, in case the goods cannot be despatched in time without any fault on the part of PP. PP is not to be responsible for any delay or failure to delivery in cases of any fault on the part of sub-suppliers. Time limits for delivery and dates are extended notwithstanding the rights of PP arising out of a delay on the part of the Customer, by the time by which the Customer is in delay with his obligations arising out of this and other contracts with PP.
- 3.) In cases of the unforeseen events, in particular force majeure, acts of state or orders from administrative authorities, strikes, lock out, war, insurrection, disturbances of the enterprise, lack of raw materials or delays on the part of sub-suppliers, PP are free from any obligations to effect supplies or deliveries during the time of such incidents effecting PP's ability to perform materially.
- 4.) The Customer's entitlement to claim damages in cases of late delivery, also in the event of the expiry of a time limit set for delivery or supplies, is excluded. This does not apply in cases covered by Paragraph X.

III. Place of Performance, Transfer of Risk

- 1.) Place of performance for supplies to be made by PP is the plant of PP in Glückstadt, unless another place of performance has been agreed.
- 2.) The risk of any accidental loss and deterioration of the goods to be supplied passes with delivery or handing over of the goods to the Customer. If delivery or handing over of the goods is delayed without any fault on the part of PP, the risk of any accidental loss or deterioration passes to the Customer on notification of the goods or supplies being ready to be delivered or handed over.

IV. Prices, Packaging

- 1.) All prices are ex works and excluding packaging, freight and custom dues. Packaging is not to be returned to PP.
- 2.) Prices are in EUROS net of any additional costs such as, for example, public levies, custom dues, public dues or taxes, which insofar as they are raised, are to be paid additionally.
- 3.) The agreed prices are based on calculations at the time of conclusion of the contract. PP is entitled to demand on adjustment to the price if costs increase between conclusion and final performance of the contract, unless the time between conclusion and final performance of the contract is less than four months.
- 4.) Cost-estimates are not binding, unless PP has expressly marked such estimates in writing as being binding.

V. Payment

- 1.) Invoices are payable immediately and without any deductions. The Customer is in default fourteen days after receipt of the invoice without notice of demand. From the time the Customer is in default PP is entitled to demand interest in the amount of 8 percentage points above the respectively applicable base rate. PP is further entitled to claim damages for losses caused by a delay in payment.
- 2.) Payment instructions, cheques and drafts are accepted only as on account payments after deduction of all costs for clearance and discounting. Negotiations or prolongation do not constitute acceptance as payment.
- 3.) The Customer is only entitled to set off claims which are undisputed or ascertained by way of final judgement. The Customer is only entitled to withhold payment if the underlying counterclaim arises out of the same contract. Any rights arising out of any contract can only be transferred to a third party after written approval from PP.

VI. Documents

- 1.) The Customer is not entitled to re-produce, copy, to make available or otherwise pass to third parties any offers, pictures, plans, drawings, calculations, descriptions, models as well as technical and other documents (Documents) without express written approval from PP. PP reserves all rights of ownership as well as commercial rights of use and copyright. Any documents must be returned to PP on demand.
- 2.) Where PP uses Documents or data belonging to the Customer in the context of supplies made, the Customer will bear the costs of any additional work or efforts arising out of errors in the Documents or data or other information provided by the Customer. The Customer must hold PP harmless from any claims of third parties relating to the use of the Documents.
- 3.) Any information given in Documents of PP, such as those relating to measurements, revolutions or speed are not binding, unless these are expressly warranted by PP in writing.

VII. Acceptance, Trials

- 1.) The Customer has to take delivery of the supplies without undue delay after notice tendering the goods for delivery. The goods are deemed accepted latest when the vessel or the charter relating to the supplies has been taken into use.
- 2.) Immediately after taking delivery the Customer must check the supplies and, if any defect is noticed, must notify this without undue delay to PP in writing. Where the Customer does not comply with this obligation, the supplies are deemed accepted. Where a defect becomes apparent later, such defect must be notified in writing to PP without undue delay after its discovery, otherwise the supplies are deemed accepted in this regard also.
- 3.) Where there is an agreement regarding effect or correct load of the propeller, the Customer has the onus of proof in respect of any alleged defects arising in the course of trials in the course of which all measures which the agreement has been based, such as the vessel's speed, nautical magnitudes (e.g. course, water depth) shaft power and revolution could have been measured. In case of insufficient water supply, for example in case of tunnel ships, adverse fairway conditions, inadequate guide blades and excessively high revolutions, PP cannot accept any warranty for the power take-up and effectiveness (of the propeller).
- 4.) Any costs arising in the context of trials are to be borne by the Customer. The Customer has to provide all personnel required and must make provision in respect of all other requirements. The Customer has the nautical responsibility, the risk of any loss as a result of an accident or deterioration as well as the risk for any errors in the control of the ship by the ship's crew as well as any other servants or agents. The Customer is responsible for arranging the required insurance cover.

VIII. Warranties

- 1.) In the case of defects PP must be given the opportunity to supplement performance within a reasonable time limit with PP having the choice to perform either by way of remedy of any defects or the manufacturing of a new product. The defective goods are to be sent back to PP free of costs. Any part replaced will become the property of PP.
- 2.) PP is only under an obligation of supplemental performance where the Customer has already paid part of the contract price adjusted by reference to the defect.
- 3.) If supplemental performance fails, or if it cannot reasonably be expected to be accepted by the Customer or performed by PP, or if it is only possible by expending unreasonably high costs and is refused for that reason by PP, the Customer can, in case of the statutory conditions being met, declare his rescission from the contract or reduce the contract price by a reasonable margin. The obligation of PP to pay damages is defined by Paragraph X of these terms and conditions.
- 4.) Warranty claims of the Customers are time-barred twelve months after delivery of the supplies. This does not apply if and insofar as the defects were concealed intentionally.
- 5.) Warranty claims do not arise in case of only a material deviation from the agreed condition or in case of a material defect on the use of the supplies, or in case of natural wear and tear or in case of damage caused after the transfer of risk as a result of incorrect or negligent use or care, or excessive load, use of inappropriate operation or media, defective installation or any other external influence, which is not in line with the intended use of the supply. Excluded from any warranties are in particular any damages caused by cavitation as well as warranty claims in respect of noise and vibrations. In the case of vibrations PP is only obliged to remedy proven errors in production, such as those relating to pitch or balancing but PP is not obliged to remedy vibrations. Other changes made to the propellers in order to remedy vibrations, for example the change in the momentum of inertia or the revolutions, cannot be required from PP. When the Customer or other third parties not authorised by PP make any changes to the supplies, or work on or with or repair any such supplies, then the Customer does not have any warranty claims for such changes or work and any consequences arising therefrom.
- 6.) For any changes to existing propellers in order to achieve new thrust or revolution, any claims for warranties are excluded with the exception of Customer's right to rescind, however, in any event only insofar as this is not covered by the liability provisions contained in Paragraph XI of these terms and conditions.

IX. Retention of Title

- 1.) PP retains unencumbered title and ownership in respect of any supplies made or product built in (retained title goods) up to full performance of all obligations arising out of the respective contracts and the course of dealings or other part of the Customer in favour of PP now or in the future, irrespective on what legal basis, provided such obligations have arisen since the conclusion of the contract or were already in existence then. Where the retained title supplies are sold or built in in performance of a contract, the Customer herewith transfers and signs all claims for remuneration to PP already at this stage.
- 2.) Any granting of lien or transfer of ownership for the purposes of security in respect of the supplies is not permitted. The Customer must inform PP immediately of any seizure of the supplies.
- 3.) Where goods delivered are situated in a jurisdiction which does not recognize a retention of title but which does allow the reservation of similar rights, PP is entitled to invoke such rights. The Customer is under an obligation to support all measures taken by PP for the protection of its property respectively its entitlement for security in respect of the supplies made.
- 4.) Any working on or with the retained title goods is made for and on behalf of PP without any resulting obligations for PP. Where such supplies are combined or mixed with other chattel not belonging to PP in such a way that such supplies have become a material part of a unitary chattel, PP will become part owner of the new chattel in the relation or the value of the supplies made to the other combined or mixed chattel at the time of the combination respectively mixing. Where the combination or mixing has been performed in such a way that the chattel of the Customer has to be regarded as the main chattel, it is already agreed now that the Customer is obliged to transfer ownership proportionally to PP.

X. Rescission

- 1.) In case of events mentioned under paragraph II 3 PP reserves the right to rescind of the contract. In such circumstances there is no obligation to pay any agreed contract penalty.
- 2.) PP are entitled to rescind the contract once the Customer has applied for commencement of insolvency proceedings or where the commencement of insolvency proceedings is refused on the grounds of insufficient assets. A right to rescind would also arise on the occasion of PP obtaining knowledge of any enforcement measures being pursued or if the Customer is in delay of his payment obligations.
- 3.) Without prejudice to the provisions contained in paragraph XI, claims for damages of the Customer based on PP exercising their right of rescission are excluded. The Customer is obliged to make part payments in proportion to the supplies and deliveries made.

XI. Liability

- 1.) Where PP has violated material contractual obligations the Customer's claim for damages against PP is limited to the losses typical and foreseeable for this contract. This does not apply in cases of intention or gross negligence, in case of personal injury or damage to health of the Customer or his employees or if PP is liable as a result of a guarantee for the existence of specifications. PP is not liable for indirect loss or damage, consequential loss or damage or economic loss.
- 2.) Further going claims are excluded, unless such claims are based on provisions of the product liability statute or, in case of personal injury, loss of life or health, are based on a negligent breach of duty on the part of PP or an intentional or negligent breach of duty of one of its statutory representatives or servants or agents or, in case of any other losses or damage, on the basis of a breach of duty amounting to gross negligence on the part of PP or breach of duty amounted to gross negligence of one of its statutory representatives or servants or agents. This provision does not imply a change in the onus of proof to the disadvantage of the Customer.

XII. Applicable Law, Jurisdiction

- 3.) The course of dealings between the Customer and PP are subject to German law. The applicability of the International Convention on the Sale of Goods of 11th April 1980 is excluded.
- 4.) All disputes arising directly or indirectly out of the contractual relationship between Customers and PP should be subject to the exclusive jurisdiction of the German courts, pursuant to which the court in Itzehoe will be the competent court. PP reserve the right to commence action against the Customer in the court of jurisdiction over their place of business or in any place where assets or the vessel are situated in respect of which supplies were made.

XIII. Authoritative Version, Partial Ineffectiveness

- 1.) In case of doubts in respect of the construction of these terms and conditions the German version is authoritative.
- 2.) In case of individual provisions of this contract being of no legal effect, the contract will remain binding in respect of the remaining provisions. In case of a provision being ineffective, the parties are under an obligation to replace this with a provision, which will come closest to the commercial effect of the invalid provision in a legally permissible way. This does not apply where the enforcement of the validity of the contract would represent an unreasonable detriment for one of the parties.