

General Terms and Conditions of Ostsee Marine Solutions GmbH (as of August 1. 2021)

1. **Scope of Application of the Terms and Conditions**
 - 1.1 Our Terms and Conditions apply to businesses, legal persons under public law and separate public legal entities.
 - 1.2 Any Terms and Conditions to the contrary provided by our contractual partners, and not specifically recognized by us in writing we hereby declare null and void; our goods and services are provided only on the basis of the conditions laid out below.
2. **Offers**
 - 2.1. Offers made by us are always to be understood as an invitation for the contractual partner to make an actual order, and are non-binding until the order is confirmed by us.
 - 2.2. Catalogs, prospectuses, designs and descriptions of our goods, left on contractual partners' premises for purposes of advertisement, are subject to constant change and are therefore non-binding – unless we issue particulars on request and confirm these as binding. Designs or technical documents, including those on storage media, provided in conjunction with the contract or initial proceedings by our contractual partners or us, always remain the property of the contractual partner providing them.
 - 2.3. Each contractual partner must delete any data provided by each and every other party from storage media – without retaining backup copies – at a time not later than one month after the termination of negotiations. Any documents are to be returned pursuant to clause 2.2.
3. **Agreements**
 - 3.1. Oral agreements between our contractual partners and us must be confirmed in all points in writing without delay.
 - 3.2. Orders made by our contractual partners become binding only once we have provided a written confirmation of contract.
 - 3.3. If we provide appendices to contracts in order to describe the products to be delivered in greater detail, and these contain not only technical details but also additional particulars, then these particulars are only binding if they agree with the particulars provided in the main contract.
4. **Conditions of Payment**
 - 4.1. All prices that we specify are strictly amounts in EUROs, and do not include VAT, postage and packing, insurance or transportation costs.
 - 4.2. Our invoices must be paid within 30 days of date of invoice.
 - 4.3. If payment is in default, then we are entitled to charge for default interest, to a level in agreement with that charged by our bank for an advance on our current account. The minimum level of interest is that set by law according to § 288 BGB (German Civil Code).
 - 4.4. On payment default we may also hold back fulfillment of our contractual obligations until payment is made in full.
 - 4.5. Checks and bills of exchange are only accepted by arrangement – and even then only for the entire sum, and on condition of their bankability. Discount charges are charged from invoice due date onwards. No guarantee is made for the timely submission of a bill or check, or for the raising of a bill protest.
 - 4.6. Should it be the case that we have delivered products that are in some way defective, and both parties are in agreement, then our contractual partner is nonetheless obliged to provide full payment for the delivered goods that are non-defective – unless it is the case that he has no interest in partial delivery of the non-defective goods. For the rest, our contractual partner has recourse only to counterclaims that are either uncontested or have been established as legally binding.
 - 4.7. If after confirmation of contract it can be determined that our entitlement to contractual payments is endangered because our contractual partner is lacking in the ability to pay, we may refuse services incumbent upon us and set an appropriate period of time for our contractual partner in which he must provide payment or security for our goods and services, on an itemized basis. If the given deadline expires, or it is settled that our contractual partner is non-compliant, then we are entitled to withdraw from the contract and to require indemnification.
5. **Goods and Services**
 - 5.1. We deliver our goods strictly ex works, according to the Incoterms 2010 EXW regulations. For this reason, the announcement of collection or delivery readiness by us is decisive when establishing whether delivery dates or time frames have been met. The extent of our goods and services is exclusively defined by the contents of the contractual agreement. We are not liable for any further (additional) goods and services other than the goods and services mentioned therein. This condition is also valid for construction packages that we deliver, for the production of contractually obligated items.
 - 5.2. The period of time for delivery begins, without agreements to the contrary, one day after our contractual agreement has been sent, and is extended as applicable in the presence of force majeure: see clause 7. The period of time for delivery is also extended as applicable if our contractual partner does not fulfill his participatory obligations according to contract – in particular, if he does not provide materials as agreed on in a timely manner, or does not meet deadlines given for services that he provides, as long as we are not responsible for this delay.
 - 5.3. We are entitled to make partial deliveries, and these can also be invoiced on an individual basis.
 - 5.4. If it can be determined that we will not be able to provide our goods inside the periods of time given for delivery, we will inform our contractual partner about the reason for this in writing, and, where possible, state the probable new date of delivery for our goods
 - 5.5. Our contractual partner may only withdraw from the contract if we are in a position of default as regards the delivery period or delivery date, and he has not received satisfaction after setting an appropriate further delivery period for us.
6. **Passing of Risk**
 - 6.1. Once we have informed our contractual partner of the readiness for collection or delivery, he must take the contractual items into charge without delay. If he does not, we are entitled, after the expiry of an appropriate time period set by us, to send or store the contractual items as we see fit, the cost and risk being borne by the contractual partner.
 - 6.2. Unless otherwise agreed, we are entitled to choose both the method and the route of transportation.
 - 6.3. Risk passes to our contractual partner on delivery to him or his agents, or to the rail network, hauler or carrier as applicable, or, in the case of warehousing, on commencement of storage, and at the very latest once the goods have left our factory or warehouse in Stralsund. This condition also applies if we arrange the shipping.
7. **Force Majeure**
 - 7.1. Force majeure, industrial action, riot, natural phenomena, official sanctions, failure of deliveries by suppliers without our fault and other unforeseeable, inevitable and severe events render us and our contractual partners free of contractual obligations to the other party, for the duration of the disturbance and to the extent of its effect. This condition also applies if the events stated above occur at a time when the contractual partner so affected is in default – unless he is, willfully or as a result of gross negligence, himself the reason for the default.
8. **Retention of Title**
 - 8.1. We reserve the right of title to contractual items after delivery until all demands made by the business relationship with our contractual partner have been fulfilled.
 - 8.2. Our contractual partner is entitled to dispose of contractual items in the ordinary course of business, insofar as he fulfills his obligations resulting from his business relationship with us in a timely manner. However, where retention of title applies to contractual items, these may be neither pawned nor pledged as security. He is obligated to secure our rights when selling on contractual items on credit.
 - 8.3. The contractual partner in this very moment transfers to us as security all claims and rights arising from the sale – or, where applicable, the usage thereof as granted to the contractual partner – of contractual items for which we are due ownership rights. We herewith accept this act of transfer.
 - 8.4. Processing or adaptation of the contractual items for which retention of title applies is invariably undertaken on our behalf by our contractual partner.
If our contractual items are combined or processed together with other movable objects into a single object, and if this object is considered the principal object, then our contractual partner transfers to us a proportional joint ownership right, insofar as he owns the principal object. Our contractual partner holds our property right or joint property right in safekeeping for us. For the rest, the same applies for the object resulting from processing or combination as for the objects of retention. Within the scope of the resale of the principal, our contractual partner in this very moment transfers to us as security the partial claim against the buyer of the principal entity as it relates to our invoiced amount. We herewith accept this act of transfer.
 - 8.5. Should a third party levy execution on contractual objects for which retention of title applies, or on claims that have been transferred to us, or other securities, our contractual partner must inform us without delay, providing us with any necessary documents for our intervention, as may be required. This condition is also valid for any other impairment concerning our contractual objects.
 - 8.6. If our contractual partner is in breach of duty, in particular when in arrears with payments, we are entitled to withdraw from the contract and to take back contractual objects, after the expiry of an appropriate period of time that has been given to our contractual partner to provide the required service; legal provisions concerning the dispensability of setting a time limit remain thereby unaffected. Our contractual partners are obligated to deliver. We are entitled to withdraw from the contract if an application is made to institute insolvency proceedings against the assets of our contractual partner.

9. **Warranty**
- 9.1. We guarantee the quality of the contractual objects according to the agreed technical terms of delivery. If no additional quality standards are provided for in the framework of this agreement, then we produce goods according to the regulations of the German Shipbuilding and Ocean Industries Association – the production standard of the German shipbuilding industry.
- 9.2. We guarantee in addition the quality of the materials used, insofar as the framework of contractual obligations renders us responsible for providing the material for the production process. We meet the requirements of this obligation of warranty insofar as we provide our contractual partner with the batch certificate concerning the origin of the material, including information about the supplier, and by transferring, at the time of signing of the contract, any warranty claims that may arise against the supplier concerning full discharge of obligation. Our contractual partner herewith accepts this act of transfer.
- 9.3. When we produce goods according to designs, specifications, samples and storage media that give information about the nature of contractual objects, our contractual partner bears the risk of suitability for the designated purpose. This is in particular the case when our contractual partner makes available the material for the production. If it is already clear at the production stage that the material provided is unsuitable, or contains defects, we will inform our contractual partner of this without delay. Any and all disadvantages that we accrue in production or in delayed delivery as a result of this will be charged to our contractual partner.
- 9.4. The time of transfer of risk pursuant to clause 6 is decisive when considering the status of the contractual objects according to the contract.
- 9.5. Technical defects arising from unsuitable or inappropriate usage, defective assembly, combination with other components by our contractual partner or third parties, or defective or careless handling, are excluded from warranty. Warranty is also not given for the consequences arising from inappropriate changes made to the contractual objects, or from changes made without our permission, whether by our contractual partner or by third parties – unless it is the case that the third party is also our agent. This condition is also valid for defects that only nominally lessen the value or utility of the contractual objects.
- 9.6. Warranty claims become time-barred one year after the agreed acceptance of the contractual objects – or on passing of risk, if there is no agreed acceptance. This condition does not apply insofar as longer time periods are compulsory legal requirements, especially for building defects and for contractual objects that are used for buildings according to their normal use, or insofar as defects have been caused either willfully or through gross negligence.
- 9.7. If an acceptance of the contractual objects has been agreed on, our contractual partner is excluded from making a claim for defects, if he could have identified the defect as part of a through acceptance procedure according to the inspection requirements as provided for by § 377 HGB (German Commercial Code).
- 9.8. Our contractual partner must give us the opportunity to check and identify the defect claimed. Our contractual partner must return the contractual object under complaint to us on demand and without delay; transport costs will be paid by us, insofar as the defect claim is justified. If our contractual partner does not meet these requirements, or if he makes changes to the contractual objects already under complaint without our permission, then he loses potential warranty rights.
- 9.9. If the claim for defects made by a contractual partner is justified and raised in the given time period then we will either rectify the contractual object under complaint, or deliver a replacement that is free of defects, as we see fit.
- 9.10. If we do not fulfill the obligations mentioned above, or do not fulfill them according to contract in an appropriate timeframe, our contractual partner is entitled to grant us a final time period in writing, during which we must fulfill our obligations. If this time period expires without his satisfaction, our contractual partner can demand a reduction in price, withdraw from the contract, or arrange for the necessary rectifications to be done, either by himself or by a third party, whereby we bear both the cost and the risk, insofar as we do not justifiably refuse to carry out the rectification. Reimbursement is excluded insofar as the expenditures are increased as a result of the contractual object being moved after our delivery to another location – unless this is in agreement with the normal usage requirements of the contractual object.
- 9.11. Legal rights of recourse against us on our contractual partner's behalf exist only insofar as our contractual partner has not made any agreement with his buyer that exceeds the bounds of the legal right to claim for defects. The extent of legal rights of recourse is determined by clause 9.10. If our contractual partner has agreed a disclaimer of liability with his client according to CDR, then this disclaimer of liability also applies internally between our contractual partner and us – unless our contractual partner is only making claims for himself; in this case, the provisions stated above apply.
10. **Liability and other Rights**
- 10.1. Insofar as nothing hereafter states otherwise, our contractual partner is excluded from making any other or further claims against us. This condition especially applies in cases of rights of indemnity as a result of breaches of duty concerning obligations and unlawful acts. We are therefore not liable for damages that did not occur directly to the contractual objects themselves as delivered. Above all, we are not liable for loss of profits or other pecuniary damages suffered by our contractual partners.
- 10.2. The limitations of liability stated above apply neither in the case of premeditation or gross negligence on the part of our statutory representatives or directorial staff, nor in the case of culpable breach of basic contractual requirements. In the case of culpable breach of basic contractual requirements, and excepting the cases of premeditation or gross negligence on the part of our statutory representatives or directorial staff, we are only liable for damages that are contractually typical and that could reasonably be foreseen.
- 10.3. This limitation of liability is not valid for occasions of injury to life, person, or health, nor when warranted features are lacking, when and insofar as the warranty was intended to safeguard our contractual partner against damages that did not occur directly to the contractual objects themselves as delivered.
- 10.4. Insofar as we are excluded from liability or our liability is limited, this also applies to the personal liability of our staff, our employees, our associates, our statutory representatives and our agents.
11. **Nondisclosure**
- 11.1. Each contractual partner agrees to use all documents and knowledge that he receives as a result of the business relationship only for the purpose of the common objectives pursued, and, with the same care and attention shown to his own documents and knowledge, to not disclose these to third parties when the contractual partner has indicated that they are confidential, or if he has a manifest interest in their nondisclosure. This obligation begins with the initial receipt of the documents and knowledge and ends 2 years after the conclusion of the business relationship.
- 11.2. If our contractual partner violates the nondisclosure agreement as stated above with respect to the special production processes used in our enterprise, then he is liable for a contractual penalty for each offence. We will set this penalty at our discretion, according to the provisions made in § 315 BGB (German Civil Code).
12. **Final Provisions**
- 12.1. No oral collateral agreements beyond this contract have been made. Alterations or amendments to this contract must without exception be made in writing.
- 12.2. For the purposes of contractual agreements, the place of fulfillment is deemed to be the place of business, if not otherwise agreed.
- 12.3. Our registered office is, without exception, the place of jurisdiction for all legal disputes – including processes involving bills of exchange or checks. We are also entitled to start legal proceedings at the registered office of our contractual partner.
- 12.4. Contractual relations with our contractual partner are governed exclusively by the substantive and procedural law of the Federal Republic of Germany. The application of the United Nations Convention on Contracts for the International Sale of Goods from April 11, 1980 is hereby excluded.
- 12.5. Should one or several of the conditions laid out in this contract prove or become void or invalid, the validity of the remaining contractual conditions remains thereby unaffected.