

General Terms and Conditions of Sales and Delivery

1. General

- 1.1. These Terms and Conditions of Sales and Delivery (hereinafter called Terms and Conditions) apply to companies within the meaning of §§ 14, 310 Clause 1 BGB (German Civil Code), legal entities governed by public law and special assets under public law.
- 1.2. These Terms and Conditions apply to all deliveries of Schiffsdieseltechnik Kiel GmbH (hereinafter called **SDT**) relating to the Contract with the Principal.
- 1.3. Any deviating General Terms and Conditions of the Principal shall only apply as far as SDT expressly consented to them in writing. These Terms and Conditions also apply without reservation to contracts with the Principal, if SDT supplies goods and services in full knowledge of the Principal's Terms and Conditions, which conflict with or differ from the present terms. In this case, a delivery of goods by SDT does not represent the explicit consent to the Principal's General Terms and Conditions.

2. Offers, Conclusion of a Contract, Right of Withdrawal

- 2.1. All offers by SDT are non-binding. These concern non-binding invitations to the Principal to provide a binding offer on his part by placing an order with SDT.
- 2.2. SDT may accept the Principal's offer within two weeks upon receipt. SDT accepts the order by sending an order confirmation to the Principal by post, by telefax or by email or by fulfilling the Principal's order.
- 2.3. Should SDT be prevented to provide the Principal with the contractually agreed services due to the incorrect and/or late delivery by his suppliers, SDT has the right to withdraw from the contract, provided such a hindrance of performance is not the responsibility of SDT. The same applies to cases of unforeseeable breakdowns, for example due to Force Majeure, strike, lockouts or unavoidable shortage of raw materials. In the event of such a hindrance of performance, SDT will inform the Principal without delay. If in this case, SDT wants to withdraw from the contract, SDT will immediately exercise its right of withdrawal. The Principal will be immediately reimbursed with any payments already made.
- 2.4. In case the Customer wants to exercise a right of withdrawal, which has been granted by SDT in a separate contract, the Customer is obliged to pay for any services rendered up to this point, even if they concern only partial services. The Customer is also obliged to pay for all materials, which SDT has already purchased; these will be handed over to him after payment has been received. In case of Sentence 1, SDT will issue an invoice in accordance with the regulation of § 649 BGB (Civil Code). The above named legal consequences do not apply to the Customer's legal right of withdrawal.
- 2.5. SDT reserves the property rights and copyright to all quotations, drawings, samples and other information, including in electronic form. The documents and any information contained therein may not be made accessible to third parties; if requested or if the order has not been placed they have to be returned to SDT without delay and all copies have to be destroyed.

3. Dates of Delivery and Delivery Period, Force Majeure

- 3.1. Dates of delivery and delivery periods result from the contractual agreements. Hence, they are approximate values. The stated delivery periods are calculated following the conclusion of the Contract. Ten days after exceeding the non-binding date of delivery, the Principal may ask SDT in writing, by telefax or by email to carry out the delivery within a reasonable period; SDT will be in default upon receipt of the request.
- 3.2. If the non-compliance of delivery times is the result of Force Majeure, such as mobilisation, war, riots, or similar events, which are not the responsibility of SDT, such as strike or lockout, the delivery period will be extended by the times during which the above named event or its impact continued.
- 3.3. Partial deliveries are admissible, insofar as they are reasonable for the Principal. Any additional cost incurred will be borne by SDT.

4. Transfer of Risk, Acceptance

- 4.1. Transport, transfer of risk and acceptance are subject to EXW Incoterms® 2010 at the plant of SDT.

5. Installation and Assembly by SDT

- 5.1. Any installation and/or assembly of the delivery item at SDT's installation site, will be subject to a separate agreement.
- 5.2. In this case, the separate Installation Terms and Conditions of SDT will also apply.

6. Retention of title

- 6.1. SDT retains the title to the delivery item until the Principal has fulfilled all the claims due to SDT resulting from the business relation. If a running invoice has been agreed, the property subject to retained title to delivery item, will be considered as security for the outstanding balance of SDT.
- 6.2. During the duration of the retention of title, the Principal has to insure the delivery item against damage and loss at his own expense. The insurance contract has to state that SDT is entitled to the rights from the insurance contract. The insurance policy as well as the payment of the insurance premiums have to be proven to SDT upon request.
- 6.3. The Principal is permitted to process or convert the delivery item (hereinafter called **Processing**). Processing will be carried out for SDT; however, if the value of the delivery item belonging to SDT is lower than the value of the goods not belonging to SDT and/or processing, SDT will obtain co-ownership of the new goods in proportion of the value (gross invoice value) of the processed delivery item to the value of the other goods to be processed and/or the processing at the time of processing. As far as according to the above said, SDT does not obtain any ownership of the new goods, SDT and the Principal agree that the Principal will grant SDT co-ownership of the new goods in proportion to the value (gross invoice value) of the delivery item belonging to SDT of the other goods having been processed at the time of processing. The sentence above applies accordingly in case of the inseparable combination or the connection of the delivery item with goods not belonging to SDT. If SDT obtains ownership or co-ownership of the new goods, the Principal will hold it for SDT with the diligence of a prudent businessman.
- 6.4. The Principal may resell the delivery item and the new goods within the scope of a proper course of business. For the purpose of security, the Principal already at this point assigns its claims from a resale of the delivery item or the new goods with all ancillary rights to SDT. The assignment includes any outstanding balances. SDT hereby accepts this assignment. However, the assignment only applies to the amount, which corresponds to the price of the delivery item invoiced by SDT. The settlement of the share of the claim assigned to SDT must be given priority.
- 6.5. Until cancelled, the Principal is entitled to collect all receivables assigned to SDT. The Principal will immediately forward all payments made relating to the receivables assigned up to the amount of the secured claim to SDT. In case of justified interests, in particular in respect of default, cessation of payment, opening of insolvency proceedings, protest of a bill of exchange or justified indication of the Principal's indebtedness or imminent insolvency, SDT is entitled to withdraw the Principal's collection authority. Apart from that, SDT may, following the previous threat subject to complying with a reasonable period, disclose the security assignment, utilize the receivables assigned and request the disclosure of the security assignment by the Principal towards its customers. If a justified interest exists, the Principal is obliged to provide SDT with all information required to assert the latter's rights against the customer and to submit all necessary documents.
- 6.6. In the event of any breaches of contract by the Principal, in particular in case of default, SDT is entitled, without setting a deadline, to request the surrender of the delivery item and of the new goods respectively and/or – if necessary after a deadline has been set – to withdraw from the contract; the

customer is obliged to surrender. The request to surrender the delivery items/the new goods is not equivalent to a rescission notice by SDT, unless it has been explicitly declared by SDT. SDT is entitled to enter the Principal's business premises for this purpose.

- 6.7. During the existence of the retention of title, the Principal is not permitted to pledge or transfer the delivery items or new goods (co-)owned by SDT as a guarantee. The Customer is obliged to inform SDT immediately of any seizure, confiscation or other disposal or intervention by third parties.

7. Prices, Terms of Payment

- 7.1. All prices apply ex works. Packaging, freight and installation as well as any legal value added tax will have to be paid separately.
- 7.2. All payments have to be made without any deductions to the specified bank account of SDT. Any possible agreed acceptance of cheques and bills of exchange will be made on account of performance. Cheque and exchange fees and other costs, which result from their redemption, as well as costs due to transfer in other currencies than the Euro, will be borne by the Principal.
- 7.3. The Principal may only set off any claims by SDT if the Principal's counterclaim is uncontested, has been recognised by declaratory judgement or accepted by SDT.
- 7.4. The Principal may only assert a right of retention, if it is based on claims from the same contractual relationship.

8. Warranty Claims

- 8.1. In case of defects, the legal regulations, however subject to the following provisions, apply to the Principal's warranty claims.
- 8.2. The Principal may only assert warranty claims on the condition that it properly fulfilled its obligations with respect to the inspection and making of complaints about defects under §377 HGB (German Commercial Code) towards SDT.
- 8.3. As far as SDT is obliged to provide subsequent performance towards the Principal, SDT is entitled, at its own choice, to provide subsequent performance in form of removal of defects or of delivering a new defect free item.
- 8.4. The number of attempts of subsequent improvement to be accepted by the Principal in case of defect is governed by the circumstances of the individual case, taking good faith into consideration. Only after the number of attempts of subsequent improvement has been unsuccessful, the subsequent improvement, deviating from § 440 BGB (Civil Code) is deemed to have failed.
- 8.5. In case of warranty cases, which occur and are remedied abroad, SDT only assumes the cost up to the maximum amount, which would have been occurred if the remedy of defects had been carried out within domestic territory. Any costs exceeding this amount are borne by the Principal.
- 8.6. The warranty period is 12 months.
- 8.7. Warranty claims do not refer to normal wear and parts, which due to their nature or type of their usage are subject to wear and tear or premature wear; they also do not apply to damage due to unsuitable or improper storage, treatment or usage, excessive use, unsuitable operating materials, poor construction work or foundations, unsuitable subgrade, chemical, electro-chemical or electrical influences and other circumstances after the transfer of risk, which occurred without any circumstances SDT would be responsible for.
- 8.8. Warranty claims are excluded as far as
- 8.8.1. the installation and commissioning of the delivery item by the Principal has not been carried out in accordance with the instructions of SDT or if it had been carried out improperly otherwise,
- 8.8.2. the Principal has ignored the provisions of SDT concerning treatment, maintenance and inspection of the delivery item,

- 8.8.3. the Principal or third parties instructed by it has carried out improper repair works or changes to the delivery item without the approval of SDT,
- 8.8.4. spare parts have been fitted, which were not supplied by SDT or which were fitted without the approval of SDT,
- 8.8.5. the defect is based on materials, parts or a construction, supplied or specified by the Principal.

9. Liability Limitation

- 9.1. In case of intent or gross negligence by SDT or one of its representatives or vicarious agents as well as in respect of culpable damage to life, body or health, SDT will be liable in accordance with legal provisions. Otherwise, SDT is only liable in accordance with the product liability law, because of culpable breach of essential contractual obligations or if SDT has fraudulently concealed the defect or if based on which it has assumed a guarantee for the quality of the delivery item. Essential contractual obligations are those, which are required for fulfilling the Contract. However, claims for damages in respect of the culpable breach of essential contractual obligations is limited to foreseeable damage typical of the contract if not at the same time another of the cases specified in Sentence 1 or Sentence 2 exists.
- 9.2. The regulations in Section 9.1 apply to all claims for damages (in particular for damages in addition to performance and for damages in lieu of performance), irrespective of legal grounds, in particular due to defects, violation of the contractual obligations or liability in tort. They also apply to the claim for the reimbursement of futile expenditure.

10. Applicable Law, Place of Jurisdiction

- 10.1. All contractual relationships between parties shall be exclusively subject to the law of the Federal Republic of Germany.
- 10.2. The sole place of jurisdiction for all disputes arising from or in connection with the contractual relationship of the parties is the seat of SDT.