

General Terms and Conditions of Purchase of HanseNautic GmbH

Edition 12/2009

1. Scope of Application

- 1.1. These General Terms and Conditions of Purchase (in the following: „Purchase Conditions“) apply to all contracts concluded with our suppliers in respect of goods and our other contractors (both referred to in the following as: “Contractors”). They only apply to enterprises within the meaning of § 14 sub-sec. 1 BGB, public law corporations and public law trusts within the meaning of § 310 sub-sec. 1 BGB (in the following: “the Contractor”).
- 1.2. These Purchase Conditions apply exclusively to the persons named in 1.1. We do not accept conflicting, different, supplementary and/or conditions digressing from our Purchase Conditions. Such conditions do not become part of the Contract unless we have specifically agreed to their inclusion.
- 1.3. Our Purchase Conditions also exclusively prevail if we accept without any reservations the Contractor’s supplies and/or services in awareness of the Contractor’s conflicting, different, supplementary and/or conditions digressing from our Purchase Conditions.
- 1.4. By virtue of the conclusion of the first Contract with the Contractor our Purchase Conditions become part of any future business transactions with the Contractor.

2. Orders

- 2.1 Our orders and other declarations are only binding if made or done by us in writing.
- 2.2 The paperwork used by the Contractor in business transactions with us must always indicate: address, order number, delivery address, product code (if available), complete product description and/or object identification, quantities and quantity units, delivery dates as well as the VAT ID number (when importing from EU).

3. Scope of Supply and Services

- 3.1 The Contractor has to supply the supplies under the Contract and/or the services pursuant to the contractual specification, otherwise in a quality as customary in the trade and brand-new at the agreed time at the agreed place of performance. At the time of the supply and/or the services the supplies and/or services must comply with the current state of technology as well as the legal provisions applicable at the place of performance.
- 3.2 The scope of services includes, in particular, the granting of all utilisation rights necessary for the contractually required and intended use of the supplies and/or services by us and/or by third parties. If required for the intended use this includes the supply and use of all technical documentation (including those from sub-contractors) having due regard to patents, supplementary protection certificates, brands or utility models, if any. If the Contractor instructs a sub-contractor he must ensure on the basis of the respective agreements that he is entitled to grant utility rights to us and/or third parties in accordance with the aforementioned terms.
- 3.3 The Contractor has to transfer property title to us in respect of the contractually owed items at the time of delivery, latest, however, at the time of complete payment of the agreed respective price.

4. Prices

- 4.1 All prices are fixed prices exclusive of VAT.
- 4.2 The prices include the consideration for all supplies and/or services to us (including certificates, drawings, evaluations, etc. in German or English language) and are understood to be “free indicated delivery address”.
- 4.3 Additional services, if any, are only payable by us if ordered by us in writing from the Contractor prior to commencement of the delivery and/or the services. If the Contractor determines that additional services not included in the order are necessary for the fulfilment of the Contract he must notify us forthwith and advise on the possibly ensuing costs. We are only obliged to pay for additional services

if their performance was approved by us beforehand in writing.

5. Times for Supply and Services

- 5.1 Agreed times for supply and/or services are binding. Changes of the supply and service times as stipulated in the order are subject to a written agreement.
- 5.2 A supply and/or service prior to the agreed time entitle us to reject the supply and/or service until its due time.
- 5.3 As soon as a transgression of the deadline is recognizable, the Contractor must notify us forthwith, however, latest within 3 days after recognisability, in writing about the reasons and the anticipated length of delay. Notwithstanding the aforesaid the Contractor is delayed with its supply and/or services by transgressing the agreed term and any agreed deadline unless the Contractor can prove that it is not responsible for the transgressing of the term or deadline.

6. Penalties

- 6.1 In the event of delay the Contractor is liable to us for a penalty in the amount of 0.1 % of the respective contract price for each calendar day of the Contractor’s delay, however, not beyond a maximum of 5 % of the contract price.
- 6.2 We reserve the right to claim the penalty due until settlement of the final invoice of the supplies and/or services invoiced to us.
- 6.3 Any of our further rights because of the Contractor’s delay remain unaffected by the aforesaid.

7. Packaging, Shipment, Part-, Over- or Short-deliveries, Force Majeure

- 7.1 Unless expressly agreed otherwise in writing from time to time deliveries of goods have to be made “free the address of receipt stated in the order”. All costs in connection with the transport of the goods to the receiver’s address, in particular shipping and packaging costs, incidental expenditure and other duties are payable by the Contractor.
- 7.2 The following shipping address must be observed at all times:

**HanseNautic GmbH
Herrengraben 31
20459 Hamburg
Germany**

Our opening hours for goods deliveries are: Monday – Friday from 08:30 a.m. to 04:00 p.m. In the event of goods deliveries outside these opening hours, delivery is deemed not to be received by us unless the Contractor has made a separate written agreement with us timely beforehand.

- 7.3 On the day the consignment is dispatched the Contractor has to provide us with a dispatch notice in duplicate indicating address of receipt, delivery date, order number, quantity of shipment and quantity unit plus the exact description of the goods. Each shipment must be accompanied by a neutral packing slip containing the same details as the dispatch notice. If the packing slip is missing we are entitled to refuse receipt of the consignment at the Contractor’s cost or to invoice the Contractor additional costs thereby caused.
- 7.4 We are not obliged to accept part, over- or short-deliveries which were not agreed.
- 7.5 In the event of force majeure and other circumstances for which we are not responsible and which we could not foresee, such as, for example, acts of good or industrial action, we are discharged from our obligation to take delivery of the supply and/or service until the circumstance has been remedied. In this case the Contractor has to store the delivery item at his cost and risk. If the obstruction lasts beyond three months, then we as well as the Contractor are entitled to rescind from the Contract after a reasonable grace period. In this case claims for damages are excluded.
8. **Bearing of Risk**
- 8.1 The Contractor bears all risks of loss or damage to the goods until the time of due delivery pursuant to no. 7.1 above or – in the event of services for work and labour – until the time of acceptance of the relevant item.
- 8.2 Upon our request the Contractor, at its cost, has to take out transport insurance to insure against transport risks.

9. Invoicing, Payment

- 9.1 The Contractor has to submit invoices after performance of the contractually agreed supply and/or service for each order separately in duplicate indicating the order number and order date, delivery date, delivery number and delivery date as well as the VAT ID number. VAT has to shown separately. If these details are missing or incorrect or incomplete we are entitled to reject the invoice. This does not constitute delay in payment.
- 9.2 We pay within 14 days following receipt of the delivery item and invoice with 3 % discount; within 30 days without deduction. A delivery executed prior to the due date has no bearing on the time for payment according to these terms. If time for payment time was determined by an exact date we are only delayed after a written reminder.

10. Assignment, Setting-Off, Retention

- 10.1 The Contractor is not entitled to transfer rights and obligations of the Contracts concluded with us or claims against us partly or fully to third parties without our written approval. § 354 a HGB, however, remains unaffected.
- 10.2 The Contractor can only set-off with undisputed or enforceable claims.
- 10.3 The Contractor is not entitled to retain or to refuse its deliveries and/or services on account of possible counter claims in relation to the relevant order or in relation to other transactions within current business relations.

11. Rights in the Event of Defects

- 11.1 We are entitled to our statutory rights in respect of defects with the proviso that subsequent fulfilment is deemed failed in any event latest within the second futile attempt at rectification.
- 11.2 The Contractor, has to rectify all defects claimed within the applicable prescription period for rights in relation to defects at our option by way of rectification or replacement delivery within a reasonable time so that we do not incur any costs. The costs of rectification or substitute delivery including all incidental costs are borne by the Contractor.
- 11.3 If subsequent fulfilment by the Contractor fails or is not performed within due time or if seriously refused by the Contractor, we are entitled to rectify the defect ourselves or by third parties at the Contractor’s cost provided we granted the Contractor a reasonable time limit for substitute performance beforehand.
- 11.4 We are also entitled to substitute performance in the event of imminent danger in which case we shall notify the Contractor forthwith about the substitute performance.
- 11.5 The statutory rights of rescission, abatement or damages remain unaffected.
- 11.6 Prescription of claims because of damage to property and/or defects of title only commences with the complete, due and defect free delivery of the delivery item in accordance with the Contract or, with the acceptance in the event of services for work and labour or if an acceptance has been agreed otherwise,.
- 11.7 The Contractor waves his right of delayed notification of defect (§§ 377, 381 sub-sec. 2 HGB) in respect of other than apparent defects.
- 11.8 Unless agreed otherwise in writing from time to time, the time limit for claims for defects is 36 months counting from delivery or acceptance, if one was agreed, provided longer time limits do not apply by statute. In the event of consequential losses the statutory commencement of prescription pursuant to § 199 BGB always applies.
- 11.9 The prescription for parts which were replaced or rectified by way of subsequent performance commences anew with the successful completion of the Contractor’s rectification or replacement delivery.
- 11.10 Our recourse claims because of defective goods (§§ 478, 479 BGB) are subject to the statutory provisions, modified, however, as follows: in digression from § 479 sub-sec. 2 BGB our recourse claims against the Contractor prescribe at the earliest three (3) months after we fulfilled the claims of our customer. In the event of defects of title this suspension of the prescription period only ends seven (7) years after delivery of the item to us.
- 11.11 Prescription is suspended during the period of investigating the presence of a defect or the time of rectification of a defect. Suspension only ends after the Contractor proves the item is free from defects and/or the defect is rectified

and this has been declared to us in writing, or if subsequent performance is finally refused in writing.

12. Liability

- 12.1 The Contractor is liable for all losses to us of any kind caused by it pursuant to legal provisions
- 12.2 The Contractor is under an obligation in the course of development and production of the item of supply and/or service to observe the newest state of science and technology applicable from time to time and to comply with all legal provisions applicable at the time of delivery of the supply and/or services and to perform a function- and quality control of the contractual object prior to delivery.
- 12.3 If third parties claim against us for damages because of a defect of the deliveries and/or services supplied by the Contractor, the Contractor must hold us free from the these claims and compensate us for all costs caused thereby in as much as the losses suffered by the third party are due to a defect in the Contractor's supplies and/or deliveries and we notify the Contractor within the time limit agreed between us and the Contractor.
- 12.4 We are liable pursuant to the statutory provisions with the proviso that our liability is only unlimited in the event of intent, gross negligence and simple negligence, if this leads to an injury to life, body and/or health. Otherwise, our liability for simple negligence is excluded unless in the event of a breach of an obligation the observance of which is of a central significance for the achievement of the purpose of the Contract (Kardinalpflicht). In the event of negligent breach of a Kardinalpflicht our liability, however, is limited to the amount of damages which are foreseeable and typical under the Contract.
- 12.5 The limitation of our liability to contractual typical and foreseeable losses also applies in the event of a loss caused by gross negligence by ourselves, our legal representatives or our servants.
- 12.6 In as much as the aforementioned no. 12.4 contains exclusions and/or limitations of liability, these also apply to non-contractual claims.
- 12.7 In as much as our liability is excluded or limited this also applies to the personal liability in respect of damages of our staff, our employees, our co-workers, agents or servants.
- 12.8 Our liability under the Product Liability Act is not affected by the foregoing.

13. Place of Performance, Jurisdiction, Applicable Law

- 13.1 Place of performance for all supplies and/or services to be rendered by the Contractor is the place of supply and/or services indicated by us from time to time.
- 13.2 Exclusive jurisdiction for all disputes in connection with existing contractual relations is in Hamburg provided the Contractor is a merchant within the meaning of the Commercial Code. However, we remain entitled, at our option, to pursue our claims against the Contractor in the courts of the Contractor's general jurisdiction.
- 13.3 All legal relations between us and the Contractor are subject to the laws of the Federal Republic of Germany under the exclusion of the United Nations Convention on Contracts for the International Sales of Goods (CISG) in the edition applicable from time to time.

14. Data Protection

We are entitled to register the personal data of our customers in our electronic data system, to store them and to process and use these data for the purpose of the performance of the respective Contract as well as for our own operational purposes in accordance with legal provisions, unless there is reason to assume the Contractor's legitimate interest in precluding the processing or use of the data prevails.

15. Partial Invalidity, Written Form

- 15.1 If individual terms of these Purchase Conditions are or become partly or completely invalid or inexecutable or if there is a lacuna in these Conditions the validity of the remaining terms and stipulation as well as the validity of the Contract concluded with the Contractor remain unaffected.
- 15.2 The invalid or inexecutable provision is replaced by such provision which in effect comes closest and commercially and legally permissible manner to the invalid or inexecutable

provision. This applies accordingly in the event of a LACUNA. The aforementioned provision of this number 15.2 only applies if the relevant provision is not substituted by force of law pursuant to § 306 sub-sec. 2 BGB.

- 15.3 Amendments and supplements of a Contract concluded with the Contractor are subject to written form. This also applies to the requirement of written form.