

## 1. Scope of Application

- 1.1. The General Terms and Conditions of Purchasing ("TOP") below apply solely and exclusively to entrepreneurs (Section 14 BGB [Civil Code]), legal entities under public law or public-law special funds.
- 1.2. These TOP apply to any and all deliveries and services performed by the business partner and supplier ("Vendor"/ "Supplier") for Möhring Marine Service GmbH ("Möhring Marine Service"). Their application is expressly stipulated as well to any and all future contracts of a similar nature concluded with the Vendor even if Möhring Marine Service does not explicitly refer to them in each specific instance. In particular, they apply to contracts regarding the sale and/or delivery of movable objects, regardless of whether the Vendor manufactures such objects itself or procures them from its own suppliers (Sections 433, 651 BGB). They also apply to contracts for works and services (Sections 631 et seqq. BGB) pursuant to which the supplier mounts or installs an object that has been manufactured or is to be manufactured as a component of a complete work (ship).
- 1.3. Unless otherwise agreed, these TOP apply as most recently revised at the point in time of the submission of an order by Möhring Marine Service.
- 1.4. The Vendor performs its deliveries and services based on these TOP. They apply solely and exclusively. Möhring Marine Service does not accept application of Vendor's deviating, contrary or supplementary general terms and conditions of business and supply, and they do not become a component of the contract unless Möhring Marine Service has expressly agreed to their application in writing. The agreement requirement above applies even if and when Möhring Marine Service, in awareness of the Vendor's general terms and conditions of business, accepts deliveries or performances without reservation. The lack of objection to the Supplier's order confirmation containing contrary declarations of the supplier does not constitute any such agreement.
- 1.5. Separate individual agreements concluded with the Vendor in specific cases take priority over these TOP. A confirmation from Möhring Marine Service in written or text form (e.g., e-mail) is authoritative for any such agreements. No agreements between Möhring Marine Service and the Vendor are binding unless in written or text form. The amendment of this form requirement is possible solely in the form of a mutual agreement concluded in written or text form. Any and all legally relevant declarations and notifications from the Vendor related to the contract with Möhring Marine Service shall be submitted in this form.

## 2. Vendor's Deliveries and Services

- 2.1. Möhring Marine Service submits orders to the Vendor in the form of single orders and contracts. Follow-up orders, addenda and modifications of performance are not effective unless confirmed in written or text form by the Möhring Marine Service project officer. Otherwise, modifications or additions to performance are not binding on Möhring Marine Service.
- 2.2. The Vendor performs the tasks for which it has been contacted independently and on its own responsibility. It carries out its deliveries and services with the care usual in the trade and considers state-of-the-art science and technology in their performance. Any and all deliveries and services to be performed by the Vendor shall be carried out completely in accordance with state-of-the-art technology and shall conform with legal standards, relevant regulations and applicable technical requirements. The Vendor utilizes solely faultless material and assigns professional personnel for performance.
- 2.3. Subject to deviating, express regulation in the specific contract order, the subject of contracts for works and services with Möhring Marine Service is the manufacture, planning, delivery, installation, and operational startup of the equipment in accordance with the specifications as well as the usable documentation.
- 2.4. Usable documentation (drawings, data sheets etc.) in German and English appropriate to the requirements of each case is an expressly agreed component of an order. As a minimum, the documentation designated in the order from Möhring Marine Service shall be provided. The documentation becomes the property of Möhring Marine Service upon the handover of the product or the work; it shall be handed over free of any third-party rights.
- 2.5. Any and all deliveries and services, including any necessary packaging, shall be performed by the Vendor free construction site. The destination for each specific order is simultaneously place of performance for the delivery and any subsequent performance.
- 2.6. The following legal and technical contractual components in the order shown below as well as these TOP are authoritative for the nature and scope of the services and deliveries to be performed:
  - the order/contract letter from Möhring Marine Service, including description of performance
  - the technical specifications
  - the delivery/contract time schedule as stipulated by Möhring Marine Service's end customer (if available)
  - any and all plans, samples, draft documents, notices, standard requirements of Möhring Marine Service that are handed over to the Vendor (if available)
  - the BGB as well as any other pertinent statutory provisions and regulations of German law and the applicable technical regulations
- 2.7. Möhring Marine Service is entitled to order minor changes in the scope of the deliveries and services without incurring additional costs for Möhring Marine Service, provided if that this is reasonable for the Vendor.

## 3. Dates, Contract Periods, Contractual Penalties

- 3.1. The delivery time stipulated by Möhring Marine Service in the order is binding. The Vendor shall perform its deliveries and services on the fixed dates specified by Möhring Marine Service. Any and all dates shown in the order and subsequently constitute fixed dates, even if they have not been specifically designated as such in the specific order.
- 3.2. Möhring Marine Service reserves the right to change the dates within the overall scheduling to a reasonable extent; the Vendor shall describe in detail and in writing the impact on its delivery/service, which the parties will then regulate by mutual agreement.

- 3.3. The Vendor is obligated to notify Möhring Marine Service in written or text form (e.g., by email) without delay if it will presumably be unable to comply with agreed delivery periods or deadlines as set forth in the schedule, specifying the reasons for, and the duration of, the delay. Within at the latest two days of becoming aware of the delay, the Vendor will present a plan of action for making up the lost time that contains any and all discernible effects on the original schedule as well as appropriate measures and actions for making up the lost time. Möhring Marine Service is at liberty to set a reasonable deadline for the Vendor's performance or subsequent performance or to accept the Vendor's proposal of the earliest possible new date. A claim to extension of the performance deadline and/or increase in the compensation, however, arises solely if, and to the extent that, Möhring Marine Service is accountable for the delay.
- 3.4. In the event a date or period is culpably exceeded, the Vendor is automatically in default without further notice. Möhring Marine Service is then entitled to request payment of a contractual penalty in the amount of 1% of the net order value for each and every calendar week or part thereof of the delay (in the aggregate, a maximum 5% of the net order value) without being required to present evidence of damage or loss or disadvantages; this provision is without prejudice to more extensive claims for damage compensation, against which any contractual penalty paid will be offset.
- 3.5. If Vendor does not fulfill its obligation to remedy defects, even if they are determined during the order period, Möhring Marine Service may cancel the order or, without cancelling, remedy the defects itself or cause them to be remedied at Vendor's expense. Above provisions are without prejudice to any other rights of Möhring Marine Service (e.g., reduction of purchase price, damage compensation).

#### **4. Performance and Delivery, Acceptance, Passing of Risk**

- 4.1. The Vendor is not entitled to subcontract third parties to carry out the owed deliveries and services without the prior consent of Möhring Marine Service and bears the procurement risk for its performance.
- 4.2. For contracts for works and services: Möhring Marine Service will assign and authorize an employee to carry out the acceptance inspection on the agreed date at the location and position of the construction site/ship and, provided that the work is ready for acceptance, declare its acceptance. Möhring Marine Service is not obligated at any time to accept partial performance. Möhring Marine Service will immediately report any defects determined during the acceptance inspection, and the Vendor will remedy any such defects immediately or find other solutions in mutual agreement with Möhring Marine Service. The acceptance inspection will be repeated at the Vendor's expense after remedy of the defects.
- 4.3. For contracts for works and services: If the acceptance is declared subject to reservations, the aberrations must be recorded in the acceptance declaration, and Möhring Marine Service expressly reserves the rights pursuant to Section 634 BGB because of the defect at the time of acceptance. The Vendor covenants to remedy the defects within a reasonable period set by Möhring Marine Service; any parts that have not previously been accepted will be accepted separately.
- 4.4. Subject to other agreements, the acceptance of the work in the case of contracts for works and services is decisive for the passing of risk (risk of accidental loss or accidental worsening); in the case of purchase contracts and contracts for labor and materials, risk passes upon handover of the object at the place of performance.

#### **5. Compensation, Prices**

- 5.1. The price shown in the order is binding. Unless otherwise agreed, prices are lump sum fixed prices. Any and all ancillary costs and out-of-pocket expenses are included in the agreed lump-sum price. Other expenses will not be compensated. The fixed price covers any and all elements required for the orderly, complete and on-time performance of the deliveries and services as well as all costs incurred for the fulfilment of the Vendor's contractual obligations. Later increases in material prices or other cost increases do not lead to a change in the agreed compensation.
- 5.2. The Vendor issues the final invoice correctly and, in the form, acceptable under tax laws, itemizing the value-added tax, immediately after the acceptance. Any partial and advance payments that have been made will be deducted from the total. The partial and advance payments shall be itemized in the final invoice. The final payment of the final invoice will be affected after complete fulfilment of all works and services and after acknowledgement and final acceptance of the works and services in accordance with the pertinent contractual agreements.
- 5.3. Work done on an hourly basis will be compensated solely if it has been expressly requested before its commencement by Möhring Marine Service and the relevant hourly records are presented to Möhring Marine Service by the Vendor on the following day of performance at the latest. If it is determined that the activities charged at an hourly rate have been taken into consideration in the lump-sum fixed price or constitute ancillary services or work, the work done on an hourly basis will not be compensated separately.
- 5.4. Möhring Marine Service is entitled to retain a reasonable number of due payments as long as it is entitled to claims against the Vendor because of incomplete or defective deliveries. It is entitled to offset and retention rights and the plea of non-fulfilment of the contract as provided by legal statutes.

#### **6. Vendor's Cooperation Obligations**

- 6.1. For contracts for works and services: The Supplier obtains any information required for execution of the contract on its own initiative from the competent project officer at Möhring Marine Service or, after prior consultation with the latter, also from other parties involved in the realization of the project. The Vendor coordinates on its own initiative the performance of its order with the other involved parties so that other involved companies are not hindered in their work.
- 6.2. For contracts for works and services: The Supplier must complete in good time any and all consultations and instructions regarding the technical workflow and its scheduling.

- 6.3. The Vendor is obligated to communicate without delay any and all circumstances or obstacles that adversely impact the on-time performance of its deliveries or services.

## **7. Warranty**

- 7.1. The Vendor warrants its deliveries and services in accordance with the provisions of the BGB; in particular, it guarantees that the purchased goods or the work or the deliveries and services it has performed are free from material and legal defects, that they are in conformity with the order and the specifications of Möhring Marine Service, that they have the contractually agreed properties and that they do not have any flaws that would annul the work or its suitability for its usual or defined use. Moreover, it warrants the operational readiness of any software that has been developed. The above provision applies as well to any and all services and deliveries performed pursuant to modifications and additions that have been agreed in writing.
- 7.2. Unless otherwise stipulated in these TOP, statutory provisions apply with respect to rights in the event of material and legal defects (including incorrect and shortfall deliveries as well as improper installation or inadequate instructions for installation, operation, or utilization) and to any other breach of obligation on the part of the Vendor. Subsequent performance includes the removal of a defective product and reinstallation as well to the extent the product is installed in a different object in accordance with its intended use.
- 7.3. The Vendor shall, at its expense, remedy any defects occurring during the warranty period that are a consequence of its performance in breach of the contract if Möhring Marine Service requests the remedy before the expiration of the warranty period. If the Vendor does not fulfil its obligation to subsequent performance within a reasonable period set by Möhring Marine Service, Möhring Marine Service may remedy the defect itself and request reimbursement for the required expenses or an adequate advance payment from the Vendor. If the Vendor's subsequent performance fails or is unreasonable for Möhring Marine Service (e.g., because of particular urgency in the interest of the end customer, endangerment of operating safety or the imminent occurrence of excessive loss or damage), the setting of a period is not required. Möhring Marine Service will notify the Vendor immediately of any such circumstances.
- 7.4. If in specific cases and pursuant to express agreement of the parties there are partial acceptances, the warranty period for these partial acceptances will be extended and will not expire until the end of the warranty period for the partial service or delivery last accepted by Möhring Marine Service so that the warranty expires for the delivery or service as a whole.
- 7.5. The warranty period always corresponds to the principal order of Möhring Marine Service and commences upon handover in the case of the sale of movable objects and upon acceptance in the case of creation of a work. As a minimum, the period is 24 months from handover of movable objects or from acceptance of the work that is created.

## **8. Liability**

- 8.1. The Vendor is liable within the scope of statutory regulations for its own fault and for the fault of its vicarious agents, employees, and subcontractors. In the event of culpable failure to comply with contractual deadlines, the Vendor is liable for any and all damage and loss and disadvantages suffered by the customer. If the Vendor is accountable for product damage or loss within the scope of product or producer liability, it shall indemnify and hold harmless Möhring Marine Service from and against any and all third-party claims to the extent that the cause is located within its area of control or organization, and it is itself liable in its relationship to other parties.

## **9. Termination**

- 9.1. The termination of the contract is based on legal provisions. Good cause within the sense of Section 648a BGB includes in particular the legal opening of bankruptcy proceedings against the Vendor's assets or the dismissal of the opening of bankruptcy proceedings against the Vendor's assets because of a lack of assets. There is also good cause if the Vendor is in culpable breach of a major provision of these Terms and Conditions of Purchasing.

## **10. Title of Ownership and Utilization Rights**

- 10.1. Any and all objects, parts, drawings, calculations and programs, data, data carriers or databases ("Delivery Items") made available by Möhring Marine Service as well as any and all text and image material handed over by Möhring Marine Service remain the property of Möhring Marine Service, and Möhring Marine Service retains any and all related copyrights and utilization rights. The Vendor is at all times obligated to surrender immediately any such Delivery Items and text and image materials upon Möhring Marine Service's request; it is not entitled to assert any retention rights to any such items and materials.
- 10.2. The work results, programs, program parts, object codes, source codes and documentation as well as any and all temporal, local, spatially unlimited, exclusive utilization rights to the Vendor/Supplier's work results from the performance of a contract for works and services accrue to Möhring Marine Service and are compensated by the agreed lump-sum price. The rights are transferrable and include the authorization as well to grant simple utilization rights to third parties. The utilization rights include future, new forms of utilization, including the redesign of a software program.

## **11. Secrecy, Confidentiality**

- 11.1. The Vendor will maintain secrecy and confidentiality regarding any and all information that becomes known to it in the course of performing the contract as well as any and all operating and business secrets of Möhring Marine Service and any and all information from the collaboration with Möhring Marine Service's end customers. This provision covers any and all information of technical, commercial or organizational nature that Möhring Marine Service makes available to the Vendor, including files, drawings, know-how, computer programs, analyses, calculations, business and marketing strategies, information about pricing, sales and profits, customer data, cooperation partners, terms and conditions of procurement and purchasing, other financial and business data and any and all information recognizable as business or operating secrets. The Vendor will utilize any such information solely for the purpose of the contract and will not exploit or utilize it for other purposes or make it available to unauthorized third parties without the prior written consent of Möhring Marine Service. The obligation to treat information confidentially does not cover any information which was verifiably known to the Vendor before its disclosure to the Vendor or that was already in the public domain at this point in time or that entered the public domain without any breach of this confidentiality obligation.

- 11.2. The obligation pursuant to 11.1 shall survive the conclusion of the contract. Information and business and operating secrets of Möhring Marine Service or end customers may not be disclosed to third parties.
- 11.3. In the event of the breach of the obligation to desist from disclosure of operating or business secrets, including the disclosure by vicarious agents as set forth in 11.1, and for each and every separate incident of a breach of the obligation to desist from disclosure, the Vendor covenants to pay a reasonable contractual penalty set in accordance with reasonable judgement by Möhring Marine Service of no less than €25,000 per breach, unless the Vendor can prove that the suffered loss or damage was lower. The payment of the contractual penalty does not exclude the assertion of a claim to cease and desist or of a more extensive claim for damages as indicated by presentation of relevant proof, whereby any contractual penalty that has been paid will be offset against damages.

## **12. Data Protection**

- 12.1. The Personal Data ("Data") provided by the Supplier to Möhring Marine Service will be electronically processed and used to the extent necessary to establish, execute or terminate the Agreement and maintain the relationship. The supplier expressly consents to the collection, processing and use of this data. Möhring Marine Service complies with the provisions of the BDSG and the DSGVO when collecting, processing, and using the data. By sending a message to [info@moehringms.com](mailto:info@moehringms.com) or otherwise contacting us, the supplier has at any time the opportunity to retrieve his stored data, request information about them, have them modified or deleted, or the use or processing of his data for advertising purposes, market -or opinion polling. Supplier's data will not be transferred to unauthorized third parties.

## **13. Customer Protection**

- 13.1. The Vendor accepts that any and all negotiations, consultations and other correspondence with the Möhring Marine Service customer ("Customer") will be handled solely and exclusively by Möhring Marine Service. The Vendor will support Möhring Marine Service in these actions in that it will notify Möhring Marine Service directly of any reservations about claims, instructions or requirements from the Customer and not communicate them to the Customer. The Vendor will not itself contact the Customer, either directly or indirectly, without the agreement of Möhring Marine Service.
- 13.2. The Vendor covenants, for the full term of the contract, to desist from accepting directly from the Customer any orders or supplementary orders related to the project that is the subject of the contract that correspond to the commercial portfolio of Möhring Marine Service and to desist from contracting the Customer for this purpose in any manner, whether through its representatives or vicarious agents or any other third party, unless Möhring Marine Service has given its express agreement; it will not refuse any such agreement without reasonable cause.
- 13.3. In the event of a breach of the obligation pursuant to 13.2, the Vendor will pay a contractual penalty of a reasonable amount set by the reasonable judgement of Möhring Marine Service, but no less than €25,000. The above provision is without prejudice to the Vendor's right to present evidence of lower damage or loss and to the assertion by Möhring Marine Service of damage or loss more than the asserted contractual penalty. The payment of the contractual penalty does not exclude the assertion of a claim to cease and desist by Möhring Marine Service.

## **14. Assignment Prohibition**

- 14.1. The Vendor may not assign its rights and obligations pursuant to the contractual relationship with Möhring Marine Service, either in whole or in part, to third parties without the prior express written consent of Möhring Marine Service; consent will not be refused without good cause.

## **15. Proper Law and Venue, Place of Performance, Notes**

- 15.1. The contractual and legal relationships of the parties in their entirety and any and all legal disputes related to this contract are governed solely and exclusively by German law, excluding application of international uniform law, in particular, but not limited to, UN conventions on the sale of goods.
- 15.2. Venue is Bremerhaven. The courts of the venue have sole and exclusive international and local jurisdiction.
- 15.3. The place of performance, including that for warranty work, is determined by the berth of the ship.
- 15.4. Should any provisions of these Terms and Conditions of Purchasing be invalid, the validity of the remaining provisions shall not be affected. In this case, the parties covenant to replace the invalid provision by a valid provision which comes closest to the commercial intent of the invalid provision.