

General Terms and Conditions of Business

§ 1

Applicability of the Terms and Conditions

1. The General Terms and Conditions of Business of MOE Marine & Offshore Equipment GmbH apply exclusively in business dealings with other companies.
2. Supplies, services and quotations by MOE Marine & Offshore Equipment GmbH are provided solely on the basis of these General Terms and Conditions of Business. This also applies to future business relations, even if they are not expressly agreed again. These terms and conditions are deemed to have been accepted at the latest on receipt of the goods or service. Any statement to the contrary by the Purchaser making reference to their own Terms and Conditions of Business or Purchase is hereby countered.
3. All agreements made between MOE Marine & Offshore Equipment GmbH and the Purchaser regarding execution of this contract must be set out in writing.

§ 2

Performance specifications

The properties specified in the performance specifications are the comprehensive and definitive description of the properties of the products to be supplied. In particular, public statements by the vendor, the manufacturer, their agents or third parties (e.g. a publicly available description of properties of a product) shall not be deemed to augment or modify the descriptions in the performance specifications of the products to be supplied.

§ 3

Quotations and conclusion of contract

1. Quotations by MOE Marine & Offshore Equipment GmbH are non-binding. Declarations of acceptance and orders are only legally binding if confirmed in writing or by fax by MOE Marine & Offshore Equipment GmbH.
2. Drawings, illustrations, dimensions, weights and other specification data are only binding if expressly agreed in writing.
3. Employees of MOE Marine & Offshore Equipment GmbH are not entitled to make verbal collateral agreements or to give verbal assurances beyond the provisions of the written contract.

§ 4

Prices

Provided nothing is agreed to the contrary, MOE Marine & Offshore Equipment GmbH shall be bound by the prices contained in its quotations for 30 days from the date of the quotation. Otherwise, the definitive price basis is the price specified in the order confirmation by MOE Marine & Offshore Equipment GmbH plus VAT at the statutory rate. Any additional services or supplies shall be invoiced separately.

§ 5

Delivery and performance deadline

1. Delivery deadlines or periods, which may be binding or non-binding, must be agreed in writing.
2. Delays in deliveries and performance due to force majeure or events beyond the control of MOE Marine & Offshore Equipment GmbH that substantially impede delivery or make it impossible on a more than temporary basis, including in particular strikes, lockouts, announcements from the authorities, etc., including those affecting the suppliers of MOE Marine & Offshore Equipment GmbH or their subcontractors, shall not render MOE Marine & Offshore Equipment GmbH liable even in the case of binding delivery periods and deadlines. They shall entitle MOE Marine & Offshore Equipment GmbH to delay delivery or performance of the service for the duration of the impediment and reasonable start-up time, or to withdraw from the contract, wholly or in part, in respect of the part that has not been fulfilled.
3. If the impediment lasts for longer than three months, the Purchaser is entitled to set a further reasonable deadline, and if this is also not met, to withdraw from the contract with regard to the part that has not been fulfilled. If the delivery period is extended, or if MOE Marine & Offshore Equipment GmbH is released from its obligations, this shall not entitle the Purchaser to claim compensation for damages in this regard. MOE Marine & Offshore Equipment GmbH may only rely on the circumstances specified above provided they inform the Purchaser immediately.
4. If MOE Marine & Offshore Equipment GmbH is responsible for failing to comply with bindingly agreed delivery periods and deadlines, or is in delay, the Purchaser shall be entitled to claim compensation for the damages caused by delay amounting to 1/2% for each complete week of the delay, subject to a maximum total of up to 5% of the invoice value of the deliveries and services affected by the delay. Any further claims shall not be accepted, unless the delay is due to at least gross negligence on the part of MOE Marine & Offshore Equipment GmbH. This limitation of liability shall not apply to liability for loss of life, bodily injury or damage to health.
5. MOE Marine & Offshore Equipment GmbH is at all times entitled to make partial deliveries or provide partial performance, unless the partial delivery or performance is not in the interests of the Purchaser.
6. If the Purchaser is in default of acceptance, MOE Marine & Offshore Equipment GmbH shall be entitled to claim compensation for any losses arising. Once in default of acceptance, the risk of any deterioration or accidental damage shall be transferred to the Purchaser.

§ 6

Transfer of risk

The risks are transferred to the Purchaser as soon as the consignment has been handed over to those responsible for transportation, or has left the MOE Marine & Offshore Equipment GmbH depot for dispatch. If dispatch is delayed at the request of the Purchaser, the risk is transferred to the Purchaser on notification of readiness for dispatch.

§ 7

Purchaser's rights in respect of defects

1. The Purchaser is entitled to make claims in respect of defects within a period of one year from delivery.
2. There shall be no claims in respect of defects in cases of a minor divergence only from the agreed quality or a minor impairment of the usefulness.
3. The Purchaser must notify MOE Marine & Offshore Equipment GmbH in writing of any defects, immediately but no later than one week after arrival of the consignment. Defects that cannot be detected even with careful inspection within this period must be notified in writing to MOE Marine & Offshore Equipment GmbH immediately on discovery.
4. In the case of notification by the Purchaser of a defect to the products, MOE Marine & Offshore Equipment GmbH shall be entitled to choose between rectification of the defect or supply of a new product. In the case of repair, MOE Marine & Offshore Equipment GmbH shall be entitled to two attempts. If rectification fails after the second attempt, the Purchaser shall be entitled to withdraw from the contract, claim compensation for damages in place of performance or resort to self-remedy. This is without prejudice to the legal provisions relating to dispensability of the notice period.

§ 8

Retention of title

1. Until fulfilment of all claims including payment of all current account balances owing to MOE Marine & Offshore Equipment GmbH by the Purchaser on any legal grounds whatsoever, now or in future, MOE Marine & Offshore Equipment GmbH shall be granted the following securities, to be released if they elect, on request, as soon as their value regularly exceeds the claim by more than 20%.
2. The goods shall remain the property of MOE Marine & Offshore Equipment GmbH. Any processing or alteration shall in all cases be on behalf of MOE Marine & Offshore Equipment GmbH, but without giving rise to obligation for them. If the (co-)ownership of MOE Marine & Offshore Equipment GmbH is extinguished by combination of the goods with others, it is hereby agreed that the Purchaser's (co-)ownership of a unified item shall be assigned to MOE Marine & Offshore Equipment GmbH in proportion to the latter's share. The Purchaser shall store the (co-)owned goods of the MOE Marine & Offshore Equipment GmbH free of charge. Goods that are co-owned by MOE Marine & Offshore Equipment GmbH are hereinafter referred to as the Goods subject to retention of title.
3. The Purchaser shall have the right to re-sell the Goods subject to retention of title in the ordinary course of business as long as the Purchaser is not in default. Pledging or transfer of the goods subject to retention of title as security is not permitted. All receivables resulting from the re-sale or any other legal cause (insurance, liability in tort) relating to the goods subject to retention of title (including all current account balances) shall herewith be fully assigned to MOE Marine & Offshore Equipment GmbH by the Purchaser as security. MOE Marine & Offshore Equipment GmbH revocably entitles the Purchaser to call in the assigned receivables in their own name on behalf of MOE Marine & Offshore Equipment GmbH. This power of collection can only be revoked if the buyer does not meet his payment obligations.
4. If third parties gain access to the goods subject to retention of title, in particular in the case of seizure, the Purchaser shall inform said third party of the ownership of MOE Marine & Offshore Equipment GmbH and immediately inform the latter, so that they may assert their ownership rights. If the third party is not in a position to reimburse the court and other costs incurred by MOE Marine & Offshore Equipment GmbH in this regard, the Purchaser shall be liable.
5. In the case of breach of contract by the Purchaser, in particular payment arrears, MOE Marine & Offshore Equipment GmbH shall be entitled to withdraw from the contract and demand surrender of the goods subject to retention of title.

§ 9

Payment

1. The purchase price is due in full on delivery and/or receipt. The Purchaser shall be in arrears, without any further notification from MOE Marine & Offshore Equipment GmbH, 14 days after the due date.
2. MOE Marine & Offshore Equipment GmbH is entitled to allocation of payments by the Purchaser to older debts first, regardless of any statements to the contrary by the Purchaser, and shall inform the Purchaser of the nature of any offset. If costs and interest have arisen, MOE Marine & Offshore Equipment GmbH shall be entitled to allocate the payment first to costs, then to interest and finally to the main balance.
3. Payments shall not be deemed to have been made until MOE Marine & Offshore Equipment GmbH is able to draw on the amount. In the case of cheques, payment shall not be deemed to have been made until the cheque has cleared.
4. If MOE Marine & Offshore Equipment GmbH becomes aware of any circumstances that call the creditworthiness of the Purchaser into question, MOE Marine & Offshore Equipment GmbH shall be entitled to declare the whole of the amounts owing as due, and to demand advance payments or securities.
5. The Purchaser shall only be entitled to offset, retention or reduction in payment, even if counterclaims or claims in respect of defects are made, provided such counterclaims have been legally determined or are not disputed. However, the Purchaser is also entitled to exercise retention in the case of counterclaims arising from the same contractual relationship.

§ 10

Liability

1. MOE Marine & Offshore Equipment GmbH shall be liable in cases of malicious intent or gross negligence by itself or one of its agents or representatives, in accordance with the legal provisions. Moreover, MOE Marine & Offshore Equipment GmbH is only liable to the extent provided by the product liability legislation for loss of life, bodily injury or damage to health, or for culpable breach of essential contractual obligations. However, a claim for damages in the event of a breach of essential contractual obligations shall be limited to foreseeable damages typical for this type of contract. In cases of gross negligence, the liability of MOE Marine & Offshore Equipment GmbH shall also be limited to foreseeable damages typical for this type of contract, provided none of the exceptions specified in the second sentence of this clause apply.
2. However, liability for damages caused by the goods supplied to the Purchaser's legal property, e.g. damage to other items, is fully excluded. This shall not apply in cases of malicious intent or gross negligence or to liability for loss of life, bodily injury or damage to health.
3. The provisions of clauses 1 and 2 above shall extend to compensation for damages in addition to performance and compensation for damages in place of performance, on any legal grounds whatsoever, in particular in cases of defects, breaches of contractual obligations or liability in tort. They shall also apply to claims for compensation for wasted expenditure. However, liability for delays is in accordance with Clause 5.
4. The foregoing provisions shall not constitute a reversal of the burden of proof to the disadvantage of the Purchaser.
5. Any exemption of MOE Marine & Offshore Equipment GmbH from liability, or limitation of liability, applies similarly to MOE Marine & Offshore Equipment GmbH's employees, staff, representatives and agents.

§ 11

Limitation of liability in the case of inability to deliver

MOE Marine & Offshore Equipment GmbH shall be liable in the case of inability to deliver in cases of malicious intent or gross negligence by itself or one of its agents or representatives, in accordance with the legal provisions. In cases of gross negligence, the liability of MOE Marine & Offshore Equipment GmbH shall, however, be limited to foreseeable damages typical for this type of contract, provided none of the exceptions specified in the fifth sentence of this clause apply. Moreover, the liability of MOE Marine & Offshore Equipment GmbH due to inability to deliver shall be limited to compensation for damages and reimbursement of wasted expenditure amounting in total to 10% of the value of the goods purchased. The Purchaser shall not be entitled to any further claims in respect of inability to deliver. This limitation shall not apply in cases of malicious intent or gross negligence or to liability for loss of life, bodily injury or damage to health. This is without prejudice to the Purchaser's right to withdraw from the contract.

§ 12

Applicable law, place of jurisdiction, partial invalidity

1. These business relations, and all legal relations, between MOE Marine & Offshore Equipment GmbH and the Purchaser shall be governed by the law of Federal Republic of Germany. The provisions of the UN Convention on the International Sale of Goods shall be excluded.
2. If the Purchaser is registered as a merchant, the exclusive place of jurisdiction for all disputes arising from this contractual relationship shall be the location of the headquarters of MOE Marine & Offshore Equipment GmbH.
3. Should one provision of these terms and conditions of business or a provision of any other agreement be or become invalid, this shall not affect the validity of any other provisions or agreements.
4. If there is any discrepancy in the interpretation of the English or German versions of these General Terms and Conditions of Business, the German version prevails.