

**GENERAL TERMS AND CONDITIONS**

of

**Formstaal GmbH & Co. KG****(Date: 1 January 2013)****1. Scope**

- 1.1. Our General Terms and Conditions shall apply to entrepreneurs, public law entities and special funds under public law.
- 1.2. We hereby object to our customers' General Terms and Conditions if they deviate from our General Terms and Conditions unless we expressly accept them in writing. Our deliveries and services shall be exclusively based on the following regulations.

**2. Offers**

- 2.1. Our offers shall always be deemed to be a request for an order by the customer and shall be non-binding until we issue an order confirmation.
- 2.2. Any leaflets, catalogues, drawings and descriptions of our services provided to the customer for advertising purposes are subject to constant changes and are thus without engagement unless we confirm individual data as binding upon request. Any drawings or technical documents, either in hardcopy or in electronic form, provided by us or by the customer in connection with the contract or its negotiation shall always remain the property of the contractual party providing such items.
- 2.3. Should no contract be concluded and/or should the negotiations be broken off, the documents provided in hardcopy or in electronic form and any copies thereof must be returned to the contractual party that is the owner of such documents or data carriers immediately, however, one month after the end of the negotiations at the latest.

**3. Confirmations**

- 3.1. Oral agreements made between us and the customer must be immediately and individually confirmed in writing.
- 3.2. Orders placed by our customers shall be non-binding until confirmed by us in writing.
- 3.3. To the extent annexes to contracts provided for the further description of the products to be delivered contain not only technical details but other details as well, such other details shall be non-binding unless they correspond to the details contained in the contract. The same shall apply to data and technical descriptions provided by our customers.

**4. Terms of payment**

- 4.1. Our prices are stated in euros, net of VAT, packaging, freight, postage and insurance.
- 4.2. Our invoices shall become due and payable within 30 days after the date of invoice unless otherwise agreed upon in writing in any individual case. In case of a mutual commercial transaction, we shall be entitled to charge interest amounting to 5 % starting on the due date, please see sections 353 and 352 of the German Commercial Code.
- 4.3. In case of any delay in payment, we shall be entitled to charge default interest amounting to the interest rate our bank charges for current account credits, however, not less than the statutory interest rate stipulated in section 288 of the German Civil Code.
- 4.4. In case of any delay in payment, we shall be entitled to suspend fulfilment of our contractual obligations until full payment is credited to our account.

- 4.5. Cheques and/or bills of exchange shall only be accepted upon prior agreement and only on account of performance and only provided they can be discounted. Discount expenses shall be calculated as of the date the invoiced amount became due. Any warranty for the timely presentation of bills or cheques and for due protest shall be excluded.
- 4.6. If we deliver partially defective products and this fact is undisputed, the customer shall be obliged to pay for the non-defective part of the products unless the partial delivery of non-defective products is useless for the customer. The customer shall not be entitled to set off any counterclaims unless they are undisputed or established by declaratory judgment.
- 4.7. Should it become obvious after the conclusion of contract that our claim for payments based on the contract is endangered due to the customer's insufficient financial capacity, we shall be entitled to refuse performance and to set a reasonable period during which the customer has the obligation to make payment concurrently with the delivery of the goods or services or during which the customer has to provide security for payment. After unsuccessful expiry of such period of time or should the customer refuse to fulfil such condition, we shall be entitled to rescind the contract and to demand damages.

**5. Delivery and services**

- 5.1. We generally deliver our products ex works (EXW in accordance with Incoterms 2010). This means that any dates or periods of delivery shall be deemed complied with upon our notification that the goods are ready for despatch and/or for collection. The contents of our order confirmation shall be exclusively relevant for the scope of our deliveries and services. Only the deliveries and services stipulated in the order confirmation shall be owed and no other additional deliveries and services.
- 5.2. Unless otherwise agreed upon, the term of delivery shall commence one day after our order confirmation was sent and shall be extended by a reasonable period of time in cases of force majeure, see no. 7. The term of delivery shall be extended by a reasonable period of time if our customer fails to fulfil the agreed obligations to cooperate, including but not limited to the failure to provide technical descriptions and data or materials or failure to comply with dates stipulated for other actions, unless such failure is attributable to our sphere of responsibility.
- 5.3. We shall be entitled to effect partial deliveries which may also be invoiced separately.
- 5.4. Should we become aware of the fact that we will be unable to deliver our products within the term of delivery, we shall inform the customer, stipulating the reason for the delay in writing and - to the extent possible - the planned new delivery time for our products.
- 5.5. The customer shall not be entitled to rescind the contract unless the non-compliance with the date or term of delivery is attributable to our sphere of responsibility and the customer granted us a grace period for the fulfilment of our obligation which expired unsuccessfully.

## 6. Transfer of risk

- 6.1. Immediately after we notified the customer that the goods are ready for dispatch/collection, the customer shall be obliged to accept the contractual items. If the customer fails to do so, we shall be entitled to set a reasonable grace period after unsuccessful expiry, after which we shall be entitled - in our discretion - to send or put in storage the contractual items at the customer's risk and expense.
- 6.2. Provided we agreed to be responsible for the transport of the goods, we shall be entitled to select the means of transport as well as the transport routes.
- 6.3. The risk shall pass to the customer once the goods are handed over to the customer and/or its vicarious agent and/or the rail forwarding agency or forwarder or carrier or, in case the goods are stored, when they are put into storage, but in no event later than at the time the goods leave our works or warehouse in Stralsund. This shall also apply if we arranged transport.

## 7. Force majeure

- 7.1. Events of force majeure, labour disputes, riots, natural disasters, official measures, failure by our sub-suppliers to deliver, to the extent such failure is not attributable to our sphere of responsibility, and other unforeseeable, unavoidable and material events shall release us and all contractual parties from their relevant performance obligations for the duration and to the extent of such event.
- 7.2. This shall also apply if the above-stipulated events occur at a time during which the affected contractual party is in delay unless such party caused such delay with wilful intent or gross negligence.

## 8. Retention of title

- 8.1. We retain title to the delivered contractual items until fulfilment of all obligations resulting from the business relationship between us and the customer.
- 8.2. Our customer shall be entitled to sell the contractual items in the ordinary course of business to the extent the customer duly fulfils all obligations resulting from the business relationship between us and the customer. However, the customer must neither pledge nor transfer by way of security the contractual items that are subject to retention of title. The customer shall be obliged to secure our rights when reselling the goods subject to retention of title on credit.
- 8.3. Effective immediately, the customer shall assign to us for security purposes all claims and rights resulting from the sale of the contractual items that are subject to retention of title or from any right to use such contractual items granted to the customer. We hereby accept such assignment.
- 8.4. Any processing of the contractual items subject to retention of title shall be deemed to be made in our name.  
If the contractual items are combined or processed with other mobile items into another uniform item and such other item is to be considered to be the main item, the customer shall transfer to us the partial co-ownership to the extent the customer is the owner of such main item. The customer shall preserve such owned or co-owned items for us. In addition, such new item created by processing or combination shall be subject to the same conditions as the items subject to retention of title. If such main item is resold, the customer shall assign to us, effective immediately, the partial claim our customer has vis-a-vis the purchaser of such main item in relation to our invoice amount. We hereby accept such assignment.
- 8.5. Our customer shall be obliged to inform us immediately if any third party executes against contractual items subject to reten-

tion of title or against any claims or other security assigned to us and to provide us with any documentation necessary to object to such execution. The same shall apply to any other impairment of our contractual items.

- 8.6. In case our customer violates any of its contractual obligations, including but not limited to delay in payment, we shall be entitled to grant a reasonable grace period and after unsuccessful expiry thereof, to rescind the contract and to take back the contractual items. The statutory provisions concerning dispensability of a grace period shall remain unaffected. Our customer shall be obliged to surrender the goods. In case of delay in payment we shall be entitled to rescind the contract if an application for the initiation of insolvency proceedings against our customer's assets is filed.

## 9. Liability for defects

- 9.1. We warrant that the quality of the contractual items complies with the technical terms of delivery agreed upon. If we agreed to produce parts and/or sections of ships and if no other quality standards were agreed upon, our production shall be subject to the regulations of the Verband für Schiffbau und Meerestechnik (German Shipbuilding and Ocean Industry Association) - production standard of the German shipbuilding industry. If we warrant the dimensional accuracy of moulds to be produced, our customer agrees to the measurement method stipulated in the order confirmation. The measurements made with the stipulated method shall be binding.
- 9.2. To the extent the framework conditions stipulate that we have to provide the materials for production, we also warrant the quality of the materials by providing the customer with the batch certificate in order to prove the origin of the material including the supplier data and by assigning - at the time the contract is concluded - any claims based on defects against the supplier to the customer in lieu of performance. Our customer hereby accepts such assignment.
- 9.3. If we are instructed to produce based on drawings, specifications, samples and data carriers which contain specifications on the quality of contractual items, our customer shall assume the risk for the suitability of the items for the intended purpose, in particular if the production materials are provided by the customer. We shall inform our customer immediately should we find out during production that the provided material is unsuitable or of insufficient quality. In such case, our customer shall be liable for any disadvantage to our production or for any delay in delivery.
- 9.4. The point in time by which the contractual items are to be in the condition that was contractually agreed upon is the time the risk passes to the customer in accordance with section 6.
- 9.5. Liability for defects shall be excluded for any defects in quality occurring due to unsuitable or improper use, defective installation or connection to other components by our customer or third parties or due to defective or negligent handling as well as for any consequences or changes of the contractual items made by our customer or any third party improperly or without our prior consent, unless such third party is our vicarious agent. The same shall apply mutatis mutandis to any defects which reduce the value or the suitability of the contractual items to a minor extent.
- 9.6. Claims based on defects shall become time-barred one year after the agreed upon acceptance of the contractual items, should no acceptance be effected, one year after the risk passed to the customer. However, this shall not apply in case longer periods are stipulated by mandatory law, including but

- not limited to defects of a building or of contractual items that were used for a building in accordance with their intended purpose or to cases in which we caused defects intentionally or with gross negligence.
- 9.7. Provided acceptance of the contractual items was agreed upon, the customer shall not be entitled to send a notification of defects if the customer could have detected the defects during a duly performed acceptance in accordance with the obligation to inspect the goods stipulated in section 377 of the German Commercial Code.
- 9.8. Our customer shall be obliged to provide us with the immediate opportunity to inspect and determine the notified defect at the customer's premises. Upon request, our customer shall be obliged to return the contractual items complained about so that we can inspect and determine the defects in our premises. We shall bear the transport costs if the notification of defects was justified. Should our customer fail to fulfil such obligation or should our customer make changes to the contractual items complained about without our consent, any claims based on defect shall be forfeited.
- 9.9. In case of a justified notification of defects sent by our customer in due time, we shall - in our sole discretion - repair the contractual items complained about or deliver replacement items that are free from defects.
- 9.10. Should we fail to fulfil our above-stipulated obligations within a reasonable period of time or fail to fulfil them as agreed upon, our customer shall be entitled to set a grace period within which we shall be obliged to duly fulfil our obligations. After unsuccessful expiry of such grace period, our customer shall be entitled to demand a price reduction, to rescind the contract or our customer may rectify the defect or have it rectified by a third party at our expense and risk unless we rightly refuse to effect such rectification. Provided the expenses go up because the contractual items were moved to another location after we delivered them, the reimbursement of costs for such increased expenses shall be excluded unless the items were moved in accordance with their intended purpose
- 9.11. Any statutory rights of recourse our customer has against us shall only apply to the extent our customer did not make any agreements with its customer that exceed the statutory claims based on defects. The scope of the rights of recourse shall be subject to no. 9.10.
10. **Liability and other claims**
- 10.1. Unless otherwise stipulated below, the customer shall have no other or additional claims vis-à-vis us, including but not limited to any claims for damages based on a violation of contractual obligations and on tort. Therefore, we shall not be liable for any damage that occurred to items other than the delivered contractual items. In particular, we shall not be liable for lost profit or other pecuniary damage suffered by our customer.
- 10.2. The above limitations on liability shall neither apply to our legal representatives' or officers' wilful intent or gross negligence nor to any culpable violation of material contractual obligations. Our liability for any culpable violation of material contractual obligations shall be limited to the reasonably foreseeable damage that is typical for this type of contract, except for our legal representatives' or officers' wilful intent or gross negligence.
- 10.3. Such limitation on liability shall neither apply to any injury to life, limb or health nor to cases in which warranted characteristics are missing if and to the extent such warranty of certain characteristics was to protect the customer from damage that incurred to items other than the delivered contractual items.
- 10.4. To the extent our liability is limited or excluded, such exclusion or limitation of liability shall also apply to personal liability of our employees, officers, legal representatives and vicarious agents.
11. **Confidentiality**
- 11.1. Each of the contractual parties shall use any documents and know-how obtained in connection with the contractual relationship only for the joint purposes of the contractual parties and each of the parties shall treat such documents and know-how towards third parties with the same degree of confidentiality it applies to its own confidential documents and information provided the other contractual party marked such documentation and know-how as confidential or it is obviously in the best interest of such party that such documentation and know-how is treated confidentially.  
This obligation shall come into effect upon the first time such documentation or know-how is provided and shall end 2 years after the end of the contractual relationship.
- 11.2. Should our customer violate the above-stipulated confidentiality obligation regarding the specific production processes in our company, the customer shall have the obligation to pay contractual damages for each case of violation, the amount of which we shall determine in our reasonable discretion in accordance with section 315 of the German Civil Code.
12. **Final provisions**
- 12.1. There are no oral collateral agreements to this contract. Changes or amendments to this contract must be in writing. This provision is mandatory.
- 12.2. Unless otherwise agreed upon in our order confirmation, our place of business shall be deemed place of performance.
- 12.3. The exclusive place of jurisdiction for any legal disputes, including procedures on claims arising out of cheques or bills of exchange, shall be the seat of our company. We shall also be entitled to initiate legal processes at our customer's seat.
- 12.4. The contractual relationship between us and our customer shall be exclusively subject to the substantive and procedural laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 shall not apply.
- 12.5. Should any provision of this contract be or become invalid or ineffective, this shall not affect the effectiveness of the remaining provisions hereof.