



FLENSBURGER

SCHIFFBAU - GESELLSCHAFT

General Terms and Conditions of Purchase Flensburger Schiffbau-Gesellschaft

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1.0 Application

- 1.1 Our orders are made subject to these General Terms and Conditions of Purchase. The terms and conditions of the contractor do not become part of the contract regardless of whether we expressly objected to them. If we accept delivery/performance without objection this cannot be interpreted as acceptance of your terms and conditions of delivery.
- 1.2 These Terms and Conditions of Purchase apply only to companies pursuant to § 14 of the German Civil Code.

2.0 Offers, Writing, Confidentiality, Changes, Termination

- 2.1 Your offers must be submitted in binding form and free of charge. Your offers must strictly comply with our inquiry/tender, in particular with regard to quantity, quality and workmanship. Your offers shall be binding for three months after they have been received by us.
- 2.2 Only written orders are legally binding. Verbal or telephone orders must be confirmed by us in writing to be legally binding. The same applies to verbal side agreements and subsequent changes of the contract. The requirement for written form can only be waived by a written declaration. Orders, delivery call-offs and changes and amendments may be made electronically or by remote data transmission or by machine-readable data carriers.
Our silence shall never be interpreted as consent.
- 2.3 If you do not accept our order in writing within 14 calendar days after receipt, we may cancel our order. If you accept our order subject to changes you must clearly indicate the changes to us. A contract shall come into force only if we consent to the changes in writing.
Delivery call-offs become binding if objections are not made in writing within 3 calendar days after receipt.
- 2.4 You must treat the conclusion of the agreement as confidential and you may only refer to business contacts with us in all publications, for example advertising material and reference lists, with our written consent. The contracting parties agree to treat all business or technical details they become aware of through the business relationship and which is not known to the public as business secrets. Subcontractors must be obligated to act correspondingly. If a contracting party recognizes that confidential information is in the possession of an unauthorized third party or that a confidential document has been lost, he shall immediately inform the other party.
The confidentiality obligation shall cease only if and to the extent the respective information has come into the public domain.
- 2.5 We may demand changes in the ordered goods after the conclusion of the contract provided it is reasonable for you. In the case of such an amendment to the contract, the effects of these changes on both parties, in particular regarding additional or reduced costs as well as delivery times, shall be properly considered.

- 2.6 We are entitled to terminate an agreement if the determinative order from a third party for this order no longer exists. In this case we shall reimburse the demonstrable material and processing costs incurred prior to the termination if you can prove that you are unable to use them elsewhere.

3.0 Prices, Packaging

- 3.1 The agreed prices are fixed prices delivered DAP 24939 Flensburg, Batteriestraße 52 (Incoterms 2010) including all additional costs including packaging and all incidental costs and are not subject to an escalation clause.
If you have accepted installation and there are no agreements to the contrary, you are responsible for all incidental costs.
- 3.2 If no prices are stated in the order, your current list prices with the usual commercial deductions shall apply.
- 3.3 The type of pricing does not change the agreement regarding the place of performance.
- 3.4 We accept only the quantities or item numbers ordered by us. Excess and short deliveries are only allowed subject to prior agreement with us.
- 3.5 The return of packaging requires a special agreement. The goods must be packaged in such a way that damage in transit is avoided. Packaging material shall be limited to the extent required for the purpose. Only environmentally friendly material may be used for packaging.

4.0 Invoicing, Payments, Certification

- 4.1 Invoices must be submitted to us in duplicate separately upon delivery and in proper form along with all relevant documents. Invoices, not submitted in proper form shall be deemed as received at the time of correction.
- 4.2 Payment shall be made net within 30 days after the date of complete delivery in accordance with the contract and receipt of proper invoices by a means of payment of our choice. In case of payment within 14 days after receipt of goods, calculated from the time of receipt of the goods and invoice in accordance with the contract at our yard, a prompt payment discount of 2% will be deducted from the invoice amount.
- 4.3 If certificates regarding material tests have been agreed, they shall constitute a material part of the delivery and shall be sent to us with the delivery. Payment is dependent upon completeness of the delivery or performance, including receipt of certificates, drawings and other technical documentation in connection with the delivery.
- 4.4 In case of defective or incomplete delivery, we are entitled to suspend payment pro rata to the value until proper performance without losing rebate, prompt payment discounts or similar payment reductions.
- 4.5 To the extent that payments for defective deliveries were already made we may withhold other payments which are due up to the amount of the payments made.

5.0 Delivery Dates, Delayed Delivery, Force Majeure, Early Delivery, Partial Deliveries, Return of Documentation, Production Stop

- 5.1 The agreed delivery dates as well as the final and interim dates are binding. Determinative for compliance with the delivery date or the delivery period is the receipt of merchandise at the receiving or processing place nominated by us or timely acceptance by us/or authorized third parties such as classification societies. If you designated or confirmed the delivery period as “expected“, “approximate”, “subject to usual reservation”, or used a similar designation, a maximum of 8 calendar days may lie between the stated date and actual delivery. Acceptance of late delivery without lodging an objection does not constitute a waiver of damage claims.
- 5.2 If you recognize that an agreed date may not be met for whatever reason, you shall immediately notify us in writing, stating the reason and the expected duration of the delay. In such cases you shall take all necessary measures to comply with the agreed delivery date or to keep the delay as short as possible and you shall notify us in writing and in detail of what you have done for this purpose and what you will still do. Notice of an expected delivery delay does not change the agreed delivery date in any case. You shall grant us the right to contact your suppliers if required. You shall be responsible for all costs caused by your failure due to intent or negligence to send a notice informing us of a late delivery or for a delay due to intent or negligence in sending such a notice.
- 5.3 We expressly reserve the right to adjust the delivery/performance date to the course of construction and to extend the delivery dates.
- 5.4 If you are late with the delivery, you shall pay us a penalty for late delivery from the agreed date of delivery in the amount of 0.15% of the total order value per working day or part thereof up to a maximum of 5%. In addition, we reserve the right to claim the damages caused by the delay that exceed the penalty for late delivery. The penalty for late delivery may be claimed in addition to performance if we declare the reservation pursuant to §341 par.3 of the German Civil Code against the supplier within 5 calendar days after receipt of the late delivery. Upon the unsuccessful expiration of a reasonable grace period granted by us, we may at our option continue to demand delivery/performance, terminate the agreement with or without claiming damages or obtain a substitute from a third party and/or claim damages in lieu of performance. Our claim for delivery/performance ceases only after we withdraw from the contract in writing or demand damages in lieu of performance. If on account of the delay of the supplier the yard has agreed to a postponement of the delivery date and if the new delivery date is not observed, damages for late delivery will be calculated from the original delivery date. You shall be responsible for additional costs, especially in the case of any necessary covering purchases.

Any acceptance of late deliveries/performance without reservation does not constitute a waiver of our damage claims for late delivery/performance.

- 5.5 You may invoke the absence of necessary documents to be delivered by us only if you have requested the documents in writing and if you did not receive them within a reasonable time.
- 5.6 Force majeure and strikes release the parties during the time of interruption and to the extent of their effect on the performance obligations. Within the scope of what is reasonable, the parties are obliged to provide the necessary information immediately and adjust their obligations to the changed circumstances in good faith.
We are released in whole or in part from our obligation to accept the ordered merchandise and to rescind the contract if the delivery/performance – taking into account economic considerations – can no longer be used by us on account of the delay caused by the force majeure or the industrial unrest.
If the impairments continue for more than three months, each party is entitled to rescind the contract.
- 5.7 In the event of earlier delivery than agreed, we reserve the right to return the merchandise at your expense. If the merchandise is not returned in the event of early delivery, it shall be stored at your risk and expense at our premises or in a transport company warehouse until the delivery date.
In case of early delivery we reserve the right to make payment only on the agreed due date.
- 5.8 We accept partial deliveries only upon express agreement. They must be marked as such in the shipping documents. They must also list the remaining quantity yet to be shipped.
- 5.9 If you are more than 30 days late with the delivery of parts for which a replacement is not possible – regardless of the legal ground – you must upon the first written request provide the entire technical documentation required for the reproduction of the parts by us or a third party retained by us.
In the event that protected industrial property rights exist in respect of these parts, we shall be entitled to obtain of the owner of such property rights the necessary license for the delivery, commissioning, use, resale etc. of the respective items on your account.
- 5.10 If you change or rearrange the manufacturing process, you shall immediately notify us. If you abandon certain products, you must ensure that the merchandise ordered by us will continue to be available for 1 year after the termination of manufacture.

6.0 Delivery Instructions

- 6.1 Delivery shall be made to the place of delivery stated by us. Risk shall pass to us at that location.
- 6.2 Each delivery shall be accompanied by two delivery notes which, like the freight bills must contain our order number, article number, item number, object part number, the merchandise description and the date of delivery. The delivery is deemed to comply with the contract only if these accompanying documents are provided.

7.0 Technical Documentation, Tooling

- 7.1 We retain property rights and copyrights to the documents we make available to you such as samples, drawings, models, etc. These documents may not be used and duplicated for other than contract purposes and must be treated as strictly confidential. They may not be made available to third parties such as subcontractors and suppliers without our prior written consent. The confidentiality obligation continues after completion of an order. It expires when and to the extent that the manufacturing knowledge contained in the documents sent to you has come into the public domain. You must insure these documents against theft and fire without cost to us. These documents must be returned to us without special request after they are no longer needed for the completion of the order. Special agreements apply to models and other moulds.
- 7.2 You must examine documents made available by us prior to manufacturing as to completeness, their dimensional correlation and their functionality for the intended use. All measurements and specifications must be examined on the goods to be delivered. If corrections appear necessary we shall make those immediately and we shall provide you with new documents. Any missing drawings shall be requested from us immediately in writing.
- 7.3 The manufacturing tools prepared by you according to our specifications or documents, such as models, samples, tools, forms, welding plates, IT programs etc. may be used by you only for the performance of our orders. You may neither use these tools for your own purposes nor offer or make them available to third parties. Documents of all types we need for the use, installation, processing, installation, operation, maintenance (inspection, maintenance, repair) of the delivered goods shall be made available to us by you free of charge, in a timely manner, complete, and without being so requested.
- 7.4 Before commencement of work in the workshop, you shall provide us with all drawings for our review. We shall stamp them. The stamp on drawings, calculations and other technical documents neither limits nor terminates your warranty and guarantee obligations with regard to the delivery item. Unless agreed otherwise, this also applies to proposals and recommendations by us.
- 7.5 Upon performance of the delivery or 14 calendar days after acceptance, you shall transmit to us drawings, calculations, test reports, work certificates, plans and other technical documents relating to the delivery item in German and English (in written/paper form) and customary DIN-format or on IT data carriers. These documents shall include in particular storage, installation and operating instructions as well as documents for the inspection, maintenance and repair of the delivery item. They must comply with existing German / European standards. They must be copyable and correspond to a generally used data format. These documents shall be immediately updated in case of subsequent changes on the delivery item.

- 7.6 You are obliged to transfer to us the ownership to these documents for our use for an unlimited time. This does not affect the intellectual ownership to them. This also applies to tools, moulds, etc. that you manufactured for the performance of your order.
- 7.7 In the case of built-in components that can be procured via lists or catalogues, the documents provided by the manufacturer are sufficient to the extent we need them for repairs and/or new purchases. These documents must be in German and English.
- 7.8 These provisions shall apply correspondingly to know-how made available to you.
- 7.9 If the workmanship deviates from the manufacturing documents we stamped, you are responsible for all damages or costs to us or third parties. These include costs for subsequent tests, expert opinions, additional calculations, subsequent treatment, replacement deliveries, etc.
- 7.10 You are liable to us for all damages we incur arising from a violation of the obligations in 7.1 through 7.9.

8.0 Warranty, Warranty Period, Suspension, New Start, Recourse

- 8.1 All deliveries/services shall be provided to us free of material and legal defects. They must correspond with the agreed quality and the art and comply with the applicable legal provisions and regulations and guidelines of classification societies, trade associations, employers' liability insurance associations and professional organizations.
All goods must comply with the latest safety regulations and at the time of transfer must have been accepted by the competent test organizations and must have been certified for the intended purpose.
You are obliged to provide the relevant safety data sheets applicable to your delivery with the delivery. You shall hold us harmless against all recourse claims by third parties in the event that you do not provide the safety data sheets or provide them late or in defective form. The same applies to all subsequent changes.
If, in an individual case, deviations from these rules are required, you must obtain our written consent. This consent does not limit your liability for defects.
If you have concerns regarding the design desired by us, you shall immediately notify us in writing.
- 8.2 Within the scope of economic and technical possibilities, you agree to use environmentally friendly products and processes for your deliveries/services. This also applies in connection with supplies and incidental services by third parties. You are liable for the environmental compatibility of the delivered products and for all consequential damages caused by the violation of your statutory waste disposal obligations.
- 8.3 We shall immediately notify you in writing of apparent defects in the delivery/performance as soon as they are noticed in the ordinary course of business, but no later than 5 working days after receipt of the delivery by us. In case of hidden defects, claims must be made within 5 working days after discovery.

You carry the burden of proof for the visibility of a defect at the time of the inspection. The statutory provisions regarding material and legal defects shall apply unless otherwise provided for below.

- 8.4 You shall rectify defects of delivery/performance asserted during the warranty period including failure to achieve warranted data and the absence of warranted properties immediately upon request and free of charge, including all incidental costs by, curing the defect or replacing the defective parts or by delivery of a new item, at our option. You are responsible for all expenses in connection with the determination of defects and the removal of the defect also to the extent incurred by us, in particular examination costs, costs of removal and installation, labor and material costs as well as shipping and other costs for the mailing of defective parts and the return of parts free of defects. This also applies to the extent expenses are increased by the fact that the delivery item was sent to another place than the place of performance.

After a second unsuccessful attempt, an attempt at rectification is considered as failed. If required, you must rectify defects or make new deliveries by adding shifts or overtime or holiday work if required on account of urgent operational reasons by us or our customer and it is reasonable for you. After the unsuccessful expiration of a grace period by us to cure or make a replacement delivery, we have the statutory right to terminate the agreement and reduce the purchase price.

We reserve the right to claim damages in all cases, in particular damages in lieu of performance.

- 8.5 If you intentionally or negligently do not satisfy your warranty obligations within the reasonable time set by us, we may take the appropriate measures at your expense and your risk or have third parties do so. In urgent cases we may, with your consent, rectify the defect ourselves or have a third party do so. We may remove small defects without your prior consent to satisfy our obligations to mitigate damages without limiting your warranty obligations. We may debit your account with the required expenses. The same applies in the case of threatened extraordinarily high damages.

- 8.6 Unless otherwise agreed, the warranty period is 12 months. This also applies in case of multi-shift operation. It begins with the transfer of the delivery item to us or the third party named by us at the place of delivery or place of use. In the case of fixtures, machinery and equipment, the warranty period begins with the date of acceptance stated in our written acceptance declaration.

If acceptance is delayed without your fault, the warranty period shall be two years from the date the delivery item is made available for acceptance.

In the case of delivery or services for new-builds, the warranty period begins with the delivery of the new-build to the customer of the yard and acceptance by the customer but it ends no later than 24 months after acceptance by the yard of the delivery from the supplier.

The warranty period for structures and structural material is governed by the statutory provisions; the warranty period for parts is two years after installation/commissioning and ends no later than four years after delivery.

- 8.7 During the negotiation of the justification of our complaint, the running of the warranty period for the affected installation/installation part is suspended from the notice of the defective operation to the end of the negotiations.
The warranty period for corrected or replaced parts or services commences with the end of the negotiations or, if acceptance has been agreed, with the acceptance. If applicable, our acceptance must be applied for in writing. In no case does the period expire before the expiration of the agreed limitation period for defect claims for the original delivery or service.
- 8.8 If we are held accountable for a defect of our product that has been caused by your merchandise, our recourse claims against you are governed by corresponding application of §§ 478, 479 of the German Civil Code.
- 8.9 In the case of an intentional or negligent violation that goes beyond the delivery of defective merchandise, e.g., in case the violation of a duty to inform, to advise, to consult, to examine or other protective duty we are entitled to claim compensation for the consequential damages arising therefrom.
- 8.10 No warranty claims can be made if the defect has been caused by a grossly negligent violation of operating, maintenance and installation provisions, unsuitable or improper use, defective or grossly negligent treatment and normal wear and tear as well as unauthorized interference in the delivery item by us or third parties.

9.0 Quality Assurance, Product Liability

- 9.1 If we are held liable on account of a violation of public safety provisions or on account of domestic or foreign product liability provisions or laws on account of a defect of our product caused by merchandise from you, we may demand compensation for these damages from you to the extent they have been caused by products delivered by you.
- 9.2 Our claim for damages against you cannot be limited by your terms and conditions of sale to a certain amount or by the limited scope of your of your insurance protection for such damages.
- 9.3 You must implement state of the art quality assurance which is suitable for the nature and extent of the work and you have to prove this upon our request. If we consider it necessary, you will conclude an appropriate quality assurance agreement.
Upon our request you will introduce and/or demonstrate a quality management system (e.g., DIN EN ISO 9000 et seq.). We reserve the right to examine the effectiveness of this quality management system on site.
- 9.4 Unless otherwise agreed, you will mark the delivered items so that they can be permanently recognized as your products.
- 9.5 The supplier agrees to maintain a product liability insurance with coverage of € 2.6 million per personal injury/property damage incident; our damage claims exceeding this amount shall remain unaffected. Upon request, the policy shall be presented to us for review.

10.0 Liability

Your claim for damages against us for any legal reason whatsoever based on normal negligence are excluded. This liability exclusion does not apply to claims based on violations of material contractual provisions by us. It also does not apply in case of any damage to life, health and personal injury.

In case of violations of material contractual provisions and gross negligence by agents and servants, damages are limited to typical and foreseeable damages at the time of the execution of the contract.

To the extent that our liability is excluded or limited, this also applies to personal liability of our employees, representatives and agents and servants.

11.0 Industrial Property Rights, Rights of Use

11.1 You warrant that all deliveries are free from third party industrial property rights and in particular that the delivery and use of the delivered items does not violate patents, licenses or other third party industrial property rights.

11.2 Upon our first written request, you shall indemnify and hold harmless us and our customers against third party claims for any alleged violation of industrial property rights and you shall pay all costs we incur in this connection. Your obligations to hold us harmless relates to all expenses which necessarily arise for us in connection with a third party claim.

11.3 We are entitled to obtain the authorization to use the relevant delivered items and services from the authorized person at your expense.

11.4 With the delivery of material protected by copyright, you shall transfer to us a simple unrestricted right to all types of use.

11.5 The limitation period shall be 10 years from the date this agreement is concluded.

12.0 Supplies, Processing, Commingling, Tools

12.1 All materials and other supplies we or third parties retained by us are making available to you shall remain our property. They may not be used for other than contract purposes. These supplies must be marked as our property during the entire time they are made available; they must be stored separately, maintained in good condition and they must be insured.

12.2 You shall notify us immediately if third parties should attach the items made available or if an attachment is imminent.

12.3 All materials made available shall be returned to us upon our first request.

12.4 Changes in the material made available are allowed only with our prior consent and only to the extent allowed.

- 12.5 The processing or transformations are made for us. If the merchandise, to which we have reserved title, is processed with other items not belonging to us we shall become co-owners of the new item pro rata of the value of our item (purchase price plus value added tax) to the other processed items at the time of processing.
- 12.6 If the item made available by us is inseparably commingled with other items not belonging to us, we shall become co-owners of the new item pro rata to the value of the item to which we reserved title (purchase price plus value added tax) to the other
- 12.7 commingled items at the time of commingling. If the commingling occurs in a manner that the item has become a material item belonging to you, it is agreed that you will transfer co-ownership to us pro rata. You will keep the sole ownership or co-ownership in custody for us.
- 12.7 To the extent that our security interests pursuant to 12.5 and 12.6 exceed the purchase price of all our still unpaid merchandise to which we have reserved title by more than 10%, we are obliged to release the security interests at our option to you upon your request.
- 12.8 We reserve title to the tools. You are obliged to use the tools exclusively for the manufacture of the merchandise ordered by us.
You are obliged to insure our tools at the acquisition cost against loss and damage by fire, water and theft. You herewith assign your claims under these insurance policies to us. We accept the assignment.
You are obliged, at your expense, to perform all required inspection, maintenance and repair work in a timely manner. You shall immediately inform us of any malfunction. If you intentionally or negligently fail to do so, our damage claims shall remain unaffected.

13.0 Verification of Price

If the orders apply to deliveries to public authorities subject to public price verification, you undertake to provide unrestricted information about your pricing to the authorities entitled to examine the prices and you recognize the admissible prices as binding for you.

14.0 Performance of Work

Persons performing contract work on the shipyard premises must observe the provisions of the factory regulations. Liability for accidents to persons in the yard is excluded unless it was caused by gross negligence of duties by our legal representatives or agents and servants.

If you or a subcontractor retained by you uses workers who are not from EU states, you must submit the relevant work permits to us prior to commencement of work. If you violate this obligation, we may terminate the agreement and/or claim for damages.



15.0 Sub-contracting only after Consent, Prohibition of Assignment

- 15.1 You are not entitled to sub-contract the order or substantial parts of the order without our prior written consent.
- 15.2 You may not assign any claims against us to third parties without our prior written consent or have them collected by a third party. In the case of an extended retention of title, the consent is deemed to be granted.
In the event that a claim against us is assigned to a third party without our consent, the assignment shall be effective. In that case we may, at our option, pay to you or the third party with the effect of discharging the obligation.

16.0 Anti-corruption provisions and code of conduct

The contractor confirms and assures that

- 16.1 it will act in accordance with all anti-corruption laws applicable to its business;
- 16.2 it does not and has not offered money, cash-equivalent gifts, travel and entertainment, business shares, work, etc., neither directly nor indirectly via third parties, or that it does not make or has not made other offers or promises with the intention of acquiring illegal, statutorily unlawful, unfair competitive advantages by doing so;
- 16.3 it has not made and will not make payments or bribes, neither directly nor indirectly via third parties, with the intention of obtaining a legal advantage, such as the procurement of contracts, addenda, or the issue of visas, licenses, acceptance protocols, etc.;
- 16.4 it does not and will not accept promises, offers or anything of value, neither directly nor indirectly via third parties, with the intention of acquiring an unfair competitive advantage by doing so;
- 16.5 it acts in accordance with the provisions of the Code of Conduct of Flensburger Schiffbau-Gesellschaft that it signed.

17.0 Data Protection

We shall treat your personal data in compliance with the Federal Data Protection Act.



18.0 Termination of Payment, Insolvency

If you stop payment, a preliminary insolvency trustee shall be appointed, bankruptcy proceedings instituted against your assets or, in case of draft and check protests, we may terminate the agreement without notice in whole or in part, without any claims being created against us. If we terminate the contract, the deliveries and services to that date shall be invoiced at the contract price only to the extent that we can use them for the intended purpose. The invoicing shall take into account the damages caused to us.

19.0 Partial Invalidity

If individual parts of these General Terms and Conditions of Purchase should be legally invalid, the validity of the remaining provisions shall not be affected.

20.0 Place of Performance, Venue

20.1 Unless otherwise agreed, the place of performance for the delivery shall be the delivery address or the place of use specified by us; Flensburg shall be the place of performance for all remaining obligations by both parties.

20.2 The exclusive venue for all present and future claims from business relationships with merchants, including draft and check claims, shall be Flensburg. The same venue applies if you do not have a general domestic venue, move your residence or general place of abode to another country or your residence or general place of abode is unknown at the time of the filing of a complaint.

However, we reserve the right to file our claims in any other admissible venue.

21.0 Supplemental Law

The laws of the Federal Republic of Germany shall apply as a supplement but excluding the provisions of the Convention of the United Nations on the International Sale of Goods dated 11.04.1980.

In case of any discrepancy between the original German text and the English translation, the German text shall prevail.