

## **General Terms and Conditions for Deliveries, Maintenance and Repair Services of Marine 2-Stroke Consultant and Service GmbH**

### **§ 1 Scope of Application**

(1) These General Terms and Conditions shall apply to all offers and contracts concerning deliveries as well as maintenance and repair services of Marine 2-Stroke Consultant and Service GmbH, Hamburg (hereinafter referred to as “MTCS”), provided that the customer is an entrepreneur within the meaning of Section 14 of the German Civil Code (BGB), a merchant within the meaning of the German Commercial Code (HGB), a legal entity under public law or a special fund under public law.

(2) These General Terms and Conditions shall apply exclusively. Conflicting, deviating or supplementary terms and conditions of the customer shall not become part of the contract, even if MTCS does not expressly object to their validity in individual cases.

(3) These General Terms and Conditions shall be deemed agreed upon if reference to their applicability was made upon conclusion of the contract. The General Terms and Conditions may be provided to the customer at any time upon request and are furthermore available in their current version on the MTCS website. Prior to conclusion of the contract, the customer had the reasonable opportunity to take note of their content.

(4) These General Terms and Conditions shall also apply to future contracts with the same customer, provided that reference to their applicability is made again upon conclusion of the respective contract and unless expressly agreed otherwise.

(5) Individual agreements within the meaning of Section 305b BGB shall take precedence over these General Terms and Conditions. Deviations from or amendments to these General Terms and Conditions shall require at least text form in order to be effective.

### **§ 2 Offers and Conclusion of Contract**

(1) Offers made by MTCS are subject to change and non-binding unless expressly designated as binding.

(2) A contract shall come into existence by (a) written order confirmation by MTCS, or (b) acceptance of an offer by the customer, or (c) execution of the delivery or commencement of the maintenance or repair service by MTCS.

(3) The order confirmation issued by MTCS shall be decisive for the content of the contract. In the absence of an order confirmation, the content of the offer issued by MTCS shall be decisive.

(4) Deviating, conflicting or supplementary terms and conditions of the customer shall not become part of the contract, even if MTCS performs services without reservation.

(5) Information contained in catalogues, technical documentation, drawings, illustrations, dimensions and weight specifications as well as other service descriptions shall only be binding if expressly designated as binding in writing.

### **§ 3 Documents, Intellectual Property Rights, Confidentiality**

(1) All documents provided by MTCS to the customer in connection with offers, contract negotiations or contract performance – in particular drawings, descriptions, plans, calculations and cost estimates – shall remain the property of MTCS and may neither be reproduced nor made accessible to third parties without the prior consent of MTCS.

(2) Copyrights, rights of use and other intellectual property rights relating to such documents shall remain exclusively with MTCS.

(3) Unless expressly agreed otherwise, information provided to MTCS in connection with inquiries or orders shall not be deemed confidential.

(4) If a contract is not concluded or if a contractual relationship ends, all documents provided by MTCS shall be returned immediately or – in the case of electronic transmission – deleted completely.

### **§ 4 Prices and Terms of Payment**

(1) Unless expressly agreed otherwise, all prices quoted by MTCS are net prices ex works or ex warehouse Hamburg, excluding packaging, transport, insurance, customs duties, levies, taxes and other ancillary costs.

(2) Additional services, in particular packaging, transport, assembly, disassembly, travel time, waiting time, overtime outside regular working hours as well as additional measures required by authorities or for safety reasons, shall be remunerated separately unless expressly included in the offer.

(3) Prices are based on the cost factors applicable at the time of conclusion of the contract (in particular material, energy, transport, labour and third-party service costs). If such costs increase unforeseeably after conclusion of the contract, without fault on the part of MTCS, and if a period of more than three months lies between conclusion of the contract and delivery or performance, MTCS shall be entitled to make a reasonable price adjustment.

(4) Unless otherwise agreed, maintenance and repair services shall be invoiced on the basis of the actual time and material expenditure in accordance with the respectively applicable hourly rates of MTCS.

(5) All prices are subject to the applicable statutory value added tax in force from time to time.

### **§ 5 Delivery Time, Delay in Delivery**

(1) Delivery periods and delivery dates shall result from the contractual agreements. Their compliance is subject to all commercial and technical issues between the contracting parties having been clarified and the customer having duly and timely fulfilled all obligations to cooperate incumbent upon it. This includes in particular the timely provision of documents, approvals, releases, technical information as well as agreed advance payments. Delays caused by missing or delayed cooperation shall extend the delivery period appropriately.

(2) Compliance with the delivery period shall be subject to correct and timely self-supply, insofar as the non-performance or defective performance is not attributable to MTCS.

(3) The delivery period shall be deemed complied with if the delivery item or service item has left the works of MTCS before expiry of such period or if readiness for dispatch or performance has been notified. Insofar as acceptance is required, the acceptance date shall be decisive, alternatively the notification of readiness for acceptance.

(4) If MTCS is in delay with delivery, the customer may – after expiry of a reasonable grace period without result – claim damages for delayed performance. In the event of slight negligence, compensation for damages caused by delay shall be limited in amount to a maximum total of 5% of the agreed contract value of that part of the delivery or service which, due to the delay, cannot be used in time or cannot be used for its intended purpose.

(5) Further claims for damages due to delay in delivery shall only exist in accordance with § 8 of these General Terms and Conditions. Liability for delay in delivery is conclusively regulated in this § 5.

(6) Cases of force majeure as well as other unforeseeable events beyond the control of MTCS (in particular operational disruptions, strikes, lockouts, governmental measures, transport disruptions or delivery delays by upstream suppliers) shall exclude delay in delivery. In such cases, the delivery period shall be extended appropriately.

### **§ 6 Acceptance of Deliveries, Maintenance and Repair Services**

(1) Insofar as acceptance is required by law or contractually agreed, the customer shall accept the delivery, maintenance or repair service immediately after notification of completion.

(2) Acceptance may only be refused due to material defects. Insignificant defects shall not entitle the customer to refuse acceptance.

(3) Acceptance shall be deemed to have taken place if (a) the customer puts the service into use or continues to use it, (b) the customer does not notify material defects in writing within seven (7) working days after notification of completion, or (c) the customer refuses acceptance for reasons other than material defects.

(4) If acceptance is delayed for reasons attributable to the customer, the service shall be deemed accepted upon expiry of the period pursuant to Clause 6.3.

(5) Upon acceptance, risk and liability shall pass to the customer, insofar as they have not already passed earlier. Acceptance shall not affect the customer's warranty rights insofar as such rights exist in accordance with these General Terms and Conditions.

## **§ 7 Warranty Rights**

### **(1) Inspection and Notification Obligation**

The customer shall inspect deliveries and services without undue delay and shall notify recognizable defects in writing without undue delay (Sections 377, 381 HGB).

### **(2) Subsequent Performance**

If a defect exists, MTCS shall, at its own discretion, be entitled to remedy the defect or make a replacement delivery. Replaced parts shall become the property of MTCS.

### **(3) Obligations to Cooperate**

The customer shall grant MTCS the time and opportunity necessary for subsequent performance. If this is not done, MTCS shall be released from liability for any resulting damages.

### **(4) Failure of Subsequent Performance**

If subsequent performance fails, the customer may reduce the purchase price or withdraw from the contract. In the case of insignificant defects, withdrawal shall be excluded.

### **(5) Costs of Subsequent Performance**

MTCS shall bear the costs of subsequent performance insofar as such costs are not disproportionate to the contract value.

### **(6) Delimitation**

Liability for delay in delivery shall be governed exclusively by § 5 of these General Terms and Conditions.

Liability for material defects and defects of title is conclusively regulated in this § 7.

§ 8 of these General Terms and Conditions shall apply to other claims for damages.

## **§ 8 Liability**

### **(1) Principle**

MTCS shall only be liable for claims for damages – irrespective of the legal grounds –

- a) in cases of intent,
- b) in cases of gross negligence by legal representatives, corporate bodies or executive employees,
- c) in cases of culpable injury to life, body or health,
- d) in cases of fraudulent concealment of a defect,
- e) on the basis of an expressly assumed guarantee,
- f) in cases of mandatory liability under the German Product Liability Act.

### **(2) Essential Contractual Obligations (Cardinal Obligations)**

Essential contractual obligations are obligations whose fulfilment is indispensable for the proper performance of the contract and on whose compliance the customer may regularly rely.

Essential contractual obligations exclusively include

- in the case of supply contracts: the professional delivery of the expressly agreed goods,
- in the case of maintenance, repair and servicing services: the professional execution of the expressly agreed service as such.

In the event of culpable breach of essential contractual obligations, the claim for damages shall be limited to the foreseeable damage typical for the contract at the time of conclusion of the contract.

### **(3) Maximum Liability Amounts (Fine-Tuning)**

The liability of MTCS shall – including in cases of gross negligence – be limited in amount to:

- a) in cases of slight negligence  
the current value of the specifically affected delivery or service item,  
up to a maximum of EUR 250,000 per damaging event;
- b) in cases of gross negligence  
the current value of the specifically affected delivery or service item,  
up to a maximum of EUR 500,000 per damaging event.

Gross negligence by simple vicarious agents who are not legal representatives, corporate bodies or executive employees shall not be deemed equivalent to gross negligence by MTCS. Liability is limited to an economically calculable and typically insurable extent.

The above maximum liability amounts shall not apply in cases of intentional conduct by MTCS.

### **(4) Exclusion of Certain Damages**

Beyond the scope of liability set out above, the following are excluded:

- production and operational downtime,
- loss of use,
- loss of profit,
- contractual penalties,
- additional costs of further processing,
- recall costs,
- assembly, disassembly and docking costs,
- transport and laytime,
- other indirect damages or consequential damages resulting from defects.

#### (5) Cooperation and Preliminary Services

MTCS shall not be liable for damages resulting from specifications, preliminary services, preliminary work or other measures by the customer or third parties.

### **§ 8a Liability for Other Damages**

Other claims for damages by the customer which concern neither claims for delay in delivery (§ 5) nor claims for material defects or defects of title (§ 7) shall be subject exclusively to the liability provisions of § 8 of these General Terms and Conditions.

### **§ 9 Declaration of Value, Insurance, Recourse**

(1) If the value of the goods or the risk profile associated with the service exceeds the liability limits regulated in these General Terms and Conditions, MTCS shall be informed thereof in writing prior to conclusion of the contract.

(2) Upon request, additional insurance may be taken out for the benefit of the customer against separate remuneration and upon written order.

(3) The goods are not insured by MTCS against theft, fire or water damage. In this respect, the customer shall itself ensure sufficient insurance coverage.

(4) The customer undertakes to agree with its insurers, business partners and other third parties on a waiver of recourse and claims insofar as their claims exceed the liability limits regulated in these General Terms and Conditions.

This shall also apply in favour of the employees as well as vicarious agents and performing agents of MTCS.

### **§ 10 Limitation Period**

(1) All claims of the customer – irrespective of the legal grounds – shall become time-barred within 12 months from delivery or acceptance.

(2) This shall not apply to claims arising from intent, fraudulent conduct, injury to life, body or health as well as claims under the German Product Liability Act.

### **§ 11 Retention of Title**

(1) The delivered goods shall remain the property of Marine 2-Stroke Consultant and Service GmbH until full settlement of all claims arising from the respective business relationship in favour of Marine 2-Stroke Consultant and Service GmbH (hereinafter referred to as “Goods Subject to Retention of Title”).

(2) The customer shall be entitled to use, install or resell the Goods Subject to Retention of Title in the ordinary course of business, provided that it duly fulfils its payment obligations.

(3) The customer hereby assigns to Marine 2-Stroke Consultant and Service GmbH, by way of security, all claims arising from the resale or installation of the Goods Subject to Retention of Title. Marine 2-Stroke Consultant and Service GmbH hereby accepts such assignment.

(4) If the Goods Subject to Retention of Title are combined, mixed or processed with other objects, Marine 2-Stroke Consultant and Service GmbH shall acquire co-ownership of the new item in proportion to the value of the Goods Subject to Retention of Title in relation to the value of the other processed objects at the time of processing.

(5) Any access by third parties to the Goods Subject to Retention of Title shall be notified immediately in writing to Marine 2-Stroke Consultant and Service GmbH.

### **§ 12 Indemnification**

The customer shall indemnify Marine 2-Stroke Consultant and Service GmbH against all third-party claims arising from the fact that

- parts, materials, drawings, specifications or instructions provided by the customer were defective, incomplete or unsuitable,
- safety, operational, classification or vessel regulations were not complied with by the customer, the ship management, the crew or other third parties, or
- work was carried out or influenced by personnel of the customer, the crew or other third parties.

This shall also apply to claims arising from governmental measures, port state controls or requirements of classification societies.

### **§ 13 Export Control and Sanctions**

(1) The fulfilment of all contractual obligations of Marine 2-Stroke Consultant and Service GmbH shall be subject to the condition that no national or international foreign trade regulations, export control provisions or sanctions and embargo regulations oppose such fulfilment.

(2) The customer warrants that neither the customer itself nor the vessel concerned, the shipowner, charterer, end user or place of use violate applicable sanctions or embargo regulations.

(3) Required approvals, end-use certificates or proof of use shall be provided by the customer in due time.

(4) In the event of imminent or actual violations, Marine 2-Stroke Consultant and Service GmbH shall be entitled to suspend services in whole or in part or to withdraw from the contract in whole or in part. In such cases, the customer shall have no claims for damages insofar as MTCS is not responsible for the violation.

#### **§ 14 Applicable Law and Place of Jurisdiction**

- (1) The laws of the Federal Republic of Germany shall apply, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- (2) The place of jurisdiction for all disputes arising out of or in connection with this contractual relationship shall be Hamburg.
- (3) Marine 2-Stroke Consultant and Service GmbH shall also be entitled to sue the customer at the customer's general place of jurisdiction.

#### **§ 15 Severability Clause**

Should individual provisions of these General Terms and Conditions be or become wholly or partially invalid or unenforceable, the validity of the remaining provisions shall remain unaffected. In place of the invalid or unenforceable provision, such valid provision shall be deemed agreed which comes closest to the economic purpose of the invalid provision.

#### **§ 16 Governing Version**

Only the German version of these General Terms and Conditions shall be authoritative.