

## **General Terms and Conditions**

If the English General Terms and Conditions deviate from the German Terms and Conditions (AGB), the German Terms and Conditions (AGB) will be in effect.

### **§ 1: Validity of the Provisions**

1. All deliveries, services and proposals of the seller will be solely executed on the basis of the underlying business terms and conditions. They shall therefore also apply to all future business relationships, even if they are not explicitly agreed upon again. At the time of acceptance of the goods and services at the latest, these terms and conditions are deemed accepted. Any returns on the part of the buyer with reference to his own business terms and conditions or purchasing conditions are herewith objected to.

2. Any deviations to these business terms and conditions shall only be valid if they are confirmed to the contracting party (buyer = ordering party) by the seller in writing.

### **§ 2: Offer and conclusion of the contract**

1. All offers of the seller shall be subject to change, and all orders are subject to the written or telex confirmation of the seller in order to be legally effective. This shall also apply to any amendments, modifications or subsidiary agreements.

2. Any drawings, images, measures and weights or other performance data shall only be binding if this has been explicitly agreed upon in writing.

The seller reserves its proprietary right and copyright for all cost estimates, drawings and other documents; they must not be disclosed to any third party. The seller is obligated to receive prior consent of the buyer before making available to third parties such plans deemed to be confidential.

3. On client's request LSE provides cost estimates. These are not binding, unless they are stated or stipulated to be binding expressly. LSE is bound to binding cost estimates for two weeks after receipt by client. For services rendered necessarily in order to provide a cost estimate (e.g. dismantling, fault diagnostic et cetera) LSE will charge hourly rates customary in trade as well as in place, unless expressly stipulated otherwise. In case of a subsequent order the services charged in order to provide the cost estimate will not be charged again.

4. The shipment shall replace the confirmation.

5. Seller and buyer are only entitled to assign their contractual rights to third parties upon the consent of the contracting party.

### **§ 3: Delivery term and time of performance**

1. The due dates and deadlines given by the seller are non-binding, provided that nothing else has been explicitly agreed upon in writing.

2. Any delivery and performance delays due to force majeure and events that substantially render the delivery difficult or impossible for the seller – including but not limited to retrospectively occurred /subsequently occurring material supply difficulties, disruption of operations, strike, lock outs, lack of personnel, lack of means of transportation, official orders, also if those incidents occur with/for the suppliers or sub-suppliers of the seller – shall not be the liability of the seller even in light of agreed upon binding deadlines and delivery terms. These events entitle the seller to postpone the shipment or service by the length of time of the interference plus a reasonable lead time or to withdraw from the contract in part or entirely due to the unfulfilled section of the contract.

3. LSE is not liable for delays, caused by requests for subsequent alterations by Client in terms of § 7, unless LSE is responsible for such alterations and provided LSE informs Client without delay under specification of the reasons about the delay and the corresponding extended delivery/performance time.

4. The seller may render partial deliveries and partial services at any time.

5. Shipment will take place by invoice and at the risk of the seller.

### **§ 4: Passing of the risk**

1. The risk shall pass to the buyer at the time of the shipment of the parts to be delivered at the latest even in the event of partial deliveries or if the seller has assumed other services, such as shipping costs or delivery and assembly. Upon the request of the buyer and at his cost, the seller will insure the shipment against theft, breakage, loss during shipment, fire loss and water damage as well as other insurable risks.

2. Should the shipment be delayed due to reasons caused by the buyer, the risk shall pass to the buyer as of the day of readiness for shipment; the seller, however, is obligated upon request and at the cost of the buyer to effectuate the insurance he has requested.

3. The seller shall accept all items delivered, even if they show marginal defects.

### **§ 5: Withdrawal**

1. The buyer may withdraw from the contract if the seller is ultimately not in the position to render the entire service before the passing of the risk. The same shall apply in the case of incapacity of the seller. Any claim for damages brought forward by the buyer due to such a withdrawal shall be excluded. The buyer is further entitled to withdraw from the contract if in the case of an order of goods of the same value, the execution of one part of the delivery shall become unfeasible and he thus has a legitimate interest to decline a partial delivery. Should this not be the case the buyer is entitled to decrease the consideration accordingly.

2. In the event of a failure to meet the obligation the buyer shall grant the seller in arrears a reasonable grace period and provide the explicit declaration that he will refuse acceptance of the service after this period has elapsed. In the event that this period of grace shall not be met, the buyer is entitled to withdraw from the contract.

3. Should the impossibility of performance occur during default in acceptance or upon the negligence of the buyer, he shall remain obligated for consideration.

4. The buyer shall further be entitled to withdraw from the contract if the seller causes a reasonable grace period, which had been granted to the buyer for the correction or compensation delivery with regard to a deficiency caused by him in the sense of the terms of delivery, to expire without results. The buyer's right to withdrawal from the contract shall also be in effect in the event of impossibility of correction or compensation delivery by the seller.

5. To the extent where permitted by law, all other claims of the buyer shall be excluded, particularly rescission, termination or reduction in price as well as damages of any kind which have not originated in the article of sale itself.

6. LSE is entitled to revoke the contract, if the performance of her contractual supplies and services becomes not only temporarily impossible due to operational disruptions (e.g. strikes, lockouts), also concerning suppliers and subcontractors, unforeseeable for LSE at the time of the conclusion of the contract and not in her responsibility, or due to force majeure (e.g. natural disasters, wars) and provided she cannot eliminate the obstacle to performance by reasonable expenditures of her own. In this case LSE is obliged to inform Client about the circumstances mentioned without delay and to repay any consideration to Client without delay.

7. LSE is furthermore entitled to revocation, if Client has made false statements concerning facts essential to his creditworthiness, which are, on founded grounds, capable to compromise the settlement of her claim for consideration. The same applies, if Client is insolvent and ceases payments or if insolvency proceedings concerning his estate have been submitted. Extensive statutory revocation rights remain unaffected.

8. In case Client does not fulfill his obligations to co-operate and thereby makes the fulfillment of the contract impossible for LSE or he does not make a due payment, LSE is entitled to terminate the contract, provided she has fruitlessly set client a reasonable period of grace with the threat of termination before. Supplies and services rendered until the date of termination are to be billed according to contract and to be paid by Client. After termination is declared and provided that the requirements under sentence 1 are met with LSE is, alternatively to the provision in sentence 2, entitled to claim liquidated damages in lieu of performance amounting to 15 % of the contractual price. Client is left free to prove that damage has either not occurred to LSE or is substantially less than the lump sum. LSE reserves the right to claim a verifiable higher damage. More extensive statutory termination rights remain unaffected.

9. In case Client terminates a contract for work and labor prior to completion of the work, without her being responsible for it, LSE is entitled to claim a flat compensation amounting to 10 % of the total price stipulated at the time of termination, unless client or LSE furnish other proof in the individual case.

#### **§ 6: Prices**

1. All prices are net prices excluded of VAT (current tariff) and are quoted for shipments ex works without packaging. Any additional services in connection with the shipment are invoiced on a time and material basis by separate invoice provided that no other specific agreements have been entered. The prices charged shall be the prices in effect on the day of the shipment. In the event of price and cost increases in the time between the conclusion of an agreement and the shipment the seller is entitled to an according and reasonable adjustment in price provided that the period between the conclusion of the agreement and the shipment is in excess of four months. Any repair services shall only be carried out against payment in advance or cash on delivery.

2. Travelling times of LSE's staff to the place at which LSE is obliged to provide its services according to the contract will be charged to client's account according to LSE's general hourly rates, unless stipulated otherwise.

3. The working hours and hourly rates charged by LSE in its invoices apply bindingly, if client does not object to them within 2 weeks after receipt of the invoice, unless the client proves that this was impossible with no fault on his part. This does not apply, if working hours and/or hourly rates deviating from the invoice have been stipulated.

#### **§ 7: Payment**

1. Net payment for deliveries and services rendered by the seller is due upon receipt of invoice unless otherwise agreed. The goods shall also be deemed delivered even if not immediately called upon following the notification of readiness for shipment. Any trade discount, if any, shall only be granted on the basis that all previous invoices have been settled. Any trade discounts shall be calculated on the basis of the net invoice amount after the deduction of any rebates, freight, etc.

The seller is not obligated to accept bills of exchange or checks. Seller's acceptance of checks shall be subject to the possibility of discounting. Checks and bills of exchange shall only be credited upon encashment; assignment of claim shall be credited upon payment. The receivables including their due date shall remain unaffected until such time. The seller will not assume any liability for accurately timed encashment and protests. All fees for discounting, protesting and collection are on the account of the buyer. In the event of several claims against the buyer, the seller shall offset incoming payments accordingly.

2. In the event of the buyer's default in payment, the seller shall be entitled to:

2.1 withdraw from the contract or to claim damages due to non-performance, to assert retention of title, to seize goods delivered, to demand securities, to make use of securities provided and to make all outstanding invoices payable. In the case of default, the goods delivered by the seller are to be kept in a separate stock and to be identified as property of the seller.

2.2 charge interest on late payments in the amount of 8 % above the discount rate of the German Federal State Central Bank as of the due date. Any changes in ownership, the legal form of the company or any other changes with economical effect as well as any changes of address, the person or the economic conditions of the buyer shall entitle the seller at his own discretion:

a) to claim payments or securities based upon due or deferred claims resulting from all existing contracts, which shall also apply to accepted bills of exchange.

b) to refuse the performance of the existing contracts until the time of prepayment of the existing contracts, to withdraw from the contract or demand damages based upon non-performance of the contract.

3. Set-off and grace shall be excluded, even in the case of asserting warranty claims, unless the claim has been ascertained without dispute and legally binding.

#### **§ 8: Retention of title/ Ownership, Industrial Property Rights and Copyrights**

1. LSE reserves the right to ownership and copyright regarding designs, drawings, illustrations, calculations and cost estimates produced by her; these must not be used by client for purposes outside the contract or be made accessible to third parties without LSE's express authorization.

2. Client is not entitled to remove, suppress or alter designations of industrial property rights and copyrights attached to the goods supplied by or to the designs, drawings, illustrations, calculations or cost estimates provided by LSE.

3. Client guarantees that designs, drawings, illustrations and calculations provided to LSE by him do not infringe upon rights to ownership, industrial property rights and copyrights of third parties. Client obliges to indemnify LSE, in this regard, from legitimate third party claims arising from infringements of rights to ownership or industrial property rights and copyrights.

4. The seller shall reserve the right of property of his goods delivered, which shall only be sold subject to proper business dealings, until the settlement of all claims arising from the business relationship, including possible refinance or reverse bills of exchange.

5. The buyer shall not acquire ownership of the goods manufactured in parts or entirely by processing such goods. The processing shall be carried out free of charge exclusively for the seller. In the event that the retention of proprietary rights shall expire due to any circumstances, seller and buyer shall already agree at this time that the ownership of the goods shall pass to the seller at the time of processing and that the seller will accept such assignment. The buyer shall continue to remain their unremunerated custodian.

6. The seller shall acquire co-ownership in the new goods as a result of processing the goods still held in third party property. The extent of such co-ownership shall be determined by the relationship of the invoice value of the goods delivered by the seller to the invoice value of the remaining goods.

7. The seller hereby assigns the claim from a resale of the retained goods to the seller, also to the extent to which the goods have been processed.

If the product processed in addition to the goods retained of the seller contains only such items which belong to the buyer or which are only delivered under the so-called simple retention of title, the buyer shall assign the entire purchase price receivable to the seller. In any other case, such as the concurrence of the assignment of future claims of several suppliers, the seller shall be entitled to a fraction of the claim, according to the relationship of the invoice value of his goods retained to the invoice value of the other, processed goods.

8. To the extent that the entire claims of the seller shall be doubtlessly secured in excess of 125 % by way of such assignments, the surplus on the amounts outstanding shall be released upon request of the buyer and upon selection of the seller.

9. Provided that he is able to meet his payment obligations towards the seller, the buyer is entitled to collect the accounts receivable for himself until revoked. The right for resale or processing of the goods and the collection of accounts receivable shall cease in the event of stoppage of payments, the application for or opening of bankruptcy proceedings, court or out-of-court insolvency proceedings, a check or bill protest or a processed garnishment. Any other accounts receivable assigned after that time shall be accrued in a special account immediately.

10. Any possible recall and redemption of goods shall always be carried out as a precaution. This shall not be construed as a withdrawal from the contract even if partial payments have been granted subsequently.

#### **§ 9: Warranties**

1. The seller warrants that all products are free from manufacturing or material defects. The warranty shall extend over a period of 6 months.

2. The warranty term shall become effective as of the delivery date. In the case that operation or maintenance instructions are not adhered to, and where products are modified, parts replaced or consumables are used that do not correspond with the original specifications all claims for warranty shall become void.

3. The buyer is obligated to inform the seller in writing of all defects immediately, however at the latest within one week after receipt of the delivery item. Defects which cannot be discovered within that time period despite thorough investigation need to be reported to the seller in writing immediately upon their discovery.

4. In the case of such notification of the buyer that the products do not correspond to the warranty, the seller can demand, at his own discretion, that

a) the defective part or device shall be sent for repair and returned to the seller;

b) the seller shall hold the defective part or device ready and that a seller's service technician will be sent to the buyer in order to carry out the repair work.

In the event that the buyer demands the work under warranty to be performed on-site, the seller may accommodate such request in which any parts subject to warranty shall not be billed whereas working time and travel expenses are to be paid in accordance with the seller's standard rates.

5. Should the rectification of defects after a reasonable period of time fail the buyer is entitled to demand, at his own discretion, a reduction in remuneration or rescission of the contract.

6. Liability for normal wear shall be excluded. The seller shall not be held liable for any deficiencies in the functions of the devices if installation and/or placing into operation of the device was not carried out by the seller or an authorized repair shop.

7. The buyer is the only party to be directly entitled to warranty claims against the seller and this entitlement cannot be assigned.

8. The above sections shall govern the warranty in a final manner. Any other warranty claims of any kind shall be excluded. This shall not apply to claims for damages for the assurance of features which are to secure the buyer against the risk of consequential damage.

9. Claims for damages as result of impossibility of the performance, non-performance, positive violation of contractual duty, negligence at the time of the conclusion of the contract or due to unlawful acts shall be excluded to both the seller as well as his vicarious agent or assistant, to the extent where the damage was not caused willfully or through gross negligence. This shall not apply to claims for damages for the assurance of features which are to secure the buyer against the risk of consequential damage.

10. Should the buyer deem a device defective but the retailer, however, merely determines faulty operation, the seller is entitled to charge the exact cost for the diagnostics carried out by the seller.

#### **§ 10: Installation**

As a rule, the seller shall not carry out the entire installation of echolocation, radio, message and navigation devices or other machines and equipment assembly on board. Upon the delivery of the delivery contents as provided in the contract, the installation of the devices shall be carried out in cooperation with mechanics who will be provided by the buyer at his own expense. The putting into operation and handing over of the devices is carried out by the seller. The buyer shall in good time provide the seller with all general technical drawings and plans required for planning the installation of the devices as well as any other documents necessary.

Below is a specification of the ship-related work which constitutes a part of the scope of delivery and performance of the buyer:

1. All work necessary to attach the individual devices, such as deck apertures, consoles, protective conduits, fabrication of auxiliary masts, other masts, etc.

2. Attention and adherence to the instructions with regard to the insulation of stays and earthing, electrical interference suppression of machines and equipment on board of ocean-going and inland navigation vessels.

3. Delivery and laying of power cables.

4. The seller shall perform all wiring for the equipment inside the radio room. The seller shall also supply these special cables. The delivery of the special cables is not included in the prices for the equipment and shall be invoiced separately on a time and material basis. Delivery, wiring and feeding the cables outside the radio room or the feeding into the cable conduits shall be carried out by the buyer or the companies commissioned by him.

5. The buyer shall arrange for the fabrication of protective boxes, consoles, etc., necessary for the set-up of the equipment units. This includes the setting up of electrical auxiliary converters, emergency batteries and other equipment material.

6. The delivery scope of the buyer further includes all fixtures which are necessary or statutory for the setting-up of the equipment. The buyer has to observe the statutory regulations with regard to equipment for radio rooms.

7. The scope of delivery of the buyer includes hemp ropes and blocks for hoisting antennas, frames and frame fixtures as well as attaching the antennas, blocks, etc.

8. The technicians of the seller shall connect the equipment to the run cables. After the commissioning, the equipment will be shown to be operable and handed over to the owner or his authorized representative. Any acceptance expenses shall be charged to the account of the buyer.

9. Independent of the provisions under the aforementioned nos. 1. and 2., for the labour of LSE to be conducted in his operational domain client warrants, that:

9.1 staff of LSE can commence with their labour according to the stipulated time schedule and can provide such labour within customary working hours. In addition, Client warrants that the labour can also be provided outside of customary working hours in the discretion of LSE, provided that LSE has given notice in reasonable time to client before that, at what times and to what extent such labour is required.

9.2 prior to the commencement of the labour he will notify LSE about all safety regulations applicable to his business, which are relevant to it. In addition, Client warrants that the labour will not be conducted under health imperilling conditions, especially that he will take all

necessary safety as well as precautionary measures prior to the commencement of the labour and that he will keep them up during the labour.

9.3 staff of LSE are able to get reasonable board and accommodation and that they have access to hygienic facilities and medical care according to international standard.

9.4 he will free of charge provide LSE with storage facilities, which provide appropriate protection against theft and damage of the supplies, tools and equipment as well as the personal effects of LSE's staff.

10. The assembly by the seller shall only be carried out via separate order and in line with the assembly conditions of the seller.

#### **§ 11: Place of performance and venue/ Severability Cause**

1. The law of the Federal Republic of Germany shall apply to the underlying general terms and conditions and the entire legal relations between seller and buyer.

2. To extent where permitted by law, Leer shall be the exclusive venue for all conflicts arising directly or indirectly from this contractual relationship.

3. Should individual provisions under these General Terms and Conditions be or become invalid or contain a loophole, the other provisions remain unaffected thereby. The parties oblige themselves to agree upon such a statutory-valid provision instead of the invalid provision, which comes closest to the economic purpose of the invalid provision or respectively fills in the loophole.

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Leer, 01.01.2012