



# **NSB Niederelbe Schifffahrtsgesellschaft mbH & Co KG**

## **General Terms and Conditions of Purchase**

### **(General T&C of Purchase)**

#### **1. General Provisions**

These Terms and Conditions form part of all contracts concluded with our suppliers and with other contractors (hereinafter both collectively referred to as the "Supplier"). The Supplier accepts them as binding for the contract in question, no later than upon commencement of implementation of the contract. Differing agreements, particularly conflicting terms and conditions of business of the Supplier, and collateral agreements shall only become part of the contract with our explicit written consent. Even if we accept delivery or performance without any explicit objection, this shall in no event be deemed to be acceptance of or consent to the Supplier's terms and conditions.

#### **2. Offer and Conclusion of Contract**

**2.1** The Supplier shall submit offers to us on a binding basis free of charge. In its offers, the Supplier shall keep to the specifications set out in our request for an offer / our invitation for tenders in respect of quantity, quality, execution, assembly etc. and shall point out in writing any and all deviations.

**2.2** Purchase orders and other declarations shall only be binding upon us, if we have submitted them in writing.

**2.3** Contrary to section 127 of the German Civil Code [BGB], the electronic form is not deemed to be equivalent to the written form.

**2.4** We may cancel a purchase order at no cost to us, if we have not received an acknowledged duplicate of the purchase order within two weeks from receipt of the purchase order at the Supplier's address.

#### **3. Prices**

**3.1** All prices are quoted as fixed prices, excluding value-added tax.

**3.2** The prices agreed upon with the Supplier include the fee for all deliveries and services entrusted with the Supplier (including any and all necessary certificates, drawings, evaluations etc. in German and English).

**3.3** Unless otherwise agreed upon, shipping and packaging costs shall be borne by the Supplier. Where prices are quoted "ex works" or "ex warehouse" of the Supplier, the goods shall be shipped at the lowest cost in each case, unless we have stipulated a specific method of transportation. The Supplier shall bear extra costs arising as a result of non-compliance with a shipping or packaging instruction. The Supplier shall equally bear extra costs for any necessary speedier transportation for compliance with a date for delivery.

**3.4** We shall pay for deliveries and services not covered by the contract concluded with the Supplier only if we have ordered these in writing from the Supplier prior to delivery / commencement of the work.

#### **4. Dates and Periods, Contractual Penalty**

**4.1** Dates for delivery and completion shall be strictly complied with. Periods for delivery shall begin to run at the time the contract is concluded.

**4.2** If it becomes evident to the Supplier that a date / period will be exceeded, the Supplier shall without undue delay give us written notification of the reason and the expected duration of the delay.

**4.3** In the event of default in delivery, we shall, not in derogation of section 4.4 below, be entitled to statutory rights without limitation (particularly without exclusions or limitations of liability).

**4.4** If as a result of default the Supplier exceeds the dates / periods agreed upon with it, the Supplier shall pay to us a contractual penalty at the rate of 0.1 % of the net contract price for every business day of default. Even where several dates / periods are exceeded, the amount of the contractual penalty shall be limited to a maximum of 5 % of the net contract price.

**4.5** The reservation of the right to a contractual penalty may be asserted until final payment is made. Payment of the contractual penalty shall not release the Supplier from its contractual obligations in relation to us or from any obligations to pay additional compensatory damages, even if these are based on default.

#### **5. Packaging, Shipment and Passage of Risk**

**5.1** Delivery shall be made to the destination specified by us (address for shipment as indicated in the section on shipment). The risk of accidental loss or destruction or accidental deterioration of the consignment shall pass to us at the aforementioned destination, unless transportation is undertaken using our own vehicles or by a carrier designated by us.

**5.2** The goods to be delivered shall be delivered packed, in so far as the nature of the goods requires transport packaging. The packaging must be safe for transportation and must comply with transportation

regulations applicable to the chosen mode of transportation and with any and all packaging instructions stated in our purchase order.

**5.3** Packaging material (loaned packing bundle or drums) shall only be returned by us, if its owner is recognisable as such through his imprint.

**5.4** If the consignment arrives at the destination in damaged packaging, or if it is delivered in damaged packaging to our driver or to the carrier designated by us, we shall be entitled to reject the consignment without checking the content. The cost of any return shipment shall be borne by the Supplier.

**5.5** On the day when a consignment is dispatched, the Supplier shall in each case send us a dispatch note containing the purchase order and item number given in our purchase order, the quantity and a precise description of the goods. The Supplier shall enclose with every consignment a delivery note containing the same information. The component parts of each consignment shall bear inscriptions describing the goods. If a delivery note is lacking, or if the delivery note contains incomplete or incorrect information, we shall at the Supplier's expense be entitled to refuse to accept the consignment.

**5.6** Until risk passes to us (cf. section 5.1), the Supplier shall insure at its expense, against accidental loss or destruction (particularly by fire or theft) and against accidental and culpable deterioration, the parts designated for the respective contract and made available for collection.

## **6. Formal Acceptance**

**6.1** Formal acceptance shall be subject to the reservation of all rights, particularly rights arising from defective or late delivery.

**6.2** In the case of machinery, plant, units of machinery etc. where it is only possible to determine whether their condition is in conformity with the contract after a follow-up plant or works has been installed, completed or put into operation, we shall not declare acceptance until after successful installation and commissioning and, where applicable, after acceptance by the relevant bodies (e.g. classification companies, German Marine Insurance and Safety Association (SeeBG), US Coast Guard etc.).

**6.3** Where billing is based on numbers of units, dimensions and/or weights, the values determined by us during the incoming inspection shall be decisive.

**6.4** If we have arranged with a Supplier that the consignment is not to be shipped to us, but to a third party, the Supplier shall prove to us in suitable form (e.g. a consignment receipt) that the consignment has been delivered to the third party.

**6.5** We shall not be obliged to take delivery of / accept deliveries by instalments which have not been agreed upon or deliveries which exceed or fall short of the agreed quantity.

**6.6** All deliveries to a warehouse announced by NSB shall be visibly marked on the outside with: Name of vessel and purchase order or reference number.

Enclosed documents shall be attached on the outside of the parcel in a transparent document pocket. The documents shall contain a delivery note, a pro-forma invoice including article based HS Codes (=Harmonized System Code) and if necessary relevant Material Safety Data Sheets.

## **7. Invoicing and Payment**

**7.1** On the day of shipment, no later than upon the rendering of performance in conformity with the contract, an invoice shall be separately sent to us in duplicate indicating our purchase order number, precisely specifying the content and the weight and stating the value-added tax. Issuance of an invoice which does not meet these requirements or which deviates from our purchase order shall not cause any cash discount period to begin.

**7.2** The Supplier's payment claims against us shall be due and payable within 30 days after completion of its services in conformity with the contract and, where a work is produced, after acceptance of the Supplier's services and after issuance of a correct invoice in accordance with section 7.1. The period for payment shall in no event begin before the contractually agreed date for delivery or completion.

**7.3** Unless otherwise agreed upon, we may pay the invoiced amount within fourteen days after receipt of the goods and the invoice with a 3 % cash discount. Set-off shall be deemed equivalent to payment.

**7.4** Payments for received invoices will only be released after receipt of goods including obligatory documentation in accordance with 6.6.

## **8. Transfer and Retention**

**8.1** Receivables or other claims directed against us on the basis of contracts concluded with us may only be assigned with our written consent.

**8.2** The Supplier shall only be entitled to exercise a right of retention in relation to us, in so far as its counterclaim is based on the same contractual relationship.

## **9. Warranty for Defects, Breaches of Duty**

**9.1** The Supplier warrants that the subject-matter of delivery / performance shall be of the quality contractually agreed upon with us, comply with relevant legal regulations and be in keeping with the state of the art in science and technology and that there are no circumstances attached to the subject-matter of delivery / performance which cancel out or reduce its value or suitability for normal use or for the use envisaged by the contract concluded with us. The Supplier further warrants that the design or composition of the goods delivered has not been altered compared to previous faultless deliveries of the same kind, except where such alterations have been agreed upon with us prior to the conclusion of the contract.

**9.2** If the subject-matter of delivery / performance is defective or is not in conformity with the contract for other reasons, we shall be entitled to statutory claims and rights without any limitation (particularly without exclusions or limitations of liability), with the proviso that the period for lodging a complaint as set forth in section 377 of the German Commercial Code [HGB] is 14 days. In the case of hidden defects, particularly those which only become apparent when the subject-matter of delivery is processed or put into operation, the period for lodging a complaint shall not begin until the defect is discovered. Sending off notification of defects in due time shall be deemed sufficient to preserve our rights.

**9.3** If the goods delivered are defective, we shall have the right to choose between repair or replacement. In urgent cases, we shall be entitled to rectify the defect ourselves or through a third party or purchase the required goods from a third party, at the Supplier's expense in each case.

**9.4** Following a failed attempt to render supplementary performance by the Supplier, we may cancel the contract and/or claim compensatory damages in lieu of performance. The Supplier shall not be entitled to an additional attempt to render supplementary performance. In so far as the Supplier's performance is only defective in part, we shall have the right to cancel or claim compensatory damages in lieu of performance either in respect of the defective part of performance or in respect of the contract as a whole, at our option.

**9.5** The defective goods shall be made available to the Supplier for repair either at the place where the defect was discovered or at the destination as per section 5.1, at our option. If it is not possible to repair the goods on site, the Supplier shall collect the goods from there at its expense and then return the goods to there.

The Supplier shall bear the cost of supplementary performance. The warranty periods shall be suspended for the duration of supplementary performance.

**9.6** The claims limitation period for defects in quality and defects in title shall conform with the provisions of the German Civil Code [BGB], but with the proviso that the periods stated therein are extended by six months.

**9.7** Even if we have examined dimensions and other general technical information on the basis of drawings sent to us and/or have approved a sample of the subject-matter of delivery for mass production, this shall not release the Supplier from its obligation to perform its duties in conformity with the contract. In particular, our examination shall not include checking whether dimensions are adequate or whether the materials used have been correctly chosen.

**9.8** Our customers or their representatives shall be entitled to obtain from the Supplier, during its operating hours, information on whether the Supplier's performance is in conformity with the contract. They may participate in internal tests or undertake tests themselves. Costs for repeat tests due to defects discovered beforehand shall be borne by the Supplier.

**9.9** The Supplier warrants to supply us with replacement parts for the subject-matter of delivery / performance, on terms and at prices customary on the market, at least for the normal duration of use of the respective subject-matter of delivery / performance.

## **10. Liability, Indemnification and Liability Insurance**

**10.1** Claims of the Supplier for compensatory damages and for reimbursement of costs (hereinafter collectively referred to as "Damage Claims") against us on any legal basis whatsoever are excluded, unless they are based on the provisions of the Product Liability Act [Produkthaftungsgesetz], an intentional or grossly negligent breach of contractual or legal duties by us, impairment of health or physical injury to the Supplier as a result of a breach of duty for which we are responsible, the absence of a feature which has been guaranteed or a breach of fundamental contractual duties by us. Where fundamental contractual duties are breached, the Supplier's Damage Claim against us shall be limited to foreseeable damages typical of this type of contract, except in cases of intent or gross negligence or in cases of liability due to impairment of health or physical injury or due to the absence of a feature which has been guaranteed. A breach of duty by our statutory representatives or our agents in performance shall be deemed equivalent to a breach of duty by us. The above provisions do not entail any shift in the burden of proof to the disadvantage of the Supplier.

**10.2** The Supplier shall indemnify us against any and all Damage Claims brought against us by third parties on account of a product defect, if and in so far as the damages were caused by raw materials or sub-products supplied by the Supplier or by services rendered by the Supplier.

The Supplier shall be further obliged to reimburse us for any and all expenses and damages arising from or in connection with a recall campaign undertaken by us. The Supplier's statutory liability under legal regulations shall remain unaffected.

**10.3** The Supplier shall keep in effect, at its expense, product liability insurance with a minimum cover in the blanket sum of EUR 2.5 million per case of personal injury / property damage.

## **11. Means of Production**

**11.1** We shall retain ownership of all means of production, such as drafts, drawings, models, samples, measuring and testing equipment, delivery and test instructions, master copies and the like, and tools which we make available to the Supplier for carrying out the purchase order.

**11.2** The means of production which the Supplier makes and charges for in performance of the purchase order shall become our property at the time of production. The Supplier shall hold them in safekeeping for us until they are handed over to us.

**11.3** Except with our written consent, the aforementioned means of production and items made with the aid thereof may not be used for purposes other than for processing our offer and for carrying out the delivery / performance ordered, nor duplicated or made available to third parties. They shall be protected against unauthorised access and use. The Supplier shall return them to us without undue delay and without request once it no longer needs them for further fulfilling its obligation to deliver or perform, unless we explicitly leave them with the Supplier. We shall have the exclusive right to exploit developments arising in connection with the purchase order, as well as resulting further developments.

## **12. Property Rights**

The Supplier warrants that no third-party rights shall be breached in connection with the delivery / performance and that the delivered goods themselves or their use shall not breach any industrial property rights or other rights of third parties. In so far as such rights do exist, the Supplier shall compensate us for resulting damages regardless of knowledge on its part or on our part. The Supplier shall be additionally obliged to indemnify us against third-party claims arising from industrial property rights.

## **13. Retention of Title**

Retention of title by the Supplier is excluded, except where we have given our explicit written consent to retention of title.

## **14. Subcontractors**

**14.1** Only with our written consent may the Supplier call in subcontractors to perform its existing contractual obligations in relation to us. The calling-in of subcontractors shall not release the Supplier from its obligations in relation to us.

**14.2** When placing orders with subcontractors, the Supplier shall ensure that the subcontractors also grant us, to the extent stated in section 9.8, the right to obtain information and undertake tests.

## **15. Data Protection**

The Supplier agrees that we may store, on our electronic data processing equipment, data relating to the Supplier and relating to individual contracts in so far as necessary under the business relationship and we may process and use such data for our own internal purposes in accordance with legal regulations.

## **16. Place of Performance and Jurisdiction, Governing Law**

**16.1** The place of performance for all deliveries / services to be performed by the Supplier is the destination stated by us (cf. section 5.1). The place of performance for payment is Buxtehude.

**16.2** Hamburg is the exclusive place of jurisdiction for all disputes directly or indirectly arising from the contractual relationship existing between the Supplier and us, including disputes about a bill of exchange, a document or a cheque. We shall however also be entitled to bring an action against the Supplier at any other permissible place of jurisdiction, at our option.

**16.3** The legal relationship between the Supplier and us shall be governed by the law of the Federal Republic of Germany, including the United Nations Convention on the International Sale of Goods (CISG).

## **17. Severability**

If any provision of a contract concluded with the Supplier and incorporating these General Terms and Conditions of Purchase is or becomes ineffective in law, this shall not affect the legal effectiveness of the other provisions of that contract.