

**GENERAL CONDITIONS**

**Telstar Marine International B.V.**  
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## **1 Definitions**

- 1.1 Customer: natural persons, legal persons and persons acting in the course of a profession or business, who are the other contracting party with regard to offers, quotes, announcements and agreements.
- 1.2 Consumer purchase: purchase relating to personal property, effected between a Supplier and a Customer, natural person, who is not acting in the course of a profession or business.
- 1.3 Supplier: user of these General Conditions who supplies goods and services.
- 1.4 Agreement(s): contractual relationship(s), whereby the Supplier supplies goods, provides services, carries out assignments or executes works.

## **2 Applicability of general conditions**

- 2.1 Insofar as the contrary is not indicated explicitly and in writing, exclusively these General Conditions apply to all Agreements, offers and acceptance thereof, quotes, announcements, contractual relationships and acceptance of orders by the Supplier, regardless of any (previous) reference by the Customer to his own or other general conditions. The Supplier explicitly rejects general conditions which the Customer declares applicable and will never be deemed to have accepted such general conditions. Derogations from these General Conditions must be explicitly agreed with the Supplier in writing.
- 2.2 These general conditions also apply in respect of any additional or follow-up agreements between the parties.

## **3 Offer and acceptance**

- 3.1 All offers/quotes made by the Supplier are without commitment and are valid during a term specified by the Supplier. Even after timely and full acceptance of the offer it can be revoked by the Supplier during twelve (12) full working days after receipt of the acceptance.
- 3.2 The Agreement is made as soon as the acceptance of the offer has reached the Supplier.
- 3.3 If reservations or alterations are made to the offer in the acceptance, in derogation from the provisions of the preceding paragraphs, the agreement will only be made if the Supplier has informed the Customer in writing to agree to such derogations from the offer.
- 3.4 All price lists, brochures and other information provided with an offer will be described as carefully as possible and therefore cannot be seen as any type of guarantee. These are only binding on the Supplier if the Supplier has explicitly confirmed such in writing.
- 3.5 Every agreement is entered into on the part of the Supplier subject to the suspensive condition that the Customer – exclusively at the discretion of the Supplier – turns out to be sufficiently creditworthy for the financial performance of the agreement.
- 3.6 For work for which, due to its nature and scope, no offers or order confirmations are sent, the invoice will also be deemed the assignment confirmation, which will also be deemed to represent the agreement accurately and in full. The administration of the Supplier is decisive in this respect.

## **4 Amendments**

- 4.1 Any subsequent supplementary agreements or amendments to the Agreement or to these General Conditions, and (verbal) agreements and/or promises made by personnel of the Supplier or on behalf of the Supplier by sellers, agents, representatives or other intermediaries of the Supplier, only bind the Supplier if the Supplier has confirmed such in writing.
- 4.2 Without prejudice to article 4 item 1 of the General Conditions the supplier may charge extra costs if they are the result of changes in the work to be carried out or of interruptions, if they were caused by circumstances for which the supplier was not responsible

## **5 Intellectual property rights**

- 5.1 The rights relating to all (intangible) products which are used by the Supplier in the framework of the Agreement – including analyses, models, overviews, software, techniques and the like – or which are the result of the work carried out by the Supplier pursuant to the assignment – which work includes advice, reports, plans and the like – lie exclusively with the Supplier, insofar as third parties are not (also) entitled to such rights.
- 5.2 All rights of intellectual property, including, but explicitly not limited to copyright on advice, reports and the like relating to what was (partly) established by the Agreement, lie with the Supplier.
- 5.3 Without the prior written permission of the Supplier, the Customer is not authorised to disclose or reproduce the products referred to in Paragraph 2 of this article, nor to use such for another purpose or to make such available to persons other than the purpose or persons for which the products in question are intended. This

prohibition also encompasses the express or tacit permission of the aforementioned actions.

- 5.4 The Supplier is not liable for claims of third parties in respect of infringement of their copyrights, patents, licenses, trademarks, models and other rights howsoever called in connection with Services provided by the Supplier, if he were to infringe such rights by making use of data (carriers), written documents or objects which have been furnished to the Supplier by or on behalf of the Customer for the performance of the Agreement. The Customer fully indemnifies the Customer in respect of said claims.

## **6 Delivery and delivery period**

- 6.1 Unless otherwise agreed, delivery will be ex the Supplier' s warehouse/premises. The time of delivery is the time when the goods leave the Supplier' s warehouse/premises, whereby the risk of the goods passes to the Customer. Delivery is only free of charge if and insofar as the Supplier has explicitly indicated this in writing on the invoice or otherwise.
- 6.2 The Customer is obliged to inspect the goods delivered or the packing immediately upon delivery for any shortcomings or damage, or to carry out such inspection after an announcement on the part of the Supplier that the goods are at the Customer's disposal.
- 6.3 The Customer must note any shortcomings or damage to the goods delivered and/or the packing which are present upon delivery, on the delivery note, the invoice and/or the transport documents; in the event of failure to do so, the Customer will be deemed to have approved the delivery. In such case, complaints in this respect will no longer be dealt with.
- 6.4 The Supplier is entitled to deliver in instalments (part deliveries), which he can invoice separately; in such case the Customer is obliged to effect payment in accordance with the provisions of Article 10 of these Conditions.
- 6.5 Unless explicitly otherwise agreed, indicated delivery times are approximates and time is never to be deemed of the essence. Exceeding the delivery date due to any cause whatsoever, does not give the Customer any entitlement to compensation, nor to dissolution of the agreement.
- 6.6 If no delivery time is agreed/specified, a period of 6 weeks after the order confirmation applies. In the event of exceeding of the delivery period, the Customer only is entitled to point out the exceeding of the date to the Supplier by registered mail and must give the Supplier another latest delivery date of at least 10 working days, which commences upon receipt of the relevant notice of default.
- 6.7 If the Customer has not taken the goods after the expiry of the delivery period, they will be stored as his disposal, at his expense and risk. After a period of 4 weeks the Supplier is entitled to (privately) sell these goods. Any shortfall in the proceeds and any costs are at the Customer's expense, without prejudice to the Supplier's other rights.
- 6.8 The Customer is obliged to reimburse the Supplier for the storage costs in accordance with the Supplier's usual rates and if there are no such usual rates, in accordance with the rates common in the industry as of the time that the goods are ready for shipment, or, if such is later, as of the delivery date agreed in the Agreement.

## **7 Packing and shipment**

- 7.1 The method of transport, shipment, packing and the like shall take place, if the Customer has not given the Supplier any specific instruction in this respect, at the expense and risk of the Customer, without the Supplier bearing any liability in this respect. Any specific wishes of the Customer with regard to the transport/shipment will only be carried out if the Customer has stated in writing that he will bear the additional costs. If the transporter demands that the waybills, transport addresses and the like contain the clause that all transport damage is at the expense and risk of the shipper, the Supplier will sign the documents in the Customer's name.
- 7.2 The goods will be delivered by the Supplier ex the Supplier's premises, or will be sent for delivery to the agreed place or places in the manner as set out in the order or agreed afterwards.
- 7.3 If the Supplier has made reels, pallets, packages, crates, containers, etc. available for packing or transport, or a third party has made such available, whether or not for payment of a deposit, the Customer is obliged (unless they are one-off packing materials) to return these reels, etc. within a maximum of three months to the address specified by the Supplier. If the Customer fails to do so, he will owe the Supplier compensation, without the need for further notice of default.

## **8 Passing of ownership and risk**

- 8.1 Subject to the provisions of Paragraph 2 of this article, the ownership and the risk for the goods will pass to the Customer upon delivery ex the Supplier's premises.
- 8.2 As long as the Customer has not paid the full amount of the purchase price including any additional costs or has not provided security therefore, the Supplier will retain title to the goods. In such case, title will first pass to the Customer as soon as the Customer meets all his obligations under or in connection with Agreements for the delivery of goods or the providing of services. In addition, the retention of title applies in respect of the claims

which the Supplier might have on the Customer in respect of default of the Customer on one or more of his obligations vis-à-vis the Supplier. If timely payment by the Customer of any debt under or connected with said agreement or timely or proper security for the payment of the debt is not effected, the Supplier is entitled to himself take back the goods to which he has retained title and the Supplier is not bound to compensate for any damage.

- 8.3 The Customer is bound to store the goods delivered subject to retention of title with the necessary care and clearly marked as the Supplier's property. The Customer is obliged to insure the goods, for the term of the retention of title, against fire, explosion and water damage, as well as against theft and to allow the Supplier to inspect the policies of said insurances upon first request. The Customer will grant a pledge in favour of the Supplier over all claims of the Customer on the insurers in respect of the goods under the heading of the afore mentioned insurances, as soon as the Supplier indicates that it desires such, in the manner indicated in Art. 3:239 of the Civil Code, as security for the Supplier's claims on the Customer.

## **9 Prices**

- 9.1 Unless explicitly otherwise agreed, the prices are:
- based on the purchase prices, salaries, wage costs, special and government taxes, freights, insurance prices and other costs applicable during the offer or on the order date;
  - based on delivery ex the Supplier's premises, warehouse or other storage places; exclusive of VAT, other taxes, levies and duties;
  - exclusive of the costs of transport and insurance;
  - set out in Euros and/or in Dutch currency.
- 9.2 Unless otherwise stated, all price indications are subject to price alterations. In the event of increase of one or more of the cost price factors which were not (properly) foreseeable at the time the Agreement was made, the Supplier is entitled to pass on these higher costs to the Customer.
- 9.3 Unless explicitly agreed otherwise, the prices for the providing of services of the execution of works are based on performance of the Agreement within the normal working hours on normal working days applicable at the Supplier's. If work has to be carried out outside of the Supplier's normal working hours or ordinary working days, outside of the Supplier's fault, the Supplier is entitled to charge the Customer for the additional attached costs.

## **10 Payment**

- 10.1 Insofar as an individual agreement is lacking in this respect, payment will be in Euros, in the manner indicated by the Supplier.
- 10.2 Payment is to be effected at latest within fourteen (14) calendar days after the date of the invoice, which invoice will be sent out after performance of the Agreement – or in the event of performance in instalments, after performance of a part of the Agreement – unless otherwise stipulated on the invoice.
- 10.3 The Supplier can demand a fee from the Customer for the costs which are charged to the Supplier in connection with a payment by the Customer to the Supplier.
- 10.4 If the Supplier deems such desirable, he is entitled at the time of or after making the Agreement, in derogation from the agreed payment regulations, to demand prior payment or cash on delivery payment. Upon the Supplier's first request, the Customer must, within a reasonable term, provide security which is satisfactory to the Supplier that both the payment and the other obligations will be performed.
- 10.5 In the event of refusal to pay or give security, the Supplier is entitled – at his election – to suspend or terminate performance of the Agreement, without prejudice to his other rights.
- 10.6 In the event there is more than one Customer, all Customers are severally liable to the Supplier. Even when two or more (legal) persons take over the Customer's debt, such (legal) persons are severally liable to the Supplier.
- 10.7 If the agreement cannot be performed within the agreed term or terms due to circumstances attributable to the Customer, this will not lead to suspension of the Customer's payment obligations. He will remain bound to pay on the agreed date.
- 10.8 In the event of late payment, due to the mere exceeding of the term stipulated for payment, the Customer must pay as of the date of exceeding of the term until the day of full payment interest over the amount owing, which interest is equal to the statutory interest plus 2%.
- 10.9 The Customer explicitly waives his right to settlement.
- 10.10 If assets of the Customer are attached, if a petition for the voluntary or involuntary bankruptcy of the Customer is filed or if the Customer himself files a petition with the district court requesting the granting of a (preliminary) moratorium on payment of applicability of the Debt Rescheduling for Natural Persons Act, all his debts to the Supplier will become immediately due in full.
- 10.11 Costs of judicial or extrajudicial measures which the Supplier has to take in connection with the failure of the Customer in the performance of obligations vis-à-vis the Supplier, are fully at the Customer's expense. The charge for collection costs will be calculated by means of the degressive collection rate of the Dutch Bar Association and is a minimum of 500 Euro per amount to be collected.

- 10.12 The Supplier need not return goods which are in the Supplier's possession for processing or repair to the Customer until after the Customer has paid the Supplier all that he owes the Supplier under any heading whatsoever.
- 10.13 If the goods are stored as referred to in Article 6.7, the Customer will remain obliged to pay the purchase price on the date set out in Paragraph 2 of this article.

## **11 Complaints**

- 11.1 Complaints on the performance of the Agreement, not being shortcomings and damage as referred to in Article 6.3, must be submitted to the Supplier in writing, with a full and clear description, within fourteen (14) calendar days after the Customer has noted or could have noted the defects; in any event complaints cannot be lodged any later than within six months after the date of performance of the Agreement. Late lodging of the complaint can entail that the Customer loses his rights in this respect.
- 11.2 If the Customer has not filed a complaint within the term set out in Paragraph 1, he can no longer bring any claims in respect of the defective performance. However, exceeding of the term referred to in the preceding paragraph can be waived in the event late filing of the complaint is not attributable to the Customer.
- 11.3 Complaints do not release the Customer from his payment obligations vis-à-vis the Supplier.
- 11.4 No complaint will be accepted in respect of delivered goods which do fulfil the qualities, but which turn out not to be suitable for the purpose for which the Customer wishes to use them.
- 11.5 Complaints on invoices must also be filed in writing within 8 (eight) days after the date the invoices have been sent.
- 11.6 If the Supplier holds that the complaint is well-founded, he is only obliged to repair, replace or credit the improper goods, at the Supplier's election, without the Customer being able to enforce any right to any compensation whatsoever in addition thereto.
- 11.7 The goods delivered can only be returned after prior written consent of the Supplier and delivery must always be free of charge. The time periods in this article apply in full. The time periods set out in the "European Directive on certain aspects of the sale of and the guarantees for consumer goods" and the legislation based thereon do not apply to our agreements with the Customer if they do not relate to a consumer purchase.

## **12 Force majeure**

- 12.1 The Supplier is not bound to perform any obligation, if he cannot or cannot any longer perform the Agreement, if this is a result of circumstances – foreseeable or otherwise – which are beyond the Supplier's control. Circumstances which are beyond the Supplier's control are in any event: war or a situation similar thereto, mobilisation, riot, strike, excessive absenteeism of personnel of the Supplier, company lock-out, blockade, boycott, illness, non-attributable fire or a disruption in the supply of electricity, gas or water, late performance of suppliers or agents, government measures and the like.
- 12.2 If a situation as referred to in the preceding paragraph arises, the Supplier will report such to the Customer. The parties will consult on a possible adjustment of the Agreement. If the parties do not reach agreement (performance of the Agreement remains impossible), each of the parties can dissolve the Agreement, insofar as it has not yet been performed. There will be permanent impossibility of performance when performance of the Agreement is not possible, de facto or legally, for more than sixty (60) more or less consecutive days or when it is clearly foreseeable that the performance of the Agreement will not be possible, de facto or legally, during said period.
- 12.3 If the force majeure arises while the Agreement has already been partly performed and the remaining delivery is delayed by more than two months, the Customer has the right to either keep the part of the goods already delivered and to pay the purchase price owing therefore, or to deem the Agreement as terminated, including the part which has already been performed, subject to the obligation to return what has already been delivered to the Supplier at the Customer's expense and risk. The latter can only take place if the Customer can demonstrate that the part of the goods already delivered can no longer be effectively used by the Customer as a result of the non-delivery of the remaining goods.

## **13 Dissolution**

- 13.1 If the Customer fails to perform one or more of his obligations ensuing from the Agreement, or does not perform such in time or in full, the Supplier is entitled, without further notice of default and judicial recourse or without being bound to pay any compensation, to suspend the delivery of the products and/or to dissolve the Agreement in question with immediate effect, without prejudice to all other rights of the Supplier.
- 13.2 In addition to the other rights to which the Supplier is entitled, the Supplier can dissolve the Agreement with the Customer at any time, without further notice of default and judicial recourse and without being bound to pay compensation to the Customer, with immediate effect if the Customer is not able to pay his due debts or leaves his due debts unpaid, becomes insolvent, if a petition is presented for the bankruptcy of the Customer (whether or not by

means of a voluntary petition), if a (provisional) moratorium on payment is petitioned for, if with regard to a Customer an application is filed requesting the application of the Debt Rescheduling for Natural Persons Act, upon the death of the Customer, or if the Customer ceases his business and/or the Customer's assets are attached, which attachment is not terminated within 30 days after the date of attachment or in the event of force majeure or circumstances equivalent thereto.

## **14 Liability/guarantee.**

- 14.1 The supplier guarantees that the work he carries out shall be to the agreed standard, carried out with proper craftsmanship and sound materials. The supplier is not responsible for the effectiveness and quality of materials ordered or supplied by the client.
- 14.2 The supplier is not responsible for (exterior) defects that are the result of the nature and characteristics of the materials used. Nor for defects that have occurred after delivery of the goods due to ordinary wear and tear, improper use or carelessness, or are the result of alterations made by the client or third parties. Nor is the supplier responsible for any damage resulting from the above defects.
- 14.3 The Supplier is not liable for damage of the Customer arising under any heading whatsoever including all direct and indirect damage, such as consequential damage or trading damage, unless such damage has been caused by intent or conscious recklessness on the part of the Supplier. In the event the Supplier is subject to any liability, the Supplier will only compensate damage in respect of which the Customer demonstrates that it is the direct consequence of the event for which the Supplier is legally liable, if and insofar as the insurance contract made by the Supplier covers this damage.
- 14.4 The compensation that the Supplier is to pay out to the Customer will in any event be limited to the amount that is paid out in a given case in the framework of the insurance referred to in Paragraph 3.
- 14.5 The Supplier is never liable for damage caused by intent or conscious recklessness if the Supplier has sold and delivered goods or provided services which with the state of awareness at the time of the sale and delivery or the providing of the services would not have led to liability as referred to in Paragraph 3 of this article.
- 14.6 The Customer is obliged to indemnify the Supplier against all claims of third parties for compensation vis-à-vis the Supplier with regard to the performance of any Agreement made between the Supplier and the Customer and the following up of recommendations and/or advice given by the Supplier in his studies, advice and/or reports.
- 14.7 The Customer is liable for all costs ensuing from the indemnity referred to in Paragraph 6.
- 14.8 The supplier shall guarantee the work for 6 months against any defect which comes to light or occurs after delivery. Parts supplied by third parties and used by the supplier are guaranteed by the said third parties. Performance of our contractual guarantee obligations /complaints is deemed sole and full compensation.
- 14.9 The Supplier excludes the applicability of the "European guideline on certain aspects of the sale of and the guarantees for consumer goods", and the legislation based thereon, with regard to its agreements with the Customer. The liability of the Supplier does not extend beyond what is laid down in this article.
- 14.10 The Supplier does not accept any liability under any heading whatsoever, for advice which the Supplier gives without such being based on an Agreement specifically geared to the giving of advice.
- 14.11 The Supplier does not accept any responsibility or liability under any heading whatsoever for drawings, designs, calculations, instructions, material and the like, which are furnished to the Supplier by or on behalf of the Customer with an eye to the performance of the Agreement.

## **15 Applicable law and competent court**

- 15.1 The Agreement is governed by Dutch law. The applicability of the United Nations Convention on the International Sale of Goods (CISG) is expressly excluded.
- 15.2 Disputes on or connected with the Agreement, which do not fall within the jurisdiction of the Cantonal Court, will exclusively be brought before the district court within whose district the Supplier has his head office. Nevertheless, the Supplier is entitled to bring disputes before the legally competent court.

## **16 Derogating provisions only in the case of consumer purchase**

- 16.1 If there is a Consumer Purchase, the mandatory provisions of Title 1 of Book 7 of the Civil Code exceed the provisions of these General Conditions, insofar as there is derogation from the mandatory provisions therein.