



## General Terms and Conditions of Purchase of Michael Schmidt Yachtbau GmbH

### Section 1: General, Scope of Application

(1) These General Terms and Conditions of Purchase (GTCP) apply to all business relationships with our business partners and suppliers ("Seller"). The GTCP only apply if the Seller is an entrepreneur (Section 14 German Civil Code (BGB)).

(2) The GTCP shall apply in particular to contracts for the sale and/or delivery of movable property ("goods"), regardless of whether the Seller manufactures the goods itself or purchases them from suppliers (Sections 433 and 650 BGB). Unless otherwise agreed, the GTCP in the version valid at the time of the Purchaser's order or in any case in the version last communicated to it in text form (Section 126b BGB) shall also apply as a framework agreement for similar future contracts without us having to refer to them again in each individual case.

(3) The goods ordered by us are generally used to manufacture sailing yachts and are combined, processed or mixed in the course of their manufacture. Where applicable, the delivered goods must comply with the requirements of the EU Sports Boat Directive 2013/53/EU Category "A" - Offshore. Corresponding certificates or declarations of conformity must be enclosed with the delivery documents.

(4) These GTCP apply exclusively. Deviating, opposing or supplementary General Terms and Conditions of the Seller shall only become part of the contract if and to the extent that we have expressly agreed to their validity in text form (Section 126b BGB). This requirement for consent shall apply in all cases, for example even if we accept the Seller's deliveries without reservation in knowledge of the Seller's General Terms and Conditions. Our possible silence on declarations regarding the inclusion of the Seller's GTCs in the contract and the Seller's GTCs themselves, in particular in confirmation letters, delivery notes, invoices, etc., shall be deemed to be a refusal.

(5) Legally relevant declarations and notices that must be submitted to us by the Seller after conclusion of the contract (e.g. deadlines, reminders, declaration of withdrawal) must be in writing to be effective (Section 126b BGB).

(6) References to the applicability of statutory provisions are for clarification purposes only. The statutory provisions also apply without such clarification, unless they are directly amended or explicitly excluded in these GTCP.

### Section 2: Conclusion of contract

(1) Our order shall be deemed binding upon submission or confirmation in text form (Section 126 b BGB) at the earliest. General enquiries from us about prices and delivery times, for example, only represent an invitatio ad offerendum. Obvious errors (e.g. typographical and arithmetic errors) and incompleteness of the order, including the order documents, must be notified to us by the Seller for the purpose of correction or completion before acceptance; otherwise, the contract shall be deemed not to have been concluded.

(2) The Seller is obliged to confirm our order immediately in writing or in text form (Section 126 b BGB) or in particular by sending the goods without reservation (acceptance).  
Late acceptance is considered a new offer and requires acceptance by us.

### Section 3: Performance, delivery, transfer of risk, default of acceptance

(1) Delivery within Germany is free to the place specified in the order. If the destination is not specified and no other agreement has been made, delivery must be made free of charge to our registered office in Greifswald Ladebow. The destination is also the location for the primary delivery (obligation to deliver).



(2) The risk of accidental loss and accidental deterioration of the goods shall pass to us upon handover at the place of fulfilment. Insofar as formal acceptance has been agreed, this shall be decisive for the transfer of risk.

#### **Section 4: Prices and payment conditions**

(1) The price stated in the purchase order or referred to in the purchase order is binding. All prices are net prices plus statutory sales tax.

(2) Unless otherwise agreed in individual cases, the price shall include all services and ancillary services of the Seller (e.g. assembly, installation) and all ancillary costs (e.g. proper packaging, transport costs including any transport and liability insurance).

(3) The agreed price must be paid within 30 calendar days of complete delivery and performance (including any agreed acceptance) and receipt of a proper invoice. If we make payment within 10 calendar days, the Seller shall grant us a 2% discount on the net amount of the invoice. For a bank transfer, payment has been made in good time if our transfer order is received by our bank before the payment deadline has expired; we are not responsible for delays caused by the banks involved in the payment transaction.

(4) We shall not owe any interest due. The statutory provisions shall apply to late payment.

(5) Offsetting by the Seller against claims of the buyer is only permissible with undisputed or legally established claims or such claims arising from an entitlement for which the Seller could assert a right of retention in accordance with sentence 2, or could have asserted earlier. The Seller shall only be entitled to a right of retention if it is based on the same purchase contract relationship.

#### **Section 5: Confidentiality**

We reserve ownership and copyright to illustrations, plans, drawings, calculations, execution instructions, product descriptions and other documents. Such documents must be used exclusively for the contractual service and must be returned to us after the contract has been completed. The documents must be kept confidential from third parties, even after termination of the contract. The confidentiality obligation shall only expire if and to the extent that the knowledge contained in the documents provided has become generally known. Furthermore, the Seller undertakes not to communicate with our customers with regard to the goods or services supplied by them without our prior consent in writing, in particular not to make their own assessments of the quality and functionality of the services provided by them or us. Such communication without our consent shall always be considered a breach of confidentiality, including with regard to the type and manner of installation itself, and shall result in the Seller being obliged to compensate for all disadvantages caused by this.

#### **Section 6: Provided items**

(1) Substances and materials (e.g. software, finished and semi-finished products) as well as tools, templates, samples and other items that we provide to the Seller for production remain our property. Such items must – as long as they are not processed – be stored separately at the Seller's expense and insured against destruction and loss to an appropriate extent.

(2) Any processing, mixing or combination (further processing) of items provided by the Seller shall be carried out for us.



## Section 7: Transfer of ownership and retention of title

(1) Further processing of the delivered goods is carried out for us, so that we are considered the manufacturer and acquire sole ownership of the product at the latest upon further processing in accordance with the statutory provisions.

(2) Ownership of the delivered goods shall pass to us at the latest upon payment of the purchase price. Any retention of title on the part of the Seller shall therefore also expire no later than upon payment of the purchase price for the delivered goods. In the ordinary course of business, we remain authorised to resell the goods even before payment of the purchase price, with the advance assignment of the resulting claim (alternatively, the simple retention of title extended to resale applies). All other forms of retention of title, in particular expanded, transferred and extended retention of title for further processing, are hereby expressly excluded.

## Section 8: Defective delivery

(1) The statutory provisions shall apply to our rights in the event of material and legal defects in the goods (including incorrect and short delivery as well as improper installation, defective installation, operating or user instructions) and in the event of other breaches of duty by the Seller, unless otherwise specified below.

(2) In accordance with statutory provisions, the Seller shall be liable in particular for ensuring that the goods have the agreed quality upon transfer of risk to us. The product descriptions that are the subject of the relevant contract – in particular by designation or reference in our order – shall be deemed to be the agreement on the quality. It makes no difference whether the product description originates from us, the Seller or the manufacturer. In addition, the goods must comply with the requirements pursuant to Section 1 Clause 3 of these GTCP as well as any other applicable legal requirements, in particular those of the trade associations, DIN and EN, at the time of delivery, unless otherwise expressly agreed. If the goods are later to be transported to a country outside the EU in a way that is recognisable for the Seller, the relevant regulations for the goods for this country must also be observed. The Supplier must also ensure that its goods comply with the specifications for which we are responsible under the Supply Chain Act, in particular environmental standards, consumer protection, workers' rights and child protection.

(3) The statutory provisions (Sections 377, 381 HGB) shall apply to the commercial inspection and notification of defects with the following proviso: Our obligation to inspect is limited to defects that are apparent during our incoming goods inspection by means of external evaluation, including the delivery documents, as well as during our quality control by means of random sampling (e.g. transport damage, incorrect and short delivery). Insofar as acceptance has been agreed, there is no obligation to inspect. In all other respects, it depends on the extent to which an inspection is feasible in the ordinary course of business, taking into account the circumstances of the individual case.

(4) Our obligation to notify for defects discovered at a later date remains unaffected. In all cases, our complaint (notification of defects) shall be deemed to have been made promptly and in good time if it is made within 5 working days of discovery of the defect. Section 377 (4) HGB remains unaffected.

(5) We are entitled to the rights arising from Sections 439 (2) and (3) BGB (reimbursement of expenses for the purpose of supplementary performance as well as removal and installation costs required for this purpose) without restriction, whereby the expenses to be reimbursed also include the expenses required for the purpose of defect inspection and determination, including any removal and installation costs that may be required. The Seller is aware that we are incorporating the goods into a yacht and therefore the place of fulfilment of the supplementary performance is specified separately in Clause 8 of this paragraph and is regulated differently to that of the primary obligation to perform. If the yacht has to be transported to a place other than the place of supplementary performance for the purpose of supplementary performance, these



costs must also be reimbursed within the framework of the reimbursement of expenses. Our liability for damages in the event of unjustified requests for rectification of defects remains unaffected; in this respect, however, we shall only be liable if we have recognised or failed to recognise through gross negligence that no defect was present.

(6) If the Seller fails to fulfil its obligation to provide supplementary performance – at our discretion by remedying the defect (rectification) or by delivering a defect-free item (replacement delivery) – within a reasonable period set by us, without the requirements of Section 439 (4) BGB (disproportionate or unreasonableness of the selected type of supplementary performance or supplementary performance overall for the Seller) being present, we may rectify the defect ourselves and demand compensation from the Seller for the expenses required for this or a corresponding advance payment. If the subsequent performance by the Seller fails or if subsequent performance is unreasonable for us, or if a deadline for subsequent performance – even if short – is no longer possible (e.g. due to special urgency, danger to operational safety or impending occurrence of disproportionate damage), we shall inform the Seller of such circumstances without delay, if possible in advance.

(7) Furthermore, in the event of a material defect or defect of title – in particular if both types of supplementary performance in accordance with § 439 (4) BGB are disproportionate or unreasonable for the Seller – we are, in accordance with the statutory provisions, entitled to a reduction in the purchase price or to withdraw from the contract. In addition, we are entitled to compensation for damages and expenses in accordance with the statutory provisions.

(8) The place of fulfilment for subsequent fulfilment is the location of the goods; in the case of processing the goods into a new product or mixing or combining the goods with a product manufactured by us, it is the location of this product, which is not stationary due to the specific nature of the product manufactured by us (yacht). If supplementary performance is not possible at the place of the supplementary performance or is not advisable for economic reasons, even taking into account the interests of our customer, we shall be free to determine the place of supplementary performance; this place shall then be deemed to be the place of supplementary performance. For the reimbursement of expenses, Section 8 (5) of these GTCP applies, whereby the Seller may not be more heavily economically burdened, taking into account a cost comparison of all costs incurred, than if the supplementary performance had taken place at the closest possible location where such a location would have been technically possible and would have been reasonable for our customer.

### **Section 9: Supplier recourse**

(1) In addition to claims for defects, we are entitled to our legally determined recourse claims within a supply chain (supplier recourse in accordance with Sections 445a, 445b, 478 BGB). In particular, we are entitled to demand the exact type of supplementary performance (rectification or replacement delivery) from the Seller that we owe to our customer in individual cases. Our statutory right to choose (Section 439 (1) BGB) is not restricted by this.

(2) Before we recognise or fulfil a defect claim asserted by our customer (including reimbursement of expenses in accordance with Sections 445a (1), 439 (2) and (3), 475 (4) and (6) BGB), we shall notify the Seller and request a written statement, briefly explaining the facts. If the statement is not made within a reasonable period of time and no amicable solution is found, the claim for defects allowed by us shall be owed to our customer; in this case, the Seller shall be liable for the counter-evidence.

(3) Our claims arising from supplier recourse shall also apply if the goods are further processed before sale by us or one of our customers, e.g. by installation in another product.



### **Section 10: Product liability**

(1) If the Seller is responsible for damage resulting from the use of the product, it must indemnify us from all third-party claims insofar as the cause is within its sphere of control and organisation and it is liable in its external relationship.

(2) As part of its indemnification obligation, the Seller shall pay expenses in accordance with Sections 683 and 670 of the BGB arising from or in connection with a claim by third parties, including recall actions carried out by us. As far as possible and reasonable, we shall inform the Seller of the content and scope of recall measures and give them the opportunity to comment. Further statutory claims remain unaffected.

(3) The Seller shall take out and maintain product liability insurance with a lump sum coverage of at least EUR 10 million per personal injury/property damage.

### **Section 11: Limitation period**

(1) Any claims by the contracting parties shall become statute-barred in accordance with the statutory provisions, unless otherwise specified below.

(2) Notwithstanding Section 438 (1) No. 3 BGB, the general limitation period for claims for defects is 3 years from the transfer of risk. The provision pursuant to Section 445 BGB shall remain unaffected by this and shall continue to apply unchanged. Insofar as acceptance has been agreed, the limitation period shall commence with acceptance. The 3-year limitation period shall also apply accordingly to claims arising from defects of title, whereby the statutory limitation period for in rem claims for the return of goods by third parties (Section 438 (1) No. 1 BGB) shall remain unaffected; claims arising from defects of title shall not become statute-barred in any case beyond this, as long as the third party can still assert the right against us – in particular due to a lack of limitation period.

(3) The limitation periods of the sales law, including the above-mentioned extension pursuant to Clause 2 shall apply to all contractual claims for defects to the extent permitted by law. Insofar as we are also entitled to non-contractual claims for damages due to a defect, the regular statutory limitation period (Sections 195, 199 BGB) shall apply if the application of the limitation periods of the sales law does not lead to a longer limitation period in individual cases.

### **Section 12: Applicable law and place of jurisdiction**

(1) These GTCP and the contractual relationship between us and the Seller shall be governed by the law of the Federal Republic of Germany, with the exception of the provisions which would assign the contractual relationship to another law, to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.

(2) If the Seller is a businessman in the sense of the Handelsgesetzbuch (German Commercial Code), the exclusive – including international – place of jurisdiction for all disputes arising from the contractual relationship is our registered office in Greifswald Ladebow. In all cases, however, we are also entitled to take legal action at the place of fulfilment of the relevant delivery obligation in accordance with these GTCP or a priority individual agreement or at the general place of jurisdiction of the Seller. Priority statutory provisions, in particular with regard to exclusive responsibilities, remain unaffected.