

## **General Conditions of Purchase of Michael Schmidt Yachtbau GmbH**

### **§ 1 General Remarks, Scope of Application**

(1) These General Conditions of Purchase (GCP) apply to any business relations with our business partners and suppliers ("sellers"). The GCP will apply only if the seller is an entrepreneur (Section 14 BGB [= German Civil Code]).

(2) In particular, the GCP apply to contracts of sale and/or delivery of movable objects ("goods") regardless of whether the seller produces the goods himself or purchases them from suppliers (Sections 433, 650 BGB). Unless something else has been agreed upon, the GCP apply in the version valid at the time of the purchaser's order or, at any rate, in the version communicated to him most recently (Section 126b BGB) as a framework agreement for similar future contracts without us having to refer to them again in any single case.

(3) As a rule, the goods ordered by us are used to manufacture sailing yachts and - while they are manufactured - combined, processed or mixed. The goods delivered have - where applicable - to meet the requirements of EU Recreational Craft Directive 2013/53/EU Category "A" - deep sea. Relevant certificates or declarations of conformity have to be attached to the delivery papers.

(4) These GCP apply exclusively. Deviating, conflicting or supplementary terms and conditions of the seller become contract components only if and as far as we have expressly agreed to their validity in written form (Section 126b BGB). This requirement of approval applies in any case, e.g. even if we - knowing the seller's terms and conditions - accept his deliveries unconditionally. If we fail to comment on statements regarding the inclusion of the seller's terms and conditions especially those contained in letters of confirmation, delivery notes, invoices etc. as well as the seller's terms and conditions themselves, this will have to be deemed a rejection.

(5) For their effectiveness, legally relevant declarations and notifications that the seller has to give us after conclusion of the contract (e.g. setting deadlines, reminders, declaration of withdrawal) require written form (Section 126b BGB).

(6) References to the validity of statutory regulations have a clarifying function only. Even without such a clarification, the statutory regulations apply as far as they are not altered directly or expressly excluded in these GCP.

### **§ 2 Conclusion of Contract**

(1) At the earliest, our order is considered binding with the submission or confirmation in textual form (Section 126 b BGB). Prior to acceptance, the seller has to notify us of obvious errors (e.g. write and calculation ones) and incompleteness of the order including order documents for the purpose of correction or completion; otherwise, the contract is considered to be not concluded.

(2) The seller is obliged to immediately confirm our order in writing or in text form (Section 126 b BGB) or, in particular, to carry it out unconditionally by sending the goods (acceptance).

A belated acceptance is deemed to be a new offer and requires our acceptance.

## **§ 3 Performance, Delivery, Passing of Risk, Default of Acceptance**

(1) Delivery takes place within Germany "free of charge" to the place named in the order. If the destination is not specified and nothing else agreed upon, delivery has to take place to our registered office at Greifswald Ladebow. The respective destination is also the place of performance for the primary delivery (obligation to fulfill).

(2) The risk of accidental loss and accidental deterioration of the item passes to us by delivery at the place of destination. As far as a formal acceptance is agreed upon, it is decisive for the passing of risk.

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

(1) The price stated in the order is binding. All prices are net plus statutory value added tax.

(2) Unless in particular cases otherwise agreed upon, the price includes any performances and ancillary services of the seller (e.g. assembly and installation) as well as any ancillary expenses (e.g. proper packaging, transportation costs, including possible transport and liability insurances).

(3) The agreed price is due for payment within 30 calendar days after complete delivery and performance (including a possibly agreed acceptance) as well as the receipt of a correct invoice. If we pay within 10 calendar days, the seller will grant us a 2% discount on the net amount of the invoice. In case of bank transfer, payment will be deemed carried out in time if our transfer order is received at our bank within the payment period; we are not responsible for delays by the banks involved in the payment process.

(4) We do not owe any maturity interest. The statutory provisions apply to default of payment.

(5) Offsetting by the seller against claims of the buyer is only permissible with undisputed or legally established claims or such receivables arising from a claim investigate the seller a right of retention after In accordance with the provisions of sentence 2, or could have previously claimed. The seller is only entitled to a right of retention to the extent that it is based on the same purchase contract relationship.

## **§ 5 Confidentiality**

We reserve ownership rights and copyrights in illustrations, plans, drawings, calculations, implementation instructions, product descriptions and other documentation. Such documents are to be used exclusively for the contractual performance and to be returned to us after completion of the contract. The documents have to be kept secret to third parties, in fact, also after termination of the contract. The obligation of confidentiality will not expire before and as far as the knowledge contained in the documents has become generally known.

## **§ 6 Items Provided**

(1) Fabrics and materials (e.g. software, finished and semi-finished products) as well as tools, templates, samples and other items which we provide the seller for manufacturing remain our property. Such items are - as long as they are not processed - to be kept safe and reasonably insured against destruction and loss at the seller's expense.

Michael Schmidt Yachtbau GmbH

[www.msyachtbau.com](http://www.msyachtbau.com)

+49 3834 5858 77-0 info@msyachtbau.com

HRB: 8938 . VAT-ID: DE284 620 682 Managing Director: Michael Schmidt

Nordstraße 1 17493 Greifswald

Commerzbank AG . IBAN DE06 1404 0000 0222 8880 00 . BIC COBADEFFXXX

(2) Processing, mixing or combining (further processing) of items provided by us is carried out for us.

## **§ 7 Transfer and Retention of Title**

(1) With us processing the delivered goods, it will be done for us so that we are deemed manufacturer and - by further processing according to the statutory provisions - acquire ownership of the product at the latest.

(2) The ownership of goods delivered passes to us by paying the purchase price at the latest. Therefore, any retention of title of the seller will expire also by paying the purchase price for the goods delivered at the latest. In proper business routines, we remain entitled to resale the goods even prior to paying the purchase price by assigning the claims incurred (alternatively, the simple retention of title and the one extended to resale apply alternatively). In any case, any other forms of retention of title, especially the extended retention of title, the transferred retention of title and the one extended for further processing in particular are excluded.

## **§ 8 Defective Delivery**

(1) In case of defects regarding quality and title of the goods (including incorrect and incomplete delivery as well as improper installation, improper installation and operating instructions) and other breaches of duty by the seller, the statutory provisions apply to our rights unless anything else is determined hereinafter.

(2) According to statutory provisions, the seller is liable particularly to ensure that on passing the risk to us the goods have the quality agreed upon. In any case, as an agreement upon quality, those product descriptions apply which - especially by naming or referring to in our order - are object of the relevant contract or were included into the contract the same way as these GCP. Thereby, it does not make any difference whether the product description originates from us, the seller or the manufacturer.

(3) As to the commercial duty to inspect and give notice of defects, the statutory provisions apply (Sections 377, 381 HGB [ = German Commercial Code ]) with the following proviso: Our duty to inspect is restricted to defects which become evident during our inspection of incoming goods including delivery documentation by outward examination as well as during our quality check by random sampling (e.g. transport damage, incorrect delivery or short fall in deliveries). If an acceptance is agreed upon, there will be no duty to inspect. Apart from that, it depends on whether an inspection is - according to proper business routines - feasible considering the circumstances of the individual case.

(4) Our obligation to give notice of defects later discovered remains unaffected. In any case, our reprimand (notice of defects) will be deemed as immediately and in time if it is served within 5 work days. Section 377 subsection 4 HGB remains unaffected.

(5) We are fully entitled to the rights under section 439 subsection 2 and 3 BGB (reimbursement of expenses for expenses for the purpose of subsequent performance as well as necessary removal and installation costs), whereby the expenses to be reimbursed also include those required for the purpose of investigating and determining deficiencies Expenses including any necessary removal and installation costs are included. Our liability for damages in cases of unjustified requests for remedy remains unaffected; in this respect, we, nevertheless, will be liable only if we have recognized or - grossly negligently - have not recognized that there has not been any defect.

(6) If the seller fails to meet his obligation to render supplementary performance - at our choice by removing the defect (rectification) or by delivering a flawless item (replacement delivery) - within a

Michael Schmidt Yachtbau GmbH

[www.msyachtbau.com](http://www.msyachtbau.com)

+49 3834 5858 77-0 info@msyachtbau.com

HRB: 8938 . VAT-ID: DE284 620 682 Managing Director: Michael Schmidt

Nordstraße 1 17493 Greifswald

Commerzbank AG . IBAN DE06 1404 0000 0222 8880 00 . BIC COBADEFFXXX

reasonable period set by us without the preconditions of Section 439 subsection 4 BGB (disproportion or unreasonableness of the chosen type of supplementary performance or the supplementary performance as a whole for the seller) being applicable, we may remove the defect ourselves and demand compensation for the expenses necessary for that or an appropriate advance from the seller. If the supplementary performance by the seller has failed or a rectification is unreasonable for us or if an - although short - deadline for rectification is not possible any longer (e.g. due to special urgency, endangering operational safety or imminent occurrence of disproportionate damages) no deadline will be required; we will notify the seller of such circumstances immediately if possible in advance.

(7) Apart from that, in case of defect of quality or title - especially if both types of rectification are - according to Section 439 subsection 4 BGB - disproportionate or unreasonable for the seller - we are according to the statutory provisions entitled to a reduction of the purchase price or a withdrawal from the contract. Moreover, we are according to the statutory provisions eligible for claim of damages and reimbursement of expenses.

(8) Place of performance for supplementary performance is the place where the goods are situated, in case of processing the goods into a new product or mixing or combining the goods with a product manufactured by us, the place where this product is situated.

## **§ 9 Supplier Recourse**

(1) Apart from defect claims, we are - determined by law - unrestrictedly entitled to our recourse claims within a supply chain (supplier recourse according to Sections §§ 445a, 445b, 478 BGB). In particular, we are entitled to demand exactly the type of supplementary performance (rectification or replacement) from the seller we owe our customer in an individual case. Our statutory right to chose (Section 439 subsection 1 BGB) is not restricted by that.

(2) Before we acknowledge or comply with a claim for defects asserted by our customer (including reimbursement of expenses according to Sections §§ 445a subsection 1, 439 subsection 2 and 3, 475 subsection 4 and 6 BGB), we will notify the seller and - giving a brief account of the facts - ask for a written comment. If the comment is not made within a reasonable period of time and if an amicable solution cannot be brought about, our actually granted claim for defects will be deemed to be owed to our customer; in this case, the seller has to provide evidence to the contrary.

(3) Our claims for supplier recourse will apply also if the goods have been processed by us or by one of our customers - e.g. by installation into a different product - prior to them being sold.

## **§ 10 Producer's Liability**

(1) If the seller is responsible for a product defect, he will have to release us from third-party claims inasmuch as the cause is within his sphere of control and organization and he himself is liable to third parties.

(2) Within the scope of his obligation to release, the seller has - according to Sections 683, 670 BGB - to reimburse expenses which originate from or in connection with third parties' claims including recall

actions carried out by us. As far as possible and reasonable, we will inform the seller about contents and extent of recall actions and give him the opportunity for comment. Further statutory claims remain unaffected.

(3) The seller has to take out and maintain a product liability insurance with a lump-sum coverage of at least 10 million Euros per personal/property damage.

## **§ 11 Limitation**

(1) The mutual claims of the contracting parties will become time-barred according to statutory provisions unless something else is determined subsequently.

(2) By derogation from Section 438 subsection 1 no 3 BGB, the general limitation period for claims for defects is three years from the passing of risk. If an acceptance has been agreed upon, the limitation period will start with the acceptance. The 3-year limitation period applies correspondingly for claims deriving from defective titles, but the statutory limitation period for third parties' claims in rem (Section 438 subsection 1 no 1 BGB) remains unaffected; apart from that, claims deriving from defective titles will not, in any case, become time-barred as long as the third party may still assert the right - especially in default of limitation - against us.

(3) The limitation periods under the law governing the sales of goods including the prolongation mentioned above apply - to the statutory extent - to any contractual claims for defects. As far as we - due to a defect - are entitled to non-contractual damage claims too, the regular statutory limitation period will apply (Sections 195, 199 BGB), unless the application of the limitation periods under the law governing the sale of goods results in an individual case in an extended limitation period.

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

(1) Regarding these GCP and the contractual relationship between us and the seller, the law of the Federal Republic of Germany shall apply - with the exception of the provisions which would assign the contractual relationship to a different law - to the exclusion of international uniform law, especially UN sales law.

(2) If the seller is a merchant in terms of the German Handelsgesetzbuch, the exclusive - also international - place of jurisdiction for any disputes resulting from the contractual relationship will be our registered office in Greifswald Ladebow. The same will apply if the buyer is an entrepreneur in terms of Section 14 BGB. We are, however, in all cases also entitled to file a suit at the place of performance of the relevant obligation to deliver pursuant to these GCP or a priority individual agreement or at the seller's general place of jurisdiction. Priority statutory provisions, especially those to exclusive jurisdictions, remain unaffected.

Rev6\_2019\_03\_07