



**General Terms and Conditions of Sale of H+B technics GmbH + Co. KG vis-à-vis entrepreneurs within the meaning of Section 310 (1) of the German Civil Code (BGB)**

**Section 1 General Information - Scope**

(1) Our Terms of Business (Terms and Conditions of Sale) shall apply exclusively; we shall not recognise any terms and conditions of the customer that are contrary to or deviate from our terms and conditions of sale, unless we have expressly agreed to their validity in writing. Our Terms and Conditions of Sale shall also apply if we carry out the delivery to the customer without reservation in the knowledge that the customer's terms and conditions conflict with or deviate from our Terms and Conditions of Sale.

**Section 2 Consent to Data Processing**

By submitting his/her legal application in accordance with clause 3.2, the customer gives his/her consent for his/her name and company logo to be used on the website and in brochures of H+B technics for the purpose of acquiring new customers. This voluntary consent shall be limited in time to the duration of the business relationship and may be revoked by the customer at any time. Data processing shall remain lawful until there is a declaration of revocation.

**Section 3 Offer - Offer Documents**

(1) Our offer shall be subject to change unless otherwise stated in the order confirmation.

(2) We shall reserve the property rights and copyrights to illustrations, drawings, calculations and other documents. This shall also apply to any written documents designated as "confidential". The customer must obtain our express written consent before passing them on to third parties. The customer acknowledges that he is obliged to pay damages in the event of a breach of the obligation.

**Section 4 Prices - Terms of Payment**

(1) Unless otherwise stated in the order confirmation, our prices shall apply "ex works", excluding packaging, which shall be invoiced separately. The same shall apply to loading and transport costs. If the customer so desires, we shall cover the delivery with transport insurance; the costs incurred in this respect shall be borne by the customer.

(2) Statutory value added tax shall not be included in our prices; it will be shown separately in the invoice at the statutory rate on the date of invoicing.

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(3) Deduction of a discount shall require a special written agreement.

(4) Unless otherwise stated in the order confirmation, the net purchase price (without deduction) shall be due for payment prior to delivery or prior to order production. The statutory rules concerning the consequences of default in payment shall apply.

(5) The customer shall only be entitled to set-off rights if his counterclaims have been legally established, are undisputed or have been recognised by us. In addition, he/she shall be entitled to exercise a right of retention insofar as his/her counterclaim is based on the same contractual relationship.

#### **Section 4 Delivery time**

(1) The start of the delivery period stated by us shall require clarification of all technical questions. Compliance with our delivery obligation further presupposes timely and proper fulfilment of the customer's obligation. We shall reserve the right to plead non-performance of the contract.

(2) If the customer is in default of acceptance or culpably violates other duties to cooperate, we shall be entitled to demand compensation for the damage incurred by us in this respect, including any additional expenses.

(3) A confirmed delivery date shall be subject to correct, complete and timely self-delivery by our suppliers. This shall not apply if the cause of a defective, delayed or completely absent self-delivery is due to a breach of duty for which we are responsible.

(4) If we are prevented from fulfilling our contractual obligations due to unforeseeable or extraordinary circumstances in our company or at our suppliers (e.g. force majeure, pandemic, operational disruption, official intervention, strike, lockout) and if we were unable to avert this despite exercising reasonable care in the individual case, the delivery period shall be extended by the duration of the disruption in performance caused by these circumstances.

(5) If the disruptions mentioned in paragraphs 3 and 4 lead to a delay in performance of more than three months or if it becomes impossible for us to fulfil the contract, both parties may withdraw from the contract. Services already rendered shall be returned without delay if there is no right of retention or set-off for other reasons.

Claims for damages by the customer due to the delay in performance or the impossibility shall not apply. Other rights of withdrawal shall remain unaffected.

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If dispatch is delayed at the purchaser's request, the supplier shall be entitled to charge the concrete costs incurred by the storage - in the case of storage at the supplier's works - at least 2 per cent of the invoice amount for each month. However, in case of lump-sum cost calculation, the ordering party or purchaser shall be entitled to prove that no damage at all has been incurred as a result of the storage or that the damage is significantly lower than the lump sum.

After expiry of a delivery time agreed as above and extended at the request of the ordering party or purchaser, the statutory provisions on default of acceptance shall apply in the absence of contractual agreements to the contrary.

(6) We shall be liable for a delay in delivery in accordance with the statutory provisions insofar as the underlying purchase contract is a transaction for delivery by a fixed date in accordance with Section 286 (2) No. 4 of the German Civil Code (BGB) or Section 376 of the German Commercial Code (HGB) or if, as a consequence of a delay in delivery for which we are responsible, the customer is entitled to claim that his/her interest in the further performance of the contract has ceased to exist.

(7) We shall also be liable in accordance with the statutory provisions if the delay in delivery is due to an intentional or grossly negligent breach of contract for which we are responsible; fault on the part of our representatives or vicarious agents shall be attributed to us. If the delay in delivery is due to a grossly negligent breach of contract for which we are responsible, our liability for damages shall be limited to the foreseeable, typically occurring damage.

(8) We shall also be liable in accordance with the statutory provisions insofar as the delay in delivery for which we are responsible is based on the culpable breach of a material contractual obligation; in this case, however, the liability for damages shall be limited to the foreseeable, typically occurring damage.

An essential contractual obligation in the aforementioned sense is an obligation the fulfilment of which makes the proper performance of the contract possible in the first place and the observance of which the contractual partner regularly relies on and may rely on.

(9) Further legal claims and rights of the customer shall remain unaffected. reserved.

## **Section 5 Transfer of risk**

(1) Unless otherwise stated in the order confirmation, delivery "ex works" shall be agreed.

(2) The risk of accidental loss and accidental deterioration shall pass to the customer in the case of Section 4 (2) at the time at which the customer is in default of acceptance or debtor's delay.

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## Section 6 Warranty/Limitation

(1) Claims for defects on the part of the customer presuppose that the customer has duly fulfilled his/her obligations to inspect the goods and give notice of defects in accordance with Section 377 of the German Commercial Code (HGB).

(2) Insofar as there is a defect in the purchased item, we shall be entitled, at our discretion, to subsequent performance in the form of rectification of the defect or delivery of a new item free of defects. In the event of rectification of the defect or replacement delivery, we shall be obliged to bear all expenses necessary for the purpose of subsequent performance, in particular transport, travel, labour and material costs, insofar as these are not increased by the fact that the purchased item has been taken to a place other than the place of performance.

(3) If supplementary performance fails, the customer shall be entitled to demand withdrawal or reduction at his/her discretion.

(4) We shall be liable in accordance with the statutory provisions if the customer asserts claims for damages based on intent or gross negligence, including intent or gross negligence on the part of our representatives or vicarious agents. Insofar as we are not accused of intentional breach of contract, liability for damages shall be limited to the foreseeable, typically occurring damage.

(5) We shall be liable in accordance with the statutory provisions if we culpably breach a material contractual obligation; however, in this case too, liability for damages shall be limited to the foreseeable, typically occurring damage. An essential contractual obligation in the aforementioned sense is one whose fulfilment makes the proper execution of the contract possible in the first place and on the compliance of which the contractual partner regularly relies and may rely.

(6) Insofar as the customer is entitled to compensation for damage instead of performance due to a negligent breach of duty, our liability shall be limited to compensation for the foreseeable, typically occurring damage.

(7) Liability for culpable injury to life, limb or health shall remain unaffected; this shall also apply to mandatory liability under the Product Liability Act.

(8) Unless otherwise stipulated above, liability shall be excluded.

(9) The limitation period for claims for defects shall be 24 months, calculated from the transfer of risk. For hydraulic pumps, hydraulic components and electrical components, the warranty period shall be 12 months from the transfer of risk.

(10) Usual wear and tear or damage due to improper use or damage caused by insufficient maintenance shall not constitute a defect.

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(11) Replacement parts shall only be shipped against advance payment. Reimbursement shall be made when the supplier has received the defective parts back and has acknowledged the warranty obligation. In this case, the supplier shall bear the reasonable labour costs for the replacement of the defective parts (in accordance with the cost specification) and the shipping costs.

(12) Claims due to other consequences of defects of any kind whatsoever (e.g. travel costs, crane costs, parking space costs, water costs, removal of panels and other non-system components) shall be excluded, unless an obligation to pay compensation is mandatory under the applicable laws.

(13) The supplier shall not guarantee the suitability of the boat for receiving the products, in particular not for the sufficient strength of its components. This risk shall be borne by the purchaser.

(14) Only the direct purchaser shall be entitled to claims for defects against the supplier and such claims shall not be assignable.

#### **Section 7 Joint and several liability**

(1) Any further liability for damages other than provided for in Section 6 shall be excluded - regardless of the legal nature of the asserted claim. This shall apply in particular to claims for damages arising from culpa in contrahendo, from other breaches of duty or from tortious claims for compensation for property damage pursuant to Section 823 BGB.

(2) Limitation of liability pursuant to paragraph 1 shall also apply insofar as the customer demands reimbursement of useless expenses instead of a claim for compensation for the damage instead of performance.

(3) Insofar as our liability for damages is excluded or limited, this shall also apply with regard to the personal liability for damages of our employees, representatives and vicarious agents.

#### **Section 7.1 Disclaimer**

We shall not be liable for any damage to the boat, its components or accessories, caused by the installation of the product.

Malfunctions and damage may also occur due to incorrect operation, by exceeding the specified maximum load capacity, failure to observe the load distance, improper operation, neglected maintenance, faulty power supply and/or collision. All direct damage and consequential damage from the aforementioned causes as well as warning marks shall not be covered by the warranties.

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We shall not be liable for damage to property or personal injury caused by:

- unsuitability of the boat or lack of strength of its components to receive the product,
- deviation of dimensional tolerances of the boat or its components, deviating installation tolerances between boat and system,
- operation of the product and coupled components outside usual intended use and specification,
- operation outside the permissible load or load distribution range, disregarding the hazard warnings (see operating instructions),
- operation with unsuitable oil, insufficient or unsuitable power supply.
- corrosion due to lack of activity of the boat's own earthing system or other circumstances affecting the galvanic reaction.
- crevice corrosion or flash rust or corrosion due to the use of unsuitable cleaning agents.
- influences on operation or operational safety due to external influences, wearing parts (e.g. anodes) or externally damaged components.
- lack of care and maintenance of the product.
- incorrect or incomplete installation of the product on the boat.

In addition, liability shall be excluded for damage caused by slight negligence on the part of the supplier, his/her legal representatives or vicarious agents, unless it is a matter of liability for damage resulting from injury to life, limb or health.

### **Section 8 Complaints, spare parts and service**

(1) Complaint procedure:

The purchaser undertakes to report defects or alleged defects without delay and to provide a minimum of information. This shall include basic data such as the serial number of the product, boat number, a detailed description of the defect, a technical assessment of the failure and its causes, additional pictures and / or videos, berth, etc. See also

[https://www.tenderlift.com/\\_my\\_media/1/cms/After-sales--Service/After-Sales\\_Claim-procedure.pdf](https://www.tenderlift.com/_my_media/1/cms/After-sales--Service/After-Sales_Claim-procedure.pdf)

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As soon as this data is available, the supplier shall review the case.  
If there is an obvious error in the system in the supplier's field of responsibility, rework shall be initiated by the supplier.  
If the responsibility lies with the purchaser or if the responsibility is disputed, the supplier may submit a quotation to the purchaser for inspection or repair or troubleshooting and / or spare parts and execute it against an order.

(2) Communication channel in the event of a complaint:

The preferred method of communication is by e-mail. Bundled information as mentioned under (1) should be provided in one e-mail by the purchaser. A review by the supplier should be completed within 2 working days after receipt of sufficient technical information mentioned above (1).  
In exceptional cases, telephone support and / or video calls may be arranged.

(3) Troubleshooting:

In general, if troubleshooting is unsuccessful, technical advice must be sought from the supplier after 30 minutes.  
In general, in case of repairs exceeding the guideline times specified by the supplier, approval must be obtained from the supplier. In addition, in general, all warranty work requiring more than 3 hours of work shall be subject to approval. Approval shall be granted by the supplier's after-sales department, which shall issue a so-called service notification number (SM)/RMA number in such a case. The replacement of hydraulic units or their individual components shall also be subject to approval.

(4) Definition of emergency situations and procedures:

An emergency situation exists when there is a danger to the safety, life and limb of the people on board and / or the ship can no longer be brought into a safe position. Only in these cases, the fastest possible solution shall be permitted with all parties involved (owner / end customer, purchaser, supplier, service partner) (responsibility, costs, cause of the problem, etc. shall be settled afterwards).

(5) Spare parts and services:

Spare parts and services may be requested from the supplier by the purchaser. The price, availability and delivery time, the terms of delivery as well as the terms of payment for spare parts and service orders shall be offered separately.

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(6) Return of defective parts:

All defective parts replaced during warranty work shall become the property of the supplier and shall be sent for inspection by the cheapest freight route.

A corresponding return note shall be provided by the supplier's after-sales department. The cleaned damaged parts, suitably packaged, are to be sent in within 4 weeks after completion of the repair together with a copy of the warranty claim and the return note. The supplier shall charge a lump sum of € 50.00 for return deliveries without a return note. Warranty claims shall not be processed without returned damaged parts.

The regular period until receipt of the damaged part shall be 4 weeks. If no damaged part has been received by the supplier after this period, the warranty claim shall be rejected.

**Section 8 Retention of title**

(1) We shall retain title to the purchased item until receipt of all payments under the delivery contract. In the event of conduct by the customer in breach of the contract, in particular in the event of default in payment, we shall be entitled to take back the object of sale. Our taking back of the object of sale shall constitute a withdrawal from the contract. After taking back the object of sale, we shall be entitled to realise it; the proceeds of realisation shall be set off against the customer's liabilities less reasonable realisation costs.

(2) The customer shall be obliged to treat the object of purchase with care; in particular, he shall be obliged to sufficiently insure it at his/her own expense against fire, water and theft damage at replacement value. If maintenance and inspection work is required, the customer shall carry this out in good time at his/her own expense.

(3) In the event of seizures or other interventions by third parties, the customer shall notify us immediately in writing so that we can file a lawsuit in accordance with Section 771 ZPO (German Code of Civil Procedure). Insofar as the third party is not in a position to reimburse us for the judicial and extrajudicial costs of an action pursuant to Section 771 ZPO, the customer shall be liable for the loss incurred by us.

(4) The customer shall be entitled to resell the object of sale in the ordinary course of business; however, he shall hereby assign to us all claims in the amount of the final invoice amount (including VAT) of our claim which accrue to him/her from the resale against his/her customers or third parties, irrespective of whether the object of sale has been resold without or after processing. The customer shall remain authorised to collect this claim even after the assignment. Our authority to collect the claim ourselves shall remain unaffected. However, we undertake not to collect the claim as long as the customer meets his/her payment obligations from the proceeds collected, is not in default of payment and, in particular, no application for the opening of composition or insolvency proceedings has been filed or payments have not

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been suspended. If this is the case, however, we may demand that the customer informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment.

(5) Processing or transformation of the object of sale by the customer shall always be carried out for us. If the object of sale is processed with other objects not belonging to us, we shall acquire co-ownership of the new object in the ratio of the value of the object of sale (final invoice amount, including VAT) to the other processed objects at the time of processing. In all other respects, the same shall apply to the object created by processing as to the object of sale delivered under reservation.

(6) If the object of sale is inseparably mixed with other objects not belonging to us, we shall acquire co-ownership of the new object in the ratio of the value of the object of sale (final invoice amount, including VAT) to the other mixed objects at the time of mixing. If mixing is carried out in such a way that the customer's item is to be regarded as the main item, it shall be deemed agreed that the customer transfers co-ownership to us on a pro rata basis. The customer shall hold the sole ownership or co-ownership thus created in safe custody for us.

(7) The customer shall also assign to us the claims to secure our claims against him/her which arise against a third party through the connection of the object of sale with a plot of land.

(8) We undertake to release the securities to which we are entitled at the customer's request insofar as the realisable value of our securities exceeds the claims to be secured by more than 10 %; the choice of the securities to be released shall be ours.

#### **Section 9 Place of jurisdiction - Place of performance**

(1) If the customer is a merchant, our place of business shall be the place of jurisdiction; however, we shall also be entitled to sue the customer at the court of his/her place of residence.

(2) The laws of the Federal Republic of Germany shall apply.

(3) Unless otherwise stated in the order confirmation, our registered office shall be the place of performance.

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