



General terms and conditions of business of Wenzel Management GmbH and Wenzel Marine GmbH & Co. KG

§1 General matters - Coverage

(1) Our general terms and conditions of business apply exclusively to all contracts, supplies, and other services provided to companies according to art. 310 section 1 BGB (German Civil Code). We do not acknowledge conditions opposed to or differing from our general terms and conditions of business expressed by the client unless we had expressly agreed and in writing to their validity. Our conditions of sale are also applicable when supplies to the client are being carried out unconditionally even if we have knowledge of contrary or deviating conditions from the client.

(2) All agreements concluded between us and the client in order to fulfil this contract, are laid down in writing in this contract.

(3) Our general terms and conditions of business are applicable for all our current and future businesses with the client, even if their validity has not been pointed out expressly again.

§2 Offers - Offer Documents

(1) If the order has to be considered as offer according to article 145 BGB (German Civil Code), then we can accept same within 2 weeks. The acceptance of the order can be expressed either in writing, my mail, electronically or by supplying the goods to the client as well as by invoicing the order.

(2) The conclusion of the contract is conditional to the correct and timely delivery by the sub suppliers to us. However this is solely applicable in cases in which we are not accountable for the non-delivery, particularly in case of a congruent business transaction with our suppliers, meaning products we have to purchase ourselves and sell unaltered. The client will be informed immediately about the non-availability of the service.

(3) We reserve ownership and copyright for copies, drawings, calculations and further documentation. This also applies for such written documents that are marked as 'confidential'. Before providing any of these to third parties the client needs expressly our written consent.

(4) We are not liable for mistakes resulting from documents, drawings, samples etc or from information received from the client in as far as we cannot be expected to recognise these mistakes.

(5) We are allowed at any time to changes in the scope of our supplies - for example changes in the construction or shape as well as changes in the chemical composition, in as far as these changes can be reasonably acceptable for our client and does not impair the substance of the contractual agreement. In case of goods that are submitted to normative standards the acceptable tolerances of the normative datasheets apply.

(6) Any documents made available to our clients, be it in an offer or added to an order confirmation (as example technical description, drawings, pictures, indications of weights and measurements) only contain approximate values commonly used in the industry and their aim is only to describe the goods and do not in any case entail quality guarantees as provided for in article 443 BGB (German Civil Code).

Verbal or written information related to the suitability or possible applications of the goods supplied by us as well as the advises or recommendations given by our staff are made to the best of our knowledge. These are non binding and do not constitute any contractual legal relation or a secondary obligation resulting from the purchase contract. In particular the client shall not be exempted from his obligation to assure himself by way of examination of the goods' suitability for the intended use.

(7) Our offer is subject to change, unless advised otherwise in the order confirmation.



§3 Scope of Service

(1) The extent of a given overhaul / repair work has to be determined by the client for the purpose of the contract. In as far as this is not possible we will decide upon the extent of the overhaul works to be carried out after consultation with the client.

(2) The order or the order confirmation will describe the agreed services which will be provided as agreed with the client or in consultation with him. If in the course of the repair it appears that the overhaul is not feasible due to shortcomings in the contractual agreement which could not have been recognised at the time of accepting the order, we are entitled to invoice the client the works carried out until that time.

If during the repair process it appears that the overhaul is uneconomical but this could not have been foreseen at the time of order acceptance, the client will be informed accordingly without delay in order to obtain a final decision from the client. Should the client decide not to pursue the overhaul for being uneconomical, we shall be entitled to compensation for the works carried till such time including an adequate profit margin.

§4 Prices - Payment Terms

(1) Unless the order confirmation provides for otherwise the price are to be understood without the legal applicable VAT and as Euro prices. These are "ex works" ("EXW" according to ICC Incoterms 2010). The deduction of prepayment discounts requires our previous written approval.

(2) Five working days after receiving the goods/ service and the invoice the client is in default of payment. A delay by the client at the reception of the goods/service is irrelevant. We are entitled to charge interest for overdue payments at the legally accepted rate. We reserve the right to claim damages thereabove. Occasionally accepted payment delays do not eliminate the occurrence of default of payment.

(3) Should the client's assets situation deteriorate we are entitled to ask for prepayment of the purchase price of the goods not yet supplied or remuneration of the services not yet performed or to make same dependend of guarantees. Should the client not comply with the obligation of prepayment due to the deterioration of his assets situation, we are entitled to withdraw from the contract after an extended grace period or claim damages for non fulfilment of the contract.

(4) Further the client shall only have the right to off-set any counterclaims if same have been found legally valid, are undisputed and have been acknowledged by us. In addition to this the client may only exercise a right of retention if his counterclaim pertains to the same contractual relationship.

(5) Orders for which no firm prices or remunerations have expressly been agreed will be considered at list price valid on the day on which goods are delivered or services rendered, i.e. based on our rates applicable on this day for invoicing our wages (daily rates) plus postage, freight and packing.

§5 Delivery Delays

(1) The delivery delays and service performance times stated by us are not binding unless something else was specifically agreed.

(2) The respect of deadlines and dates presupposes the client provides in good time all relevant documents, permits, and authorisations and complies with the agreed payment terms and pre -performance obligations. Should these conditions not be met in time, the delays extend accordingly; this does not apply in case we are responsible for the delay. We reserve the right of objection to the non-fulfilment of contract.

(3) Should the client delay acceptance of deliveries, we are entitled, without granting a grace period, to invoice the goods and to store them for on behalf and at the risk of the client. In as far as the storage is done in our premises we shall calculate 3% of the invoice amount per commenced month, whereby the client is entitled to prove a lesser damage. Further claims are reserved.



(4) In as far as the conditions of section (3) are met, the risk of an accidental loss or deterioration of the purchased goods are transferred to the client at the time he is in default of acceptance of the goods or in default of payment.

(5) In case goods cannot be supplied due to force majeure or cessation of production and we could not provide them at reasonably acceptable conditions, we shall be freed from the obligation of delivery, if these conditions occur only after conclusion of the contract and are not our responsibility.

In such case the client will be informed without any delay and payments that were already effected will be returned to the client. Should a product only not be available for a short period of time due to the above mentioned reasons, then the deliveries delays will extend in accordance to the time of the impediment. Should the impediment last more than two months the goods are to be considered undeliverable.

(6) We are liable according to legal provisions, in as far as the sales contract is a firm deal in the sense of article 286 section 2 no. 4 BGB or article 376 HGB (German Commercial Code). We are also liable according to the legal provisions in as far as of consequence to a delivery delay for which we are responsible the client claims loss of interest in further fulfilment of the contract.

(7) Furthermore we are liable in accordance with legal provisions should the delay in the supply be based on an intentional or grossly negligent breach of contract for which we are responsible; the fault of our representatives or vicarious agents shall be attributed to us. In as far as a delivery delay is not based on an intentional breach of contract our damage liability is limited to the foreseeable typical occurring damage.

(8) We shall also be liable according to legal provisions if the delivery delay is to be attributed to a culpable violation of an essential contract obligation (cardinal obligation). In such case however the liability for damage compensation is limited to foreseeable and typical damages.

(9) Should the client change or extend the originally agreed scope of works and should this lead to a delay in the completion or supply we shall not be liable for such delay. We shall however inform the client without delay of the reasons and advise on a new date for the completion or supply of goods. Should the reason for non-observance of the given deadline be a case of force majeure or operational disruptions, also if sub-suppliers or sub-contractors are concerned and which are beyond our responsibility, we shall not be under any obligation to compensate for damages caused resulting from such delays. We shall inform the client forthwith.

(10) We are entitled at any time to provide partial performance of services or deliveries.

(11) The object of our contractual obligation can also be the supply of a completely overhauled unit possibly in exchange of an equivalent old engine, group of components or a single part of the same type. We are entitled to supply deviations to the original execution in as far as these can be reasonably accepted by the client. Contractual objects that the client hands over to us in the process of installation or exchange may not have any deficiencies or other shortcomings which are not due to normal wear. In particular the contractual item that will be provided must be free of any welded or not welded breaks or cracks.

§6 Transfer of Risk - Packing Costs

(1) In as far as the order confirmation does not provide for anything else, the delivery is agreed "ex stock" ("EXW" in accordance with ICC Incoterm 2010), also in case of part-deliveries or if we undertake other performances as removal or installation.

(2) We pack the goods for the delivery on account and cost of the client. The costs and expenses for the disposal of old packaging which were used to deliver the goods to us, in particular cylinder heads, are on the account of the client.



§ 7 Exchange of Cylinder Heads

(1) The “exchange of cylinder heads“ includes the sale of our overhauled cylinder heads and the part-exchange of the client’s cylinder head that has been dismantled as well as the order to overhaul the client’s dismantled cylinder heads in as far as we consider this, to the best of our knowledge, as economically still viable. The cost of transport of the cylinder heads to our premises is at the expenses of the client.

(2) The cylinder heads we sell are invoiced in accordance with these terms and conditions of business and the settlement of the invoice is due accordingly. The same applies to the overhaul of cylinder heads dismantled on the client’s premises. The client is only entitled to the right of retention or the right of set-off if his counter claims have been legally ascertained, are undisputable and acknowledged by us. This also applies to claims concerning the traded-in cylinder heads.

(3) We shall assess within 10 working days after reception in our warehouse in Stuhr/ Germany whether an overhaul of cylinder heads can be carried out by us. Within the same lapse of time we shall advise the client for which amount the cylinder head will be traded-in. Should the client not agree to the stated value, he has to inform us accordingly in writing (either by post, fax, or e-mail) within 7 days following the assessment of the value we made. Should the client not revert within this period of time we shall consider that he agrees to the trade-in value .

(4) If the client agrees to the trade-in value we assessed, this established value will be offset against the payment in as far as the payment has not yet been effected. In case the payment has been effected we shall transfer to the client the assessed value within 10 days, whereby the bank charges are to the client’s account.

(5) The client has to inform us fully on all major features of the cylinder heads that are to be dismantled on his premises. This includes in particular but is not limited to: oversize limits, degree of wear, crack in the cylinder head, as well as the general condition.

(6) Should the client not agree to our trade-in offer, then the cylinder heads are at the client’s disposal for collection from our warehouse in Stuhr, Germany. The collection has to be agreed with us at least 7 days in advance.

(7) Should the client not come at the agreed collection date he will have to bear the cost of 150.00 euro per cylinder head as handling and restorage fee. As of the 21st. day of storage of the cylinder head at our premises, counted from the date the client declined the trade-in value amount, the client has to pay the amount of 50.00 euro per cylinder head and started month for storage fee. After the twelfth month of storage or once the storage costs have surpassed half of the estimated trade-in value, depending on what occurs first, we shall be entitled to dispose freely of the cylinder heads, or, should we not within a further period of 4 weeks find a buyer who will collect the cylinder heads within the same period of time, we shall be entitled to dispose of the cylinder heads.

§8 Liability for defects

(1) The client has to inspect the goods and advise us in writing without any delay of any defects latest 14 days after the goods have been handed over. Should a defect only appear later the information has to be made immediately after it has been discovered.

(2) If a defect becomes apparent after assembly or installation works have been carried out by other parties rather than ourselves, we shall be liable in accordance to the liability for quality defects, only if the assembly or installation works of the item overhauled and sold by us have been carried in a competent and professional manner, in particular in accordance with the instructions and the regulations of the OE manufacturer. The ordering party will have to prove that the assembly/ installation works have been carried out in a competent and professional manner.

(3) Claims for defects are excluded in as far as they are the results of natural wear and tear, improper or negligent handling, improper storage, unsuitable or inadequate use or non compliance with the instructions for processing and use by the client. Discrepancies in the quality, dimensions and quantity that are common in the industry are not to be considered as defects. We are only liable for the suitability of the goods for specific use as well as their chemical resistance for further processing if we explicitly advised so.



(4) The liability ceases when repairs or changes have been carried out by the client or by a third party and differ from our remarks related to processing or use or if damages occur due to the use of foreign non conform materials.

(5) In as far as the purchased item has a defect for which we are liable, we are entitled, as we see fit, to provide subsequent fulfilment either by rectifying the defect or by supplying a new item free of defects. In case of rectifying the defect we are obliged to bear all costs related to rectifying the defect, in particular transport charges, travel expenses, wages and material costs, in as far as these are not increased due to the fact that the purchased item has been forwarded to another location than the original place of fulfilment .

(6) In case the subsequent fulfilment is not successful, the client is entitled, as he sees fit, to withdraw from the contract or request reduction in the purchase price. However in case of minor insignificant breach of contract the client will not be entitled to withdraw from the contract.

(7) The liability we are subjected to is restricted to damages that are foreseeable and typical. Aforementioned restriction is not valid, in as far as intent or gross neglect, including intent or gross negligence on the part of our representatives or assistants on the fulfilment of contract.

(8) We are liable in accordance to legal provisions in as far as we can be blamed for breach of a major obligation of the contract. In this case however the claim for compensation is limited to the foreseeable, typically occurring damages.

(9) In as far as no alternative regulation from the above has been agreed, the liability is excluded. This applies in particular to damages outside the purchase item as well as claims related to loss of profit.

(10) The time limitation for claims asserted on the basis of rights and defects related to the supply of goods and service performances - irrespective of the legal reasons invoqued for such claims - is one year. However this is not valid in as far as article 438 paragraph 1 no.: 1 and 2 BGB, article 479 paragraph. 1 BGB or article 634a paragraph 1 no.: 2 BGB (German Civil Code) foresee longer periods.

(11) The right of limitation for all claims starts with the supply, in case service performances with the acceptance of same.

(12) The above mentioned restrictions regarding the period of limitation are not applicable in cases of culpable damage to life, body or health, fraudulent intent or in cases of breach of quality warranty. This is also applicable to mandatory liability in accordance with the product liability law. Furthermore the periods of limitation are not valid in cases of claims related to a gross breach of obligation or in cases of important an breach of contractual obligation.

§ 9 Warranties

(1) The acceptance of a warranty by us requires an explicit written notification by us.

(2) In as far as a manufacturer agrees to a warranty for a quality feature of a given item, or for the fact that a particular quality for a given item will last for a given period of time, the client shall be entitled to claim only against the manufacturer irrespective of the legal provisions related to the right of warranty claims within the declaration of warranty or relevant advertisement.

§10 General liability

(1) A liability for damages going beyond the provisions of article 7 is excluded, regardless of the legal nature of the claim put forward. This is in particular valid in cases of claims for compensations resulting from a violation at a precontractual obligation, or any other neglect of duties or tortuous claims for replacement of damaged goods according to Article 823 of the German Civil Code (BGB) as well as claims related to compensation of loss of profit or similar financial claims.

(2) Section (1) does not apply in case of accepting a warranty or a procurement risk nor does it for the liability in accordance with the obligations resulting from the German Product liability Law in cases of injury to life, body or health and in cases of culpable violation of essential contractual obligations (cardinal obligations).



(3) in cases of culpable violation of essential obligations we shall be liable only for damages that are typical to the contract, which could reasonably be foreseeable, except in case of intent, gross negligence, or liability for damages resulting from injury to life, body or health. An amendment related to the burden of proof to the disadvantage of the client is not associated with this.

(4) The client may only assert claims and rights due to a defect within a period of one year from the time goods were supplied or service performances accepted. This time limitation is not valid in as far as article 438 section 1 no. 2 of the German Civil code (BGB) related to buildings and parts for buildings, or rights of withdrawal according to article 479 section 1 BGB and para 634 a section 1 number 2 relating to shortcomings in buildings are concerned and which regulate longer delays.

(5) In as far as claim for damages against us are excluded or restricted, this is also valid with respect to personal claims of damages against our employees, labour work force, associates, representatives and vicarious agents.

§11 Securing of Reservation of Ownership

(1) We reserve the right to ownership to all supplied goods until due settlement of all receivables related to the contract. The reservation of ownership also extends to recognised balances in as far as we have claims against the client for current account reservation. Till such time the client is neither entitled to pledge the goods nor assign them as security to third parties. In case the client behaves contrary to the contract, in particular in cases of defaulting in payments, we are entitled to take back the purchased goods. Taking back the goods does not entail a withdrawal from our side from the contract, unless such has been declared explicitly in writing by us. The seizure by us of the goods always entails a withdrawal from the contract. After taking back the purchased goods we are entitled to dispose of them, and use the received funds against the obligation of the client - including a deduction of the costs incurred for the disposal.

(2) The client is obliged to handle the purchased goods with care; he is in particular obliged to insure these sufficiently on his own account and in relation to the new value the goods against fire, water, theft. In as far as maintenance works or inspection works are required, the client has to carry out same in good time on his own account.

(3) In case of seizure or other interference by third parties the client has to inform us immediately in writing, so that we can file suit in accordance with article 771 of ZPO (Code of Civil Procedure). In as far as the third party is not able to refund the legal court and ancillary cost according to article 771 ZPO, the client himself is liable for the loss we incurred.

(4) The client is entitled to sell or further process the goods purchased subject to retention of title as part of normal business procedure. In case the client sells the goods subject to retention then all payment claims towards the second buyer resulting from this sale are automatically transferred and in advance to us. We shall accept this assignment. The assignment covers the complete amount due which the client owes to us. We can demand that the client informs thereof his client and advises us on the debtor of the claim he assigned. The client collects receivables only for and on our account. In case of discontinuation of payments by the client, or application for or initiation of insolvency proceedings, the right to resell, to use or further process the goods subject to retention expires as well as the right for collection of assigned outstanding debts.

(5) If the client processes or modifies the goods we supplied it is always done for and on our behalf. Should the goods supplied by us be processed with other other goods not coming from us than we acquire the co-ownership to the new item in proportion to the value of the originally supplied item by us (final invoice value, including the applicable VAT) at the good's value at the time of its modification. Besides the same applies for the newly realised item as for the goods supplied subject to reservation of title.



(6) Should the purchased item be modified with others items not belonging to us in an unseparable manner, then we shall acquire co-ownership to the new item in proportion to the value of the purchased item (final invoice amount including the applicable VAT) at the time of its modification. Should the modification be carried out in such a way that the item belonging to the client has to be considered as the main item, it will be considered as agreed that the client transfers to us the co-ownership proportionally. Hence the client shall hold for us the resulted item in sole ownership or co-ownership.

(7) In order to secure our claim against him, the client also assigns to us the claims he has and that arose against third parties in relation to the purchased goods in combination with an immovable property or a sea going vessel. (8) we commit ourselves to release upon request of the client the securities we are entitled to in as far as the achievable value exceeds more than 10% the value of the claim that is to be secured. The choice of the security that will be released lies with us.

§ 12 Right of lien, assignment of securities, utilisation, booth fee

(1) In case of works or reconditioning of items we are entitled in consideration of the claim that will result from the order to a right of lien on the goods belonging to the client and being in our possession. The right of lien extends to all claims of receivables we have in accordance with the reservation of proprietary rights as per above mentioned article 9 section 1. The right of lien may also be applied in cases of previous claims for receivables be it for works carried out, supply of spare parts or other service performances in as far as these are in relation with the said item. For other claims resulting of the business relationship the right of lien only applies if these are undisputable or legally binding.

(2) Should the client be in default of payment for a period exceeding two months, then we shall be entitled, after a written information and waiting for a further period of four weeks, to utilize the contractual item for the best possible sale on the free market either by way of auction or by presenting the current market value. The client is entitled to the proceeds of the sale, however we are entitled to deduct in addition to our main claim and the accrued interests the costs incurred through the sale procedure.

(3) Should we not be able to store the lien item due to reasons pertaining to our business we shall be entitled to demand the payment of costs we incurred for storing the goods elsewhere. To store the goods in our own warehouse we shall invoice the client storage fees in accordance with the commonly requested prices for storage fee.

(4) In as far as we work on or recondition items for the client which do not belong to him but to third parties the client already assigns to us the compensation claim he has against the third party to an amount equivalent to the invoice amount of the service we rendered. In as far as we correct or eliminate damages or deficiencies for which the client can ask refund from third parties (i.e Insurances) for the costs and expenses incurred for the correction and elimination, the client already assigns to us the claim he has as equivalent to the invoice value for the services we rendered. We accept this assignment. Irrespective of this assignment the client is entitled to collect as long as he meets his obligation towards us and does not become involved. The client is obliged to submit to us, upon request, the necessary information related to the assigned claim and inform his debtor about the assignment.

§ 13 Final provisions

(1) The place of fulfilment for reciprocal rights and duties are our registered offices in as far as the client is a trader in accordance with the German Trade Code. However we are also entitled to sue the client at his place of residence or a general place of jurisdiction.

(2) The Law of the Federal Republic of Germany is applicable. The UN Sales Law is excluded.

(3) In case nothing else is stipulated in our order confirmation our registered offices will be the place of fulfilment.



(4) Should some of the provisions of the contract agreed with the client including these general terms and conditions not be or not become in whole or in part legally effective or enforceable, this will not affect the validity of remaining provisions of this contract. This is also valid in case the contract contains a legal loophole. Instead of the invalid or unenforceable provisions or to fill the gap an acceptable regulation should be found, which, in as far as legally possible is closest to what the contractual parties would have wanted if at the time of concluding the contract this point would have been thought of. An acceptable regulation to replace the invalid or unenforceable provisions or to fill the gap should be found, a regulation which, in as far as legally possible is closest to what the contractual parties would have wanted if at the time of concluding the contract this point would have been thought of.