

GENERAL TERMS AND CONDITIONS

of Frauscher Bootswerft GmbH & Co KG

Version August 2012

1. Area of Application

- 1.1. The following General Terms and Conditions (hereinafter referred to as "GTC") shall apply to all contracts concluded by Frauscher Bootswerft GmbH & Co KG with its corporate seat in Gmunden and business address Betriebspark Ehrenfeld 3, A-4662 Steyermühl, Austria, registered with the commercial register of the competent court (regional court Wels) under registration number FN 300948 x (hereinafter referred to as: *Frauscher KG*), with its customers. The present GTC shall apply irrespective of the nature of the conclusion of the contract; thus they shall also apply when a contract is concluded by exclusive use of one or more means of distant communication, such as telephone, letter, fax or e-mail. If the use of the GTC has been agreed in a contract, they shall be valid for all further contracts as well as for the whole business relationship between *Frauscher KG* and the customer; the aforesaid shall also apply if the applicability of the GTC has not been expressly agreed when concluding a contract. After termination of the business relationship, the GTC shall continue to apply until complete execution of the contract. Applicable shall be the version of the GTC valid at the date of conclusion of the contract.
- 1.2. Differing or additional agreements negotiated by the contracting parties in a given case shall precede the provisions of these GTC insofar as written confirmation of *Frauscher KG* exists.
- 1.3. Customers of *Frauscher KG* may be consumers as well as entrepreneurs. Consumers are consumers in terms of the Austrian Consumer Protection Act, hence natural or legal persons not defined as an entrepreneur. Entrepreneurs are natural or legal persons or partnerships vested with legal capacity for which the contract in question is part of their business operations.
- 1.4. The application of the customer's own general terms and conditions, particularly of his general purchasing conditions, shall be expressly excluded herewith; this exclusion shall be agreed by application of the present GTC. References to the application of the customer's general terms and conditions, in particular on his business documents, shall be deemed not to exist. It shall be agreed that in case of a dispute whether the customer's general terms and conditions or the present GTC shall apply, the application of the customer's general terms and conditions shall be excluded.
- 1.5. *Frauscher KG* shall be entitled to modify these GTC at any time. The modified version shall apply upon publication on *Frauscher KG's* website for all new contracts.

2. Offer – Conclusion of Contract

- 2.1. All offers of *Frauscher KG* are non-binding and may be changed, amended or withdrawn prior to the conclusion of a contract.
- 2.2. The customer's order shall be considered a binding offer to conclude a sales contract with regards to the goods ordered.
- 2.3. The sales contract shall become effective if *Frauscher KG* either explicitly accepts the purchasing order or effectively complies by delivery of the ordered goods, in each case within 30 days from *Frauscher KG's* receipt of the purchasing order. After expiry of the time-limit the customer shall not be bound to his offer any longer and the sales contract shall be considered not to be concluded.
- 2.4. *Frauscher KG* is entitled – for example after checking the customer's credit rating – to reject acceptance of a purchasing order.
- 2.5. The conclusion of the contract with entrepreneurs shall be subject to the reservation of non-delivery or partial delivery, in the event that *Frauscher KG* is unable to obtain all supplies required. In case the required goods are unavailable or only partially available, the customer shall be informed immediately. A counter-performance already provided shall be refunded without delay.
- 2.6. Statements of *Frauscher KG's* employees who do not present a written authority shall not be binding on *Frauscher KG*.

3. Retention of Title

- 3.1. All goods delivered by *Frauscher KG* remain in *Frauscher KG's* ownership until full payment of all receivables out of the business relationship with the customer.
- 3.2. As long as the retention of title is effective, the customer shall be required to handle the delivered goods with due care; in case maintenance or inspection work is required, the customer shall perform it on a regular basis at his own expenses.

- 3.3. Prior to acquisition of ownership, the customer shall only be entitled to sell, pledge or transfer the goods to third parties with prior written consent of *Frauscher KG*. In case a third party claims own rights on the goods in the course of distraint or insolvency proceedings the customer shall forthwith notify *Frauscher KG* in writing and refer to *Frauscher KG's* ownership.
- 3.4. The customer shall compensate *Frauscher KG* for any damages and costs incurred by an infringement of this obligation and by necessary intervention measures against a third party's access to the delivered goods.
- 3.5. In the event of non-contractual behaviour by the customer, in particular in the event of a default in payment, *Frauscher KG* shall be entitled to withdraw from the contract and reclaim the delivered goods.
- 3.6. If goods are resold by a customer who is an entrepreneur, the customer shall hereby assign to *Frauscher KG* all claims which accrue from the reselling to a third party and shall be committed to make corresponding notes in his books or invoices. *Frauscher KG* hereby accepts the assignment.

4. Right of Withdrawal

- 4.1. According to § 5e of the Austrian Consumer Protection Act, a customer who is a consumer has the right to withdraw from a contract that has been concluded by the exclusive use of means of distant communication within 7 days, starting from the date upon which the goods were delivered to the customer or – regarding service contracts – on the day of the conclusion of the contract. Saturday does not count as a working day. The revocation does not require any reasons; punctual dispatch suffices to comply with the time limit.
- 4.2. According to § 5f digit 3 of the Austrian Consumer Protection Act, the right of withdrawal does not exist concerning contracts for goods that are produced according to the customer's specifications or which are not suitable for return due to their condition.
- 4.3. In the case of a justified withdrawal the customer shall forthwith return the received goods and shall pay a fair remuneration for the use, including a reimbursement for the reduction in value. The customer shall have no right of retention and shall bear the costs of sending the goods back to *Frauscher KG*.

5. Prices

- 5.1. Unless agreed otherwise in writing, the prices applicable are those in the price lists and prospectuses of *Frauscher KG*, valid at the date of conclusion of the contract. All prices are valid until recalled by *Frauscher KG*. All quotations are non-binding.
- 5.2. In case the customer orders by using means of distant communication no additional costs arise out of that fact.
- 5.3. Any applicable fees (customs duties), expenses and charges resulting from the import or export of goods are to be paid by the customer.
- 5.4. Any costs resulting from the delivery of goods to the delivery address indicated by the customer are not included in the indicated prices and are to be borne by the customer.
- 5.5. While giving reasonable consideration to the circumstances for calculating prices (especially changing market conditions or operating and personnel costs), *Frauscher KG* shall have the right, even after conclusion of the contract, to modify the prices at any time to a reasonable extent.

6. Maturity, Payment and Delay

- 6.1. When purchasing boats and yachts, the customer shall make a prepayment of 30% (thirty per cent) of the purchase price within 14 days after an order is accepted by *Frauscher KG*, unless a different payment period has been agreed upon in writing. *Frauscher KG* starts with the manufacture of the ordered boat or yacht only upon receipt of the prepayment clear of any expenses and deduction. The remaining purchase price shall be paid clear of any expenses and deduction within 14 days after receipt of the invoice, prior to delivery or, as the case may be, collection of the ordered boat or yacht. The boat or yacht shall solely be delivered or, as the case may be, collected after complete payment of the purchase price.
- 6.2. When purchasing goods or obtaining services of *Frauscher KG*, the price shall be paid clear of any expenses and deduction within 14 days after receipt of the invoice, unless a different payment

period has been agreed upon in writing. After the expiry of this time-limit the customer is in default.

- 6.3. *Frauscher KG* shall be entitled to charge each partial delivery on a separate invoice.
- 6.4. In the event of delay of payment, *Frauscher KG* shall be entitled to charge default interest at the rate of 8% (eight per cent) above the base rate p.a. and compound interest at the same rate. Claims to reimbursement of damages exceeding the default interest shall remain unaffected.
- 6.5. Incoming payments shall first be credited against costs, then against interest accrued and finally against capital. In the case of titled and untitled receivables, incoming payments shall first be credited against untitled receivables.
- 6.6. The customer shall bear all costs and efforts related to the collection of receivables, including, but not limited to, collection fees or other costs necessary for an adequate prosecution of the matter. *Frauscher KG* shall not be obligated to remind the customer of late payment.
- 6.7. The customer shall not be entitled to offset any counterclaims against claims of *Frauscher KG* or to withhold due payments.

7. Collection, Delivery and Transfer of Risk

- 7.1. Unless delivery of goods is explicitly agreed upon in writing, the customer shall collect the purchased goods at the shipyard of *Frauscher KG* in A-4662 Steyrermühl, Betriebspark Ehrenfeld 3, at his own account and his own risk.
- 7.2. In case of delivery, which must be explicitly agreed upon in writing, the purchased goods shall be sent to the delivery address indicated by the customer by using customary modes of shipment to be selected by *Frauscher KG*. *Frauscher KG* shall be entitled to partial delivery.
- 7.3. In case the customer collects the purchased goods at *Frauscher KG*'s shipyard, risk and coincidence devolve to the customer upon handing over of the goods.
- 7.4. In case of delivery, which must be explicitly agreed upon in writing, risk and coincidence devolve to the customer upon handing over the goods to the person or agent designated to execute the shipment.
- 7.5. The delivery shall be tantamount to the customer's default of acceptance. The customer is in default if he fails to accept the proper delivery.

8. Warranty

- 8.1. In case of a customer's warranty claim, *Frauscher KG* shall be entitled to refuse the chosen form of remedy if it is impossible or would result in disproportionate expense for *Frauscher KG* compared to an alternative form of remedy. For customers who are entrepreneurs *Frauscher KG* warrants defects on goods primarily at its own choice through repair or replacement of the good.
- 8.2. Customers who are entrepreneurs shall examine the delivered goods for defects and report these to *Frauscher KG* in writing within a period of 7 days from receiving of the goods; otherwise all warranty claims, rights to compensation and the avoidance of the contract on account of mistake shall be excluded. Customers who are entrepreneurs shall carry the full burden of proof for all eligibility requirements, in particular for the defect itself, the time of detection of the defect and the timeliness of the notification of defects.
- 8.3. The warranty period for customers who are consumers amounts to two years from receiving of the goods, in case of used goods one year. The warranty period for customers who are entrepreneurs amounts to one year from receiving of the goods.
- 8.4. All customer's warranty claims have to be filed with court within the warranty period, unless the claim is explicitly accepted by *Frauscher KG* in writing.
- 8.5. Customers who are entrepreneurs shall not be entitled to warranty claims related to batteries installed in boats and yachts.
- 8.6. *Frauscher KG* does not issue any special guarantee.

9. Limitation of Liability

- 9.1. Outside the application area of the Act on the Liability for a Defective Product, liability of *Frauscher KG* is limited to damages caused by intent or gross negligence. The liability for damages caused by ordinary negligence and the compensation for consequential damages, pecuniary loss, loss of profit, loss of interest and for damages arising from third-party claims are excluded.

- 9.2. The foregoing limitations of liability shall not apply in the event of health or bodily injury or the loss of life of the customer for which *Frauscher KG* is culpable. For consumers the limitations of liability in case of ordinary negligence shall not apply.
- 9.3. *Frauscher KG* shall not be liable for technical faults affecting the operation of its website and shall only be responsible for own contents on its website. In case *Frauscher KG*'s website contains links to other websites, *Frauscher KG* shall not be responsible for the external contents contained on these websites.
- 9.4. Limitations of liability stipulated in this clause 9 shall also apply for claims against personnel, employees, shareholders, legal representatives or assistants of *Frauscher KG*.
- 9.5. Indemnity claims against *Frauscher KG* become time-barred within six months after knowledge of the damage and the liable party.

10. Data Protection and Advertising Efforts

- 10.1. When concluding a contract, *Frauscher KG* shall be entitled to collect and process the personal data made available by the customer in its system and use these data for the term of the contract. Personal data is any data that identifies an individual directly or indirectly, for example name, address, e-mail address, date of birth, profession, banking account etc.
- 10.2. *Frauscher KG* shall be permitted to create and utilize anonymous user profiles for advertising, market research and the development of customized offers. The customer shall have the right of objection to this use of data which the customer may exercise in writing at any time. Upon request, *Frauscher KG* shall provide, free of charge, the customer with information about the customer's personal data that has been saved by *Frauscher KG*.
- 10.3. The customer shall have the right to request rectification, blocking or erasure of his data saved by *Frauscher KG* at any time.
- 10.4. The customer agrees to be informed via telephone, telefax, through electronic data transfer (especially via e-mail), in writing or in person about current offers, goods and services provided by *Frauscher KG*.

11. Final Provisions

- 11.1. The place of performance and payment shall be A-4810 Gmunden, Austria.
- 11.2. The entire business relationship and all contracts between *Frauscher KG* and the customer shall in all respects be governed by and construed in accordance with the laws of Austria exclusively, excluding its provisions on conflict of laws and the provisions of the United Nations Convention on Contracts for the International Sale of Goods.
- 11.3. The entire business relationship and all contracts between *Frauscher KG* and the customer are exclusively subject to the jurisdiction of Austria and the exclusive place of jurisdiction for all disputes out of or in connection with the business relationship and the contracts is the court local competent for Gmunden. *Frauscher KG* reserves the right to file a lawsuit against the customer at the customer's place of general jurisdiction. For customers who are consumers the abovementioned place of jurisdiction shall only be considered to be agreed if the customer resides in or has his usual domicile or place of employment in this court district or if the customer lives abroad.
- 11.4. Should any provision of these *GTC* be or become invalid, ineffective or unenforceable as a whole or in part, the validity, effectiveness and enforceability of the remaining provisions shall not be affected thereby. Any such invalid, ineffective or unenforceable provision shall, to the extent permitted by law, be deemed replaced by such valid, effective and enforceable provision as comes closest to the economic intent and purpose of such invalid, ineffective or unenforceable provision; the same shall apply to any missing provisions.