

TERMS AND CONDITIONS

for Frauscher Bootswerft GmbH & Co KG

Version November 2022

1. Scope

1.1. These Terms and Conditions (hereinafter referred to as "T&Cs") apply to all customer contracts agreed by Frauscher Bootswerft GmbH & Co KG, headquarters in Gmunden, business address Betriebspark Ehrenfeld 3, A-4694 Ohlsdorf, Austria, listed in the Austrian Commercial Register under company number FN 300948 x, competent court Landesgericht Wels (hereinafter referred to as "Frauscher KG"). The T&Cs shall apply irrespective of how the contract was concluded. Consequently, they are applicable even if a contract is concluded exclusively using one or more forms of remote communication, such as telephone, letter, fax or email. If the validity of the T&Cs has been agreed in a contract, the T&Cs shall apply to all further contracts and, more generally, for the entire commercial relationship between Frauscher KG and the customer, even if in a specific instance a contract is concluded that does not explicitly reference the validity of the T&Cs. The T&Cs shall also apply following the termination of all contracts until implementation is complete. The relevant version of the T&Cs at the time the contract was agreed shall be applicable.

1.2. Any additional or different agreements that are individually negotiated by both parties shall take precedence over the provisions in these T&Cs insofar as the new agreement has been confirmed in writing by Frauscher KG.

1.3. Customers of Frauscher KG can be either consumers or traders. Consumers are as defined in the Austrian Consumers Protection Act (Konsumentenschutzgesetz, KSchG) and are thus a natural or legal person that is not a trader. Traders are natural or legal persons or legal partnerships for whom the relevant contract is part of their business operation.

1.4. The validity of the customer's own terms and conditions, particularly any purchase conditions, is explicitly excluded. This exclusion is agreed when these T&Cs become valid. Any references to the validity of the customer's terms and conditions, particularly in the customer's commercial documents, are deemed inapplicable. In the event of any dispute as to whether these T&Cs or the customer's terms and conditions should apply, it is agreed that the application of the customer's terms and conditions shall be excluded.

1.5. Frauscher KG is entitled to modify these T&Cs at any time; the modified version shall apply from the date on which it is published on the Frauscher KG website for any contracts subsequently agreed.

2. Quotation — contract conclusion

2.1. All Frauscher KG quotations are subject to alteration and are non-binding; they can be retrospectively modified, augmented or withdrawn by Frauscher KG at any time before the contract is concluded.

2.2. The customer's order is considered to be a binding offer to conclude a contract of sale for the ordered item.

2.3. The contract of sale or a repair or maintenance contract shall become effective either by Frauscher KG explicitly accepting the customer's order or their repair or maintenance instruction, or thanks to a de facto acceptance through delivery of the ordered item or repair of the relevant boat, in each case within 30 days of receipt by Frauscher KG (issuing the acceptance or sending the item). Once this period has elapsed, the customer is no longer bound by their offer, and the contract of sale or the repair or maintenance contract shall be considered ineffective.

2.4. Frauscher KG is entitled to decline the order — for example after checking the customer's credit rating.

2.5. Conclusion of a contract with traders is subject to non-performance or partial performance in the event of an incorrect or inadequate supply of goods and materials. If contract performance is impossible or only partially possible, the trader will be notified of this immediately. Payment will be reimbursed immediately.

2.6. Statements by Frauscher KG employees shall not be binding for Frauscher KG in the absence of corresponding written authorisation.

3. Retention of title

3.1. Any items supplied by Frauscher KG shall remain the property of Frauscher KG until complete payment has been received from the customer for any receivables arising from the commercial relationship.

3.2. The customer is obliged to take good care of any items that are subject to retention of title. Insofar as maintenance or inspection work is required, the customer must carry this out regularly at their own expense.

3.3. Before ownership is assumed, the customer must have written approval from Frauscher KG in order to resell, pledge or pass on the reserved goods to a third party. If a third party asserts rights to the purchase item as part of enforcement or insolvency proceedings, the customer must notify Frauscher KG of this immediately in writing and inform the third party that the item is the property of Frauscher KG.

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3.4. The customer must cover any damages or costs incurred by *Frauscher KG* resulting from a violation of these obligations or from interventions required to prevent access to the goods by third parties.

3.5. In the event of customer conduct that breaches the contract — particularly late payment — *Frauscher KG* is entitled to withdraw from the contract and to reclaim the goods.

3.6. If a customer who is a trader resells the item, the customer now assigns to *Frauscher KG* all claims up to the invoiced amount that have been accrued against a third party due to this resale and undertakes to make a corresponding entry in their bookkeeping system or on the relevant invoices. *Frauscher KG* accepts the assignment.

4. Right of withdrawal

4.1. Pursuant to § 5e KSchG, for contracts agreed exclusively via remote communication methods, a customer who is a consumer has the right to withdraw from the contract within seven working days, calculated from the date on which the customer took delivery of the goods or from the date on which the contract was concluded in case of service contracts. Saturdays do not count as a working day. The withdrawal does not have to include a justification. Timely dispatch shall suffice in order for the deadline to be met.

4.2. However, there is no right of withdrawal for contracts relating to goods produced according to customer specifications and that are not suitable for return due to their nature (§ 5f(3) KSchG).

4.3. If withdrawal is permitted, the customer must immediately return the received goods and pay reasonable compensation for their use, including remuneration for any associated reduction in the value of the item. The customer has no right of retention. The customer must cover the cost of returning the goods.

5. Prices

5.1. Unless otherwise agreed in writing, the prices in *Frauscher KG* brochures and price lists are applicable; the relevant version **will be the one that applied at the time the contract was agreed**. Prices are applicable until further notice. All price indications are subject to alteration.

5.2. No additional costs shall be incurred by the customer when ordering by using remote communication methods.

5.3. Any taxes (e.g. customs duty), fees or costs associated with imports or exports must be paid by the customer.

5.4. Any costs arising from a potential delive-

ry of the goods to a delivery address specified by the customer are not included in the prices quoted; these additional costs must be covered by the customer.

5.5. Even after the contract has been agreed, *Frauscher KG* is entitled to make reasonable adjustments to the prices at any time, taking into consideration the relevant factors for price calculation (particularly changes to market conditions or to material or staff expenditure).

5.6. Estimates for repair work or maintenance on boats or yachts are made with no guarantee and are subject to a fee. Consumers will be notified separately about the corresponding payment obligation before the estimate is produced. If the services covered by the estimate are then commissioned, the cost of the estimate will be deducted from the relevant invoice for the repair or maintenance work.

6. Due date, payment and arrears

6.1. Unless alternative payment terms are expressly agreed in writing in a specific case, for the purchase of boats and yachts, the customer must provide advance payment of 30% (thirty percent) of the purchase price within two weeks of the date on which *Frauscher KG* accepts the order. *Frauscher KG* will only begin production work on the ordered boat or yacht after receiving this down payment in full and without incurring any fees. Before collection or delivery, the outstanding balance must be paid in full and without any fees within two weeks of receiving the invoice, with payment being made to the *Frauscher KG* account specified on the invoice. The boat or yacht can only be collected or delivered after full payment of the total purchase price.

6.2. If the customer purchases other items or services from *Frauscher KG*, the customer must pay the full invoice sum without any fees within two weeks of receiving the invoice — with payment being made to the *Frauscher KG* account specified on the invoice — unless an alternative payment period has been expressly agreed in writing in a specific case. Once this payment period has elapsed, the customer is considered to be in arrears.

6.3. *Frauscher KG* is entitled to invoice separately for each individual partial delivery.

6.4. In the event of late payment, *Frauscher KG* has the right to claim interest on arrears amounting to 10% above the base rate p.a. plus compound interest at the same rate. If the customer is a consumer, *Frauscher KG* is entitled to interest on arrears amounting to 4%. The right to claim compensation for damages beyond the interest on arrears shall

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remain unaffected.

6.5. Incoming payments are first offset against taxes, fees, recovery costs, interest on arrears and then against open capital. If there are legally enforceable and non-enforceable claims, incoming payments will first be offset against non-enforceable claims.

6.6. Any expenditure associated with debt collection (such as reminder fees and the cost of any judicial and/or extrajudicial legal representation) must be paid or reimbursed by the customer. There is no obligation on the part of *Frauscher KG* to issue reminders.

6.7. If the customer is a trader, the customer is not entitled to offset claims from *Frauscher KG* or to retain any payments due. Customers who are consumers are only entitled to set off counterclaims if these have been legally established, are recognised by *Frauscher KG*, are legally connected with the customer's payment obligation or in case of insolvency on the part of *Frauscher KG*.

7. Collection, delivery and transfer of risk

7.1. Unless delivery has expressly been agreed in writing in a specific case, the goods must be collected by the customer, at their own expense and risk, from the *Frauscher KG* shipyard at A-4694 Ohlsdorf, Betriebspark Ehrenfeld 3.

7.2. In case of delivery (which must be expressly agreed in writing), this will be made using a standard shipping method selected by *Frauscher KG* to the delivery address specified by the customer. *Frauscher KG* is entitled to supply partial deliveries.

7.3. Where the customer is collecting the goods, the transfer of risks and contingencies to the customer takes place when the goods are handed over at the *Frauscher KG* shipyard.

7.4. In case of delivery (which must be expressly agreed in writing), the transfer of risks and contingencies to the customer takes place when the goods are handed over to the designated person or institution carrying out the delivery.

7.5. This transfer shall not be affected by any delay to acceptance on the part of the customer. Delayed acceptance by the customer is deemed to apply if the customer fails to accept the proper performance of the service provided.

7.6. For repair or maintenance work, the boat or yacht on which the repair or maintenance work is to be performed must be delivered by the customer, at their own expense, to the location agreed with *Frauscher KG* and collected from the same location once the work has been carried out.

7.7. For repair or maintenance work, the customer must hand over the boat or yacht in a suitable

condition to be worked on and with no hazardous cargo, so that *Frauscher KG* can start the relevant work without further delay.

7.8. If a boat or yacht is not collected on the agreed date, *Frauscher KG* is entitled to claim a storage fee in accordance with the relevant price list. Furthermore, in the event of a failure to collect the boat or yacht on the agreed date, the vessel may be handed over to a third-party custodian at the customer's expense.

7.9. The customer hereby agrees to the use of a crane should this be necessary for *Frauscher KG* to carry out the requested repair or maintenance work.

8. Warranty

8.1. For any warranty claims by the customer, *Frauscher KG* is entitled to refuse the chosen remedy if it is not possible or if it involves disproportionate expense on the part of *Frauscher KG* when compared with an alternative remedy. For customers who are traders, *Frauscher KG* guarantees to remedy any potential defects in the goods at its own discretion by rectifying the defect or offering a placement.

8.2. Customers who are traders must inspect the supplied or repaired goods for defects within a reasonable period and notify *Frauscher KG* in writing within one week of acquiring / receiving the goods. Otherwise, the assertion of warranty claims, claims for damages, or disputes over errors are ruled out. Customers who are traders bear the full burden of proof for any eligibility criteria, particularly for the defect itself, the time at which the defect was identified and for making any complaint in a timely manner.

8.3. The warranty period for customers who are traders is two years from the date on which the (repaired) goods were handed over, or one year from handover in the case of used goods. For a (temporary) transfer of goods to a third party in exchange for a fee, however, the warranty period is one year from the handover of the goods including for customers who are consumers. The warranty period for customers who are traders is generally one year from handover of the goods.

8.4. Any potential warranty claims by the customer must be legally established within the warranty period unless they have been expressly recognised in writing by *Frauscher KG*.

8.5. For customers who are traders, any assertion of warranty rights relating to built-in batteries in boats or yachts is excluded.

8.6. *Frauscher KG* does not give its customers any guarantees in a legal sense.

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9. Limitations on liability

9.1. Beyond the scope of the Austrian Product Liability Act (Produkthaftungsgesetz), *Frauscher KG* shall only be liable for damages resulting from gross negligence or intent. Liability is excluded for slight negligence, compensation for consequential damage or damage to property, unrealised savings, loss of interest, lost profits and damages from third-party claims against the customer.

9.2. The aforementioned limitations on liability shall not apply if *Frauscher KG* is culpable for personal injury or damage to health or loss of the customer's life. The limitation on liability for slight negligence does not apply with regard to consumers.

9.3. *Frauscher KG* accepts no liability for technical disruption to the operation of its website and accepts responsibility only for its own content on the website. Insofar as *Frauscher KG* enables access to other websites via links, *Frauscher KG* is not responsible for the external content hosted there.

9.4. The limitations on liability detailed here in Section 9 also apply for any potential claims against *Frauscher KG* employees, service users, shareholders, institutions or agents.

9.5. The limitations on liability also apply with regard to repair and maintenance work by *Frauscher KG*.

9.6. With regard to repair and maintenance work, *Frauscher KG* assumes no liability for theft or damage to the boat or yacht being repaired, or its accessories, insofar as the damage is not caused by gross negligence on the part of *Frauscher KG*. Liability for damage due to force majeure is also explicitly excluded. The customer undertakes to remove any valuable objects before the repair or maintenance work commences. *Frauscher KG* assumes no liability for valuable objects that remain on the boat or yacht during the repair or maintenance work.

9.7. Claims for damages against *Frauscher KG* shall lapse six months from the date on which the damage and the party causing the damage became known.

10. Data protection and promotional activities

10.1. In the event of a contract being agreed, *Frauscher KG* will collect and process personal data provided by the customer and will use these data for the duration of the contract performance. Personal data means any information that would allow a person to be identified, either directly or indirectly, e.g. name, home address, email address, date of birth, occupation, bank details etc.

10.2. *Frauscher KG* will create and use anonymised user profiles for marketing purposes, for market research and in order to design their product offering to meet customer demands. The customer is entitled to object to this by submitting written notification of their objection at any time. On request, *Frauscher KG* will provide the customer free of charge with information about the personal data stored in relation to that customer.

10.3. The customer can request the rectification, erasure or restriction of processing of the personal data stored by *Frauscher KG* at any time.

10.4. The customer hereby agrees to receive information about current offers, goods and services from *Frauscher KG* by telephone, via electronic data communication (particularly email), by fax, in writing or in person.

11. Final provisions

11.1. The place of payment and performance of all services is A-4810 Gmunden, Austria.

11.2. Austrian Law shall apply for the entire commercial relationship and for any contracts or mutual claims between *Frauscher KG* and the customer. The UN Convention on Contracts for the International Sale of Goods and the Austrian conflict-of-law rules are excluded.

11.3. For any disputes between *Frauscher KG* and the customer, responsibility will fall to the competent court for dealing with cases of this kind between the parties and with local jurisdiction in Gmunden. However, *Frauscher KG* reserves the right to lodge a claim against the customer at the latter's general place of jurisdiction. For customers who are consumers, the place of jurisdiction cited is only deemed to have been agreed if the customer's residence, habitual abode, or employment location is in this court district, or if the customer lives abroad.

11.4. If a provision in these T&Cs proves to be partially or entirely invalid or unenforceable, this shall have no impact on the validity or enforceability of the remaining provisions. The invalid or unenforceable provision will be replaced by a valid or enforceable provision, the commercial substance of which comes as close as possible to the intention of the invalid or unenforceable provision. The same applies for any potential loopholes in these T&Cs.