

# MARIWAY GmbH AGB'S

**This English version of our General Terms and Conditions is meant solely for the convenience of our English-speaking business partners. It is not a legally binding document.**

## General Terms and Conditions for deliveries, maintenance and repair activities of MARIWAY GmbH, Geesthacht

1. Application of the Terms and Conditions
2. These general provisions shall apply to all offers and legal transactions concerning deliveries of goods, as well as to all maintenance and repair activities of MARIWAY GmbH, Geesthacht, hereafter called "MARIWAY GmbH". The customer will acknowledge these general provisions as soon as he has placed his order, however, at the latest, when he receives the first consignment or the first maintenance and service job and they shall be valid for the complete duration of the business relationship.
  
1. We will object to any conditions of the customer that differ from these; furthermore, we will not accept these when carrying out the order. Other agreements that differ from the General Terms and Condition, especially guarantees, alterations or subsidiary agreements will only be effective, if MARIWAY GmbH has consented to them explicitly and in written form.
  
2. Offers, conclusion of contracts
3. The offers of MARIWAY GmbH are non-binding and without obligation.
  
1. Contracts will only be binding, when MARIWAY GmbH confirmed them in written form (order confirmation). If no order confirmation is sent, the contract shall definitely be formed upon the delivery of the contents of the invoice, or, in the case of maintenance and repair, the contract shall be formed upon the commencement of performance of service.
  
1. Drawings, pictures, characteristics, measurements, weights or other performance data are only binding, if this has been explicitly confirmed in written form. MARIWAY GmbH has the right to make alterations of the goods due to production circumstances without prior notice during the period of delivery, unless these alterations are unbearable for the customer.
  
3. Documentation, Secrecy
4. Any documentation, including also descriptions, drawings and cost estimates, remain the property of MARIWAY GmbH and must not be made accessible to Third Parties without our written consent. If MARIWAY GmbH has the copy right, the exclusive right of use remains with us.
  
1. Unless explicitly stated otherwise, all information conveyed to MARIWAY GmbH relating to an order is not considered confidential.
  
1. If a contract fails to become effective, the customer has to return all documentation conveyed to him by MARIWAY GmbH; this also applies if a contract is cancelled.

4. Prices

5. All prices for deliveries and services are non-binding and are quoted ex works, excluding packing.
1. The customer bears all extras, especially those for shipping and transport insurance, which we will only take out at the explicit wish of the customer and upon prior written agreement.
1. The prices are based on the labour and material cost at the time of placing the order confirmation, unless MARIWAY GmbH and the customer have agreed on fixed prices.
1. If costs have risen during the period preceding the delivery resp. receipt of the goods or service, MARIWAY GmbH has the right to demand a price reflecting these cost increases.
1. If an order is subject to sales tax, the prices indicated will apply plus the corresponding legal value added tax.

5. Delivery/Risks/Delivery deadlines

6. Delivery shall be unpaid ex our warehouse in Hamburg/Geesthacht within the European Union.
1. The contents of the delivery is defined in our written sales invoice. The quantities stated in the invoice shall be ascertained at the corresponding place of despatch acc. to point 5 a., unless the despatch will take place from another location agreed upon by the customer and us.
1. MARIWAY GmbH has the right to carry out partial deliveries of partial services.
1. The performance risk shall pass to the customer, also in the case of partial deliveries and services, as soon as we have handed over the goods to the carrier, even if the transport of the goods is effected by the company MARIWAY GmbH itself
1. Delivery deadlines have to be agreed upon in an extra point of the contract. The delivery times stated in offers are non-binding. If a delivery deadline has been agreed upon in written form, it starts with the date of the conclusion of the contract, or – in the case of a telephone or written order – with the date of our order confirmation. In any case, it does not start not before the customer has effected pre-payment of the whole amount or of an amount agreed upon between MARIWAY GmbH and the customer. The delivery deadline is kept, if the goods have been delivered to the carrier on time acc. to section 5 d. We shall only keep the delivery deadline, if the customer has fulfilled all his contractual obligations.
1. If force majeure or other occurrences cause a delay in the delivery or performance, and make it extremely difficult or even impossible to deliver on time, MARIWAY GmbH does not bear the consequences of these delays. Such occurrences include the following events: correct and punctual self-supply, labour disputes, difficulties during transport, official actions, no matter whether these events occur at the site of MARIWAY GmbH or at the site of MARIWAY GmbH's suppliers. They give MARIWAY GmbH the right to delay deliveries or performances for the duration of

such hindrances plus an adequate starting time or to cancel the contract completely or partially because of the non-fulfilled deliveries or performances. Section 10 defines MARIWAY GmbH's liability for such cases.

1. The customer is only entitled to cancel the contract in accordance with the legal rules, if we are responsible for exceeding the delivery times agreed upon, and if the customer granted us an adequate deadline for the delivery – in observance of the exceptions provided by the law - which we did not keep. This regulation exempts any change of the evidence. The customer has no right to cancel the contract, if he is solely or primarily responsible for the circumstances leading to the cancellation, or if the event, for which we are not responsible, occurs at a time when the customer is at default of acceptance.
1. If delivery is effected with delay due to reasons caused by the customer, there will be a default in acceptance and transfer of the performance risk, as soon as MARIWAY GmbH has informed the customer of the readiness of the order.
1. If the customer is at default of acceptance even of only a partial delivery, we have the right to cancel the contract completely or partially after an interval of at least two weeks, which we will determine and to claim compensation replacing the performance with respect to the complete contract or parts of it. If we claim damages to make up for the performance, the compensation amounts to a lump sum of 15% of the agreed price plus any value added tax that may occur, unless we prove that our damage is higher or unless customer proves that the damage is lower.
6. Acceptance
7. The customer is obliged to accept repair or maintenance services immediately after completion.
  1. Acceptance has also become effective, if the customer has explicitly or silently refrained from the acceptance.
7. Warranty/Claim and rights due to faulty delivery or performance
8. Merchants have to claim obvious faults or mistakes immediately, however, latest within 8 days after delivery, in written form. Merchants also have to claim hidden defects immediately, however, latest within 8 days after they have become known, in written form. This applies correspondingly, if the customer is an entrepreneur in the understanding of § 14 BGB, but not a merchant in the understanding of the HGB.
  1. Defective deliveries, which can be proved to be defective or unusable due to faulty material or construction mistakes, will be replaced or repaired - depending on our choice - at short notice, after the customer has sent us his written request. Replaced parts will become our property. If the replacement or repair fails eventually, the customer has the right to cancel the contract. He has no right for a replacement, repair, cancellation of the contract and/or compensation, if there is only a minor loss of value or usability of the delivered goods.
1. The customer is obliged to grant MARIWAY GmbH the opportunity to check and possibly, to exchange any claimed goods. If we wish, the customer has to return the goods to enable us to remove the claim. The complete delivery has to be packed and labelled, including serial and type numbers. Furthermore, a copy of the delivery note

as well as the number of the order confirmation and invoice have to be indicated. Depending on the option of MARIWAY GmbH, we can also carry out the repair job or replacement job at the site of the customer.

1. MARIWAY GmbH will only bear such costs which would rise in the course of the repair or replacement job on our own premises. MARIWAY GmbH will only bear the cost of the repair or replacement delivery for an amount up to the order value.
1. MARIWAY GmbH does not take on any further warranty obligations than the present ones stated in these general terms and conditions, and, in particular, MARIWAY GmbH does not take on the liability for any secondary damages.
1. The customer loses all entitlements 12 months after delivery of the goods due to limitation of claim. This also applies to claims resulting from neglect of duty that are not related to legal defects or defects with regard to the goods or the service. The legal limitation period applies in the case of deliberate and malicious action as well as in the case of claims according to the law of liability for defective products.
8. Payment terms
9. Payment has to be effected immediately after the invoice has been issued, without deduction and free of expense, unless otherwise agreed upon.
10. In the event of the customer's default MARIWAY GmbH has the right to charge interest of 8 percentage points above the current basic rate of interest. This applies irrespective of any future claim.
1. In the event of late payment as well as in case of justified apprehension of an essential loss of assets of the customer or in the case of his insolvency we may suspend the delivery or – depending on our option – demand immediate prepayment of all outstanding accounts even if they are not yet due yet including deferred or corresponding securities. If the customer does not comply with the request for prepayment or with the request for providing securities within a reasonable deadline, we have the right to cancel all contracts and to claim damages.
1. If payment by instalments has been agreed upon and if the customer is late with the payment for two instalments, the complete amount will become due immediately.
9. Right of Detention, Offsetting
10. The customer has no right of detention with regard to outstanding debts of MARIWAY GmbH.
1. Offsetting of outstanding debts of MARIWAY GmbH against outstanding debts of the ordering party are only admissible, if the customer's outstanding debts are un-disputed and have been legally recognized.
10. Liability of MARIWAY GmbH, Customer's obligation to hold harmless
11. We will take on liability for any damage occurred to the customer in case of our own deliberate or grossly negligent conduct, of our executive's deliberate and grossly negligent conduct and in the event of our culpable violation of the customer's life, body or health.

250. Apart from that we are liable - no matter for which legal reason - only in the case of culpable violation of essential contract duties, which are indispensable for fulfilling the contract, and in the event of deliberate and grossly negligent conduct of simple subcontractors. In these cases we will limit our liability to the foreseeable typical damage at the time of concluding the contract. Our maximum liability for damages that may occur on board of a seagoing vessel caused by the performance of maintenance and repair work amounts to € 250.000,00. In all other cases our liability is limited to the triple amount of the invoice for the corresponding delivery or service.

1. The liability according to the law of product liability and according to any other compelling regulations remains untouched.

1. Apart from that our liability is excluded.

1. The customer will keep MARIWAY GmbH and their subcontractors clear against any claims of third parties.

#### 11. Reservation of title and security interest

12. MARIWAY GmbH reserves the ownership of the delivered goods, until all outstanding debts of MARIWAY GmbH against the customer resulting from their business relationship including any future outstanding debts from current or future contracts (hereafter called „reserved goods“). This also applies, if individual or all of MARIWAY's outstanding debts have been integrated into an open and accepted invoice.

1. The customer has the right to process or manufacture the reserved goods and to sell them in the ordinary course of business. Already in this moment, the customer cedes all outstanding debts to GmbH which may result by the sale of the reserved goods to interested or third parties. If reserved goods are processed or if they are sold after being processed with the help of objects belonging to the customer, the customer cedes to us all outstanding debts to the full amount resulting from the sale from the same moment on. If the customer sells reserved goods – after processing/mixing/manufacturing them – together with goods which do not belong to the customer, the customer will cede to us all outstanding debts resulting from the sale in the value of the reserved goods with all subsidiary rights and priority before the rest. If a genuine or non-genuine competitive relationship exists between the customer and the third parties, or if such relationship will be founded, the customer will cede to us all outstanding debts from drawn balances or future balances. The right of statement of the reciprocal balance as well as the right of cancelling an open account. We will accept this cession. The customer remains entitled until the outstanding debts have been remitted. Our right to collect the outstanding debts ourselves remains untouched by this. However, we will assume the obligation not to collect the outstanding debts as long as the customer pays his invoices on time and abides by his other duties correctly. We can demand that the customer informs us of the outstanding debts ceded to us and of the debtors and provides all details to collect the outstanding debts, passes us all corresponding documentation and informs the debtors of the cession.

1. The customer will carry out any possible processing or manufacturing of the reserved goods for MARIWAY GmbH, without any obligations of MARIWAY GmbH. MARIWAY has the partial ownership of the new product in proportion of the value of

the reserved goods at the time before processing and after processing in the case of processing, manufacturing or blending the reserved goods with other goods which do not belong to the customer. If the customer obtains the exclusive ownership of the new products, the contract partners will agree that the customer cedes partial ownership to MARIWAY GmbH in proportion of the value of the processed, blended or manufactured reserved goods and the customer will keep this for MARIWAY GmbH free of charge.

1. The customer is only allowed to pawn or deposit the reserved goods at a secure place, if MARIWAY GmbH permits this explicitly. If our security interests are impaired by third parties, especially by confiscation or pawning of reserved goods and/or of outstanding debts ceded to us, the customer has to inform us immediately by sending us the corresponding documentation that is available to him, such as pawn protocols etc. and to point out our security interests to third parties. The customer is obliged to recompense us for our costs for taking measures to fight for our security interests.
2. In case of suspended payments, insolvency of unfavourable report which hint at an essential decrease of the customer's solvency, MARIWAY GmbH has the right to take possession of the reserved goods. The customer will give his consent to handing out the reserved goods unrecallably and absolutely. The same applies in the case of legal enforcements against the customer, once these become known to MARIWAY GmbH.

## 12. Security regulations

The customer has to arrange and monitor that the ship's managements or owners abide by their obligations and provisions resulting from legal and/or other security regulations. If he is also subjected to security regulations, he has to abide by those rules. Furthermore, the customer has to check on his own initiative whether the security provisions met by MARIWAY GmbH are sufficient for the special circumstance of the customer.

## 13. Place of execution competent court of jurisdiction, applicable law.

14. Geesthacht is the place of executions for all obligations from this contract.

1. Competent court of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is Hamburg. MARIWAY GmbH has the right of filing a lawsuit also at the registered office of the customer.
1. The applicable legislation is that of the Federal Republic of Germany with the exception of its regulations of international private legislation. The validity of the UN-Purchasing right is excluded. Es gilt das Recht der Bundesrepublik Deutschland mit Ausnahme seiner Bestimmungen des internationalen Privatrechts. Die Geltung des UN-Kaufrechts ist ausgeschlossen.

## 14. Partial nullity Teilnichtigkeit

If parts of these regulations should be or become null and void, ineffective and/or impracticable as a whole, the validity of the rest of the regulations remains untouched.

Oliver I. Giebel

MARIWAY GmbH

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