



1. General

- 1.1 These terms and conditions shall apply to all supplies and services of Kongsberg Maritime GmbH (Kongsberg) as well as for all offers and quotations made by Kongsberg.
- 1.2 Oral or written commitments which deviate from or supplement our contract terms and/or our order confirmation are only valid upon valid consent by our statutory representatives (managing directors and/or general representatives).
- 1.3 General terms and conditions of our customer shall only apply if and to the extent expressly accepted by Kongsberg in writing.
- 1.4 Our standard terms and conditions shall apply for all future business operations with the customer.
- 1.5 As per these conditions "customer" in service contracts is also referred to as "purchaser".

2. Quotations (Price information)

- 2.1 Our prices are valid from place of business of Kongsberg Maritime GmbH. Value Added Tax is not included in the price. When sale by delivery to a place other than the place of performance, freight costs and in case that insurance is requested by customer also costs for insurance are to be paid by the customer.
- 2.2 Unless otherwise specified a quotation does not commit Kongsberg. A binding supply or other contract is only concluded in accordance with clause 3.
- 2.3 We recommend that our customers base their offers in each case on up-to-date quotations (i.e. price information which has been provided within the preceding 30 days).
- 2.4 The weight, dimensions, capacities in catalogues, prospectuses, circulars, advertisements, illustrated matter and price lists constitute technical indications only. They do not constitute any guarantees. Industry standard deviations (fabrication tolerances) are admissible in any event.

3. Formation of Contract

Our quotations are non-binding. A supply or other contract shall be concluded only when (i) Kongsberg has sent a written confirmation to the customer within the time limit (if any) set by the customer, or (ii) when a separate contract has been signed by Kongsberg and the customer or (iii) when the goods have been delivered by Kongsberg and accepted by the customer.

4. Prices

- 4.1 All prices are net excluding VAT which the customer shall pay additionally in the applicable statutory amount.
- 4.2 To the extent not expressly agreed otherwise, the customer is responsible for any additional freight costs, packaging costs (to the extent the packaging exceeds the requirements of clause 6) and all charges such as import duties and taxes.

5. Delivery

- 5.1 Delivery shall be ex-works Hamburg. This shall also be the place of fulfilment. Passing of risk of accidental perishing or degradation shall be as of handover to the customer. When goods are delivered, such risk, including the risk of late delivery, shall be passed to the customer with handover to the carrier, forwarding agent or any other party that perform delivery of the goods. If the parties agreed on a commissioning, this shall be deemed the relevant point for passing of risk.
- Further, statutory conditions of service contracts for passing of risk shall apply for commissioning when services are provided. The goods and or services shall be deemed to be delivered or accepted if purchaser is in default with the acceptance.
- 5.2 The time of delivery stated in the agreement shall apply. The delivery dates shall be deemed to be met upon notification that the goods are ready for shipment, even if the goods cannot be shipped in time without fault of Kongsberg.

- 5.3 Periods and time for delivery are extended for the period by which the customer fails to meet his obligations vis-à-vis Kongsberg (preparation for delivery, payment, etc.) or the customer otherwise delays delivery by request for changes etc. The customer is responsible for any resulting costs. Our rights based on default by the customer, if any, remain unaffected.
- 5.4 If the customer fails to accept delivery as agreed, such failure shall not relieve the customer from payment of any instalment due on delivery. In such case, Kongsberg will endeavour to arrange for storage of the product at the customer's risk and cost.
- 5.5 Upon request of the customer, Kongsberg will insure the product at the cost of the customer.
- 5.6 In case of delivery periods and times which the order confirmation does not expressly designate as being firm, the customer may set a reasonable deadline for the delivery/service two weeks after expiration of such delivery period or time. We will be in default only after expiration of such deadline.
- 5.7 Due supply by our suppliers is reserved.
- 5.8 Kongsberg is authorized to partial deliveries if such partial delivery is not unreasonable.
- 5.9 In case of a violation of our obligations we shall be liable for damages of any kind only as provided for in clause 11 of these conditions.

6. Packaging

Kongsberg will pack and protect the goods delivered in order to prevent damage to the goods before they reach their destination as stated in the contract, provided normal transport.

7. Payment

- 7.1 Unless otherwise agreed, all payments shall be made in Euro and shall be made free of postal or other charges.
- 7.2 Payments shall take place net (without deductions) 30 days after the date of invoice.
- 7.3 Kongsberg is entitled to claim interest on overdue payments at an interest rate of 6 percentage points above the base rate according to § 247 of the German Civil Code. Each contract party is entitled to demonstrate a different loss of interest. Claims based on default remain unaffected.
- 7.4 The retention of payments based on counter-claims, or the set-off of payments with counter-claims, by the customer is excluded unless such counter-claims are undisputed by us or have been determined by final judgment.
- 7.5 Should it after signing of the agreement become apparent that our claim for payment may be at risk due to lack of solvency of the buyer, we shall have the rights out of sect. 321 BGB (German Civil Code) (defense of insecurity). We are in this event entitled to collect all claims that are not subject to limitation and are arising from current transaction. The defense of insecurity shall extend to all further goods delivered and services provided in relation to the purchaser / customer.

8. Retention of Title

All delivered products remain our property (retention of title) until payment in full of all our claims, regardless of their legal basis, including future and contingent claims arising from concurrent or future contracts. In case that the value of all our collateral exceeds our secured claims by more than 20%, we shall release, upon request of the customer, collateral of our choice to such extent.

- 8.1 All delivered products remain our property (retention of title) until payment in full of all our claims, regardless of their legal basis, including contingent claims arising from concurrent or future contracts. This also includes claims that arise from acts of insolvency administrators when executing the right to demand delivery. This shall also apply for future or conditional claims, regardless of their legal basis or future contracts.



- 8.2 This par. 1 shall also apply for goods and materials we have worked on or with. Manufacture, composition or blending of goods subject to retention of title shall by purchaser grant us a common ownership of the new good, this in relation to the ratio of the purchase price of the goods under retention of title to purchase price of the other goods used. Should our retention of title expire due to manufacture, composition or blending, purchaser herewith transfers the right of ownership of the new goods to the extent of the purchase price of the goods under retention of title and shall store these for us free of charge. Our joint ownership shall be deemed as a retention of title as in par. 1.
- 8.3 Purchaser shall only sell such goods under retention of title in the normal course of business and only if purchaser is not in default with payments and only if purchaser is retaining the title and only if claims from further sale are transferred to us under the following clauses. Purchaser shall not be entitled to other dispositions of the goods under retention of title.
- 8.4 Purchaser herewith assigns claims arising from or out of the resale of goods or products to us in full or to the extent of the value of our joint ownership acc. to par. 8.3 as a security. We herewith accept the assignment of the claim. The obligations of purchaser of par. 8.2 shall also apply for assigned claims.
- 8.5 Purchaser shall, as well as we, be entitled to collect claims. We undertake not to collect claims as long as purchaser is not in default with our claims, has not filed insolvency or there are other reasons of insecurity of our claims. In such event, we are entitled to request purchaser to supply the required information of such assigned claims and their debtors, to supply all information required to collect claims and submit required documents, and to inform debtors of the assignment of the claim.
- 9. Warranty and Notification of Defects**
- 9.1 The objection period in the sense of § 377 paras. 1 and 3 of the German Commercial Code is 30 days; decisive is our receipt of a written (including Telefax) objection which should include a reference to the invoice number and delivery number, as applicable.
- 9.2 The limitation period for warranty claims (claims based on a defect) is 12 months from delivery. The preceding sentence does not apply to objects which are used, pursuant to their usual application, for a building and have caused defects in such building. It also does not apply to defects consisting of any third party's claim in rem for the transfer of such object. The limitation period with respect to parts replaced or repaired hereunder shall end 12 months after replacement or repair.
- 9.3 Basis of or liability for defects shall primarily be the contractual consent as to properties and condition of the goods. All product descriptions that are subject to an individual contract shall be part of the contractual consent as to properties and condition of the goods, regardless if these are supplied by us or the producer.
- 9.4 In case of a justified notification of a defect within the limitation period, we undertake to remedy any defects by way of supplementary performance, at our option by repair or replacement. We are entitled to refuse supplementary performance in accordance with the applicable statutory provisions. In case of refusal of the supplementary performance, its failure or in case that such supplementary performance is an unreasonable hardship for the customer, the customer has the right to rescind the contract or reduce the purchase price pursuant to clause 9.5.
- 9.5 Any rescission of the contract – to the extent such rescission is not already excluded by statutory law – or reduction of the purchase price by the customer is only admissible after the customer has set a reasonable deadline for the supplementary performance and after such deadline has unsuccessfully expired, unless such reasonable performance deadline is dispensable according to statutory law.
- In case of rescission the customer is liable for any deterioration, destruction and undrawn uses or profits in case of negligent or intentional behavior (instead of being liable merely for the same diligence as applied in his own affairs).

- 9.6 With respect to damage or compensation claims, clause 11 is applicable.
- 9.7 In case of fraudulent concealment of a defect or in case of a quality guarantee in the sense of § 444 of the German Civil Code (declaration of the seller that the sold object shows certain properties at the time of the transfer of the risk and that the seller wants to be responsible, regardless of fault, for any consequences of the lack of such properties), the customer's claims are exclusively governed by statutory law.
- 9.8 The defect shall generally be remedied in the workshop of Kongsberg. The cost of transport as well as the service engineer's travel costs – if repair or replacement on site is necessary – shall be for the account of the customer.
- 9.9 If the ultimate purchaser of the sold object is a consumer, the customer is entitled to recourse pursuant to the statutory provisions (§§ 478, 479 of the German Civil Code), if the further requirements of § 377 of the German Commercial Code are fulfilled. However, the customer may claim damages or compensation only in accordance with clause 11. The customer has to notify us of the defect claimed by the ultimate purchaser at the latest within 5 days after the customer has obtained knowledge of such claim, otherwise the goods are deemed to be approved pursuant to § 377 of the German Commercial Code also with respect to such defect, so that our liability is excluded.
- 10. Exclusion of Warranty Claims**
- 10.1 Kongsberg's responsibility for warranty claims (claims based on defects) is excluded if the customer, having discovered or suspecting an error in the system, neglects to notify Kongsberg of the suspected error. The same applies if the customer continues to use the goods without our specific written permission, unless the customer demonstrates that the defect was not caused or aggravated by such further use.
- 10.2 Furthermore, our warranty obligations are excluded with respect to defects or malfunctions caused by design, material or workmanship prescribed by the customer, nor defects resulting from improper use or unexpected working conditions, inadequate or improper maintenance, installation, or defects caused by the non-adherence to Kongsberg instructions, manuals, handbooks.
- 10.3 All warranty claims are excluded in case of changes which the customer has introduced and/ or implemented or if connection to the equipment has taken place, in each case without Kongsberg's prior written approval, unless the customer demonstrates that the defect was not caused by such changes or connections.
- 10.4 The warranty does not cover defects due to normal wear and tear.
- 10.5 Parts such as packing, fuses, lamps and simple electronic components are regarded as consumables and are as such exempt from any warranty.
- 11. Liability**
- 11.1 In case of the violation of any of our pre-contractual, contractual or non-contractual obligations, including in case of delivery of defective goods, liability in tort and product liability, Kongsberg is liable for damages and compensation – under the reservation that all applicable contractual or statutory requirements are fulfilled – only in case of intent, gross negligence and in case of a negligent violation of a fundamental contractual obligation (a contractual obligation whose violation endangers the accomplishment of the contractual purposes). In each case except in the case of intent, our liability is limited to the typical and foreseeable damage.
- 11.2 Our liability for damage due to delay is limited in case of simple negligence to a maximum of 5% of the purchase price.
- 11.3 To the extent that no fundamental contractual duty is violated, our liability for simple negligence is excluded, and limited to the amount of the purchase price in any event. Clause 11.2 remains unaffected.



11.4 The preceding exclusions and limitations of liability are not applicable in case of a quality guarantee in the sense of § 444 of the German Civil Code (see clause 9.7), in case of fraudulent concealment of a defect, in case of damages for physical injury of life, body or health as well as in case of mandatory liability according to the German Product Liability Act.

11.5 All damage claims are excluded at the latest upon expiration of a limitation period of one year after delivery of the goods to the customer; in case of liability in tort this limitation period commences when the customer obtains knowledge – or fails to obtain knowledge due to gross negligence - of the facts giving rise to the claims and of the person who is responsible for the damage. The preceding limitation periods are not applicable in case of intent and in the cases described in clause 11.4; in such cases the statutory limitation periods shall apply. Any statutory periods which are shorter than the aforementioned limitation periods prevail.

If the customer is a vendor of the delivered goods and if the ultimate purchaser of the goods is a consumer, the statutory limitation periods apply to any recourse claims of the customer.

12. Copyright

The design and the software supplied to the system under this contract are the property of Kongsberg and the purchaser has no right to exploit such design or software for the benefit of any third party without a prior written approval of Kongsberg, i.e. the purchaser has the right to use such design and software for its own need, but the title to the software rests with Kongsberg.

13. Training

Any training called for under the contract will be carried out by Kongsberg personnel or qualified personnel appointed by Kongsberg. However, it is the customer's obligation to nominate his personnel and it is the customer's responsibility to ensure that his personnel have the necessary basic knowledge for the Kongsberg training to be successful.

14. Force Majeure

14.1 Force Majeure is defined as circumstances beyond the reasonable control of the parties, such as war, catastrophes caused by nature, delays in delivery from sub-contractors, lack of raw material or energy, shortage of labour, strikes, legal lockout, governmental regulations, and obstacles in transportation or lack of means of transportation. Technical difficulties shall also be regarded as Force Majeure provided that the difficulty is reasonably unforeseen and makes it extremely difficult to deliver within due date.

14.2 The party wishing to claim relief in accordance with this clause shall notify the other party in writing without delay. The notification shall describe the nature, complexity and the expected cessation of the obstacle.

14.3 The obligation to deliver shall be suspended as long as the Force Majeure incident endures plus a reasonable restart period. The delivery schedule shall be extended for a period equal to the duration of the Force Majeure event.

14.4 The customer is entitled to rescind the contract in accordance with statutory law, if the obstacle is not only temporary and/or if the extension of the delivery dates is an undue hardship for the customer.

15. Disputes and Governing Law

15.1 In case of disputes, the parties shall endeavor to settle such dispute amicably.

15.2 The venue for all disputes under or in connection with this contract is Hamburg. Statutory provisions on exclusive venues remain unaffected.

15.3 German law shall apply to all legal relations between us and our customer. The UN-law on the international sale of goods (CISG) as well as any other international treaties, also after implementation into German law, shall not be applicable.