

TERMS AND CONDITIONS

A. General

1. Hamburgische Schiffbau-Versuchsanstalt GmbH (“HSVA”) is a globally operating company providing services in the field of ship hydrodynamics as well as ice and offshore.
2. The terms and conditions below shall apply to all deliveries and services to be provided by HSVA. Contracts are exclusively concluded on the basis of these terms and conditions. Contrary terms shall not apply even if HSVA accepts and carries out the order of the principal without reservation.

B. Offer and Contract Conclusion

1. Offers of HSVA shall be non-binding unless they are expressly marked as binding.
2. All agreements that are made upon contract conclusion are fully set out in writing in the contract signed between the parties, including these terms and conditions. The employees of HSVA are not authorized to enter into deviating oral agreements.

C. Remuneration and Payment Terms

1. Prices offered shall be net prices. Value-added tax, if applicable, shall be shown separately in the invoice at the respective statutory rate.
2. It is permitted to invoice agreed partial services.
3. The principal has to make payment in accordance with the payment terms agreed. Unless otherwise agreed, claims have to be settled at the latest 14 days after the respective invoice has been received.
4. In the event of a payment default, HSVA shall be entitled to charge default interest in the statutory amount, subject to further claims.
5. The principal shall only be entitled to offsetting or retention rights to the extent that the principal’s claim has been finally determined by a court or is undisputed. This limitation shall not apply for claims of the principal based on defective performance.

D. Deadlines

1. For HSVA to meet agreed performance deadlines, it is required that the principal properly fulfils its participation obligations. The principal is obliged to establish the conditions allowing for a prompt and smooth performance by HSVA. In particular, the principal is obliged to provide to HSVA, in time and in full, all information, drawings and other documents that are required for the performance. In the event of information provided with delay or subsequent changes for which the principal is responsible, any additional costs thereby incurred have to be borne by the principal. In such a case, HSVA is not obliged to provide additional services without extra charge.
2. The contractually agreed final and interim deadlines or the deadlines agreed during project development shall be binding for both parties.
3. Events occurring after contract conclusion and preventing HSVA from performing in accordance with agreed deadlines such as labour disputes, unrest, terrorist attacks, natural disasters, epidemics, pandemics or other force majeure events shall release HSVA from the fulfilment of their performance obligations for the duration of the hindrance and to the extent of its effect. Hindrances caused by the coronavirus-SARS-CoV-2 pandemic, especially containment measures ordered by law and/or authorities, shall also result in HSVA being exempted from its obligations to the extent as set out in sentence 1. Sentence 1 and sentence 2 shall also apply if the hindrance is due to the fact that such events happen at subcontractors hired by HSVA. HSVA undertakes to inform the principal immediately on the occurrence and the probable duration of such an event. If such a hindrance lasts for more than three months, each party is entitled to terminate the contract.

E. Material Provided

If the principal provides models, measuring instruments or the like for the realization of an order, the principal shall be liable for their quality, functioning and properties. HSVA shall not be liable for the suitability and quality of the material provided. The principal shall bear the transportation costs incurred in connection with the material provided.

F. Termination

1. Each party is entitled to terminate the contract without notice for good cause.
2. Moreover, the principal is entitled to effect standard termination of the contract with immediate effect. This does not apply if the contract is geared towards the sale or provision of software products.
3. The notice of termination has to be given in writing.
4. If the principal terminates the contract early and HSVA is not responsible in this regard, HSVA shall be entitled to payment of the agreed remuneration less any expenses saved pursuant to Section 649 German Civil Code (Bürgerliches Gesetzbuch), subject to regulations to the contrary.

G. Confidentiality and Property Rights

1. HSVA and the principal shall observe confidentiality in relation to all confidential documents and information they receive in connection with any orders placed. HSVA and the principal will only use confidential information and documents in the context of the activity that is subject to these terms and conditions, and only for the contractually intended purpose. Any transfer to third parties is only permitted with the prior written consent of the respective other party, with the exception of disclosure vis-à-vis persons who are bound by professional secrecy. The confidentiality obligation does not apply to information that is publicly accessible, information that the recipient already had without the obligation to observe confidentiality, information that was independently developed by the recipient or information that has to be disclosed on the basis of an official order or court order or mandatory statutory regulations. The confidentiality obligation continues to apply after the contract has ended.
2. The confidentiality obligation also extends to testing or calculation results of HSVA as well as to the methods used to obtain such results. Reports, calculations, drawings, photos or video recordings produced by HSVA in the context of the contract may only be used by the principal for the contractually intended purpose. It is only permitted to use or copy such material - as a whole or in part - beyond the contractually intended purpose if the prior written consent of HSVA has been obtained.
3. With the exception of the ship models produced on behalf of the principal, all hardware used, specially made or produced for the pilot test remain property of HSVA. HSVA reserves copyrights and any commercial property rights to the models, drawings, calculation methods, scientific papers or other documents produced by HSVA or by third parties on behalf of HSVA.

H. Warranty

1. The principal has to give notice of obvious defects of performance to HSVA in writing immediately, however, at the latest within 4 weeks after the service has been received. If no defects or only minor defects are claimed within this deadline, the service shall be considered accepted at the latest after this deadline has expired. In the case of software deliveries, the principal shall have the obligations of examination and giving notice of defects that are standardized in Section 377 German Commercial Code (Handelsgesetzbuch). Also in this case, the notice of defects has to be given in writing.
2. If the service or the delivery has been defective, HSVA shall be entitled to subsequent performance. HSVA shall at its discretion either offer subsequent performance or replace defective parts of its service or delivery. Subsequent performance is considered to have failed after the second fruitless attempt. If subsequent performance has failed, is impossible, inappropriate or if HSVA has refused to provide such subsequent performance, the principal shall be entitled to reduce the agreed remuneration or to rescind the contract. The principal may only claim damages to the extent that HSVA is responsible for the defective performance and only in accordance with the regulations of section I.
3. The warranty period shall be one year after the services provided by HSVA have been accepted by the principal. This time limit shall not apply for damage claims of the principal for an injury to life, the body or health or from intentional or grossly negligent violations of duty on the part of HSVA or its vicarious agents, which shall become time-barred according to the statutory regulations.

I. Liability

1. HSVA shall be liable pursuant to the statutory regulations if the principal asserts a claim for damages caused intentionally or in a grossly negligent manner by HSVA, its representatives or vicarious agents or due to a culpable violation of essential contractual obligations. Essential contractual obligations are those obligations that have to be met in order to achieve the purpose of the contract and on the compliance with which the principal regularly trusts and may regularly trust. In the event of a slightly negligent violation of an essential contractual obligation, HSVA's liability for damages is limited to the foreseeable, typically occurring damage.
2. Liability for culpable injury to life, the body or health remains unaffected.
3. Liability beyond this clause is excluded, irrespective of the legal nature of the claim that is asserted.
4. The aforementioned limitations of liability shall also apply if the principal claims a refund of futile expenses instead of a claim for damages in lieu of performance.
5. To the extent that HSVA's liability for damages is excluded or limited pursuant to the provisions above, this shall also apply with regard to the personal liability for damages of the company's legal representatives, employees and vicarious agents.

J. Place of Jurisdiction – Place of Performance – Governing Law

1. If the principal is an entrepreneur, a legal entity under public law or a special fund under public law, the place of jurisdiction for all disputes arising from and in connection with this contract shall be Hamburg.
2. The place of performance for all obligations arising in connection with the contract shall also be Hamburg, subject to the requirements mentioned in lit. 1 above.
3. This contract and the entire relationship between the parties shall be governed by the laws of the Federal Republic of Germany; the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

K. Partial Invalidity

If individual provisions of these terms and conditions are ineffective or void or shall become ineffective or void, in full or in part, this shall not affect the validity of the remaining provisions. The invalid provisions shall be replaced by the statutory regulations.

L. Language

The English translation of the original German text of the General Terms and Conditions serves only for information. In the event of any inconsistency between the German and the English version only the German version, which will be transmitted on request, shall apply. If the English legal meaning differs from the German legal meaning of any terms, the German meaning shall prevail.

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