

## General Purchasing Conditions

### I. Application of the General Purchasing Conditions

1. These General Purchasing Conditions apply to all contracts with commercial suppliers of Neptun Werft GmbH & Co. KG – hereinafter referred to as Neptun Werft – which are concluded as of October 1<sup>st</sup>, 2015 and the preponderant object of which is the **delivery of goods** and/or **software** and/or **the production of a work** (“Werkleistungen”) to Neptun Werft. The regulations set forth in these General Purchasing Conditions equally apply to the work to be produced by the supplier; subject to expressly formulated deviations, the contract on the production of a work is deemed a “contract” and the work to be produced is deemed “goods” within the meaning of these General Purchasing Conditions. Additional obligations assumed by the supplier do not affect the application of these General Purchasing Conditions.
2. Conflicting or differing **terms of business of the supplier** do not bind Neptun Werft, even if Neptun Werft does not object to them or if Neptun Werft unconditionally renders performance or accepts the supplier’s performance. Neither is Neptun Werft bound, insofar as the terms of business of the supplier deviate from statutory provisions irrespective of the contents of these General Purchasing Conditions.

### II. Conclusion of the Contract

1. The supplier is obliged to give written **notice to Neptun Werft prior to the conclusion of the contract** if the goods to be delivered are not fit without restrictions for the purpose made known to the supplier or for the purpose provided in the contract or if special safety instructions have to be observed in handling the goods or if a risk to health, safety or the environment or a risk of atypical damages or unusual amounts of loss is associated with the goods to be delivered of which the supplier is or ought to have been aware. The same applies if statements regarding the goods to be delivered made by the supplier or by third parties in adverts, prospectuses or other public announcements in as well as outside of Germany, of which the supplier is or ought to have been aware, cannot be complied with in each and every respect.
2. **Offers by the supplier** have to be made in writing. If the supplier’s offer deviates from the inquiry or order submitted by Neptun Werft, the supplier will emphasize the **deviations** as such.
3. All orders, in particular also those placed by employees of Neptun Werft, will take effect **exclusively** if followed by a **written Order** by Neptun Werft. The **contract** comes into existence if the **Order Confirmation** forwarded to the supplier by Neptun Werft is received by Neptun Werft without any changes to content and **signed by the supplier with legally binding effect** within fourteen (14) calendar days as of the date of the written Order or if the supplier tacitly accepts the Order. The contract does not come into existence if the supplier gives written notice that the Order forwarded to the supplier by Neptun Werft is not completely consistent with the declarations made by the supplier, if the supplier specifies such inconsistencies in writing and if such notice is received by Neptun Werft within a short period of time, i.e. no later than seven (7) calendar days after the written Order has been received by the supplier. The actual taking delivery of goods and/or accepting the supplier’s performance, the payment of such goods and/or work or other conduct by Neptun Werft or silence shall not give reasons for the supplier to rely on the conclusion of the contract.

4. The written Order by Neptun Werft sets out all the **terms of the contract** even if it deviates from the declarations made by the supplier in any other way, especially with reference to the exclusive application of these General Purchasing Conditions. Illustrations and drawings accompanying the contract as well as details of amounts, size and weight are binding.
5. Any restriction of Neptun Werft's legal rights or of the rights granted by these General Purchasing Conditions, namely any limitation to or exclusion of statutory remedies, guarantees, warranties or assurances by the supplier concerning the goods and/or work to be produced or the performance of the contract as well as the kind and extent of tests to be conducted by Neptun Werft require Neptun Werft's express and **written confirmation** in any case.
6. Order confirmations by the supplier are of **no effect** without any objection by Neptun Werft being necessary. In particular, neither the actual taking delivery of the goods and/or accepting of work, the payment of such goods and/or work or any other conduct by Neptun Werft nor silence shall give rise to any belief by the supplier in the relevance of its order confirmation.
7. Neptun Werft's **employees** or agents are not authorized to dispense with the requirement of the timely receipt of the Order Confirmation signed by the supplier with legally binding effect by Neptun Werft or to make promises which differ from its content.
8. Against reimbursement of the supplier's proven and reasonable expenses caused thereby, Neptun Werft is entitled to **change** the requirements for the goods to be delivered and/or work to be produced or to **cancel** part of the already concluded contract. In case of a partial cancellation, the supplier shall furthermore be reimbursed for the part of its profit, which is proven to be lost due to such cancellation. For work to be produced, § 649 German Civil Code applies.
9. **Amendments** to the concluded contract may be made by an Order by Neptun Werft modifying the contract and the corresponding Order Confirmation by the supplier according to Clause II.-3. Any other amendment to the concluded contract always requires written confirmation by Neptun Werft.

### **III. Obligations of the Supplier**

1. The supplier shall fulfil all duties imposed by the contract and these General Purchasing Conditions as well as ancillary all duties imposed on him pursuant to the ICC rules on the application of the Clause **DAP Incoterms® 2010** and statutory provisions in due time, in particular the supplier shall **deliver the goods** and/or **produce the work** as referred to in the written [Order] by Neptun Werft. Guarantees, warranties and assurances given by the supplier shall be honoured, without these having to be confirmed in writing. Furthermore, the supplier shall ensure that the applicable regulations on minimum wage and social welfare provisions are observed while conducting business.
2. In any case, the supplier is not allowed to entrust **sub-suppliers** with the performance of its obligations owed to Neptun Werft without expressed written consent by Neptun Werft if such sub-contracting may result in legal consequences for the contractual relationship with Neptun Werft according to the applicable law.
3. Irrespective of other information duties, the supplier shall **inform** Neptun Werft in writing and a reasonable time in advance of the forthcoming delivery and is obliged to **examine** the goods as close in time as possible prior to their handing-over to

Neptun Werft to the same extent as Neptun Werft is obliged to examine incoming goods after taking delivery. Furthermore, the supplier shall record the result of such examination in writing and send it to Neptun Werft upon request. In any event and irrespective of any obligation of examination on taking delivery incumbent upon Neptun Werft, the supplier is obliged to examine the goods in respect of the supplier's compliance with the quantity owed, the type and packaging of the supplied goods and their freedom from relatively easily detectable defects in quality and of title.

4. Up to the taking over by Neptun Werft, the **transport** and custody of the goods and/or work is the sole responsibility of the supplier; in particular, the supplier is responsible vis-à-vis Neptun Werft for the goods and/or work being packed suitably for transportation, being loaded in a safe manner and being transported by suitable means of transport. Without prejudice to its sole responsibility for transport, the supplier is additionally obliged to observe all **dispatch requirements** set out in the written Order Neptun Werft. The agreement of other delivery clauses merely involves a variation of the provisions as to transportation and transportation costs and does not modify the provisions laid down in this paragraph.
5. The supplier is responsible vis-à-vis Neptun Werft that the goods and/or work comply with all requirements that have to be met when **making the goods and/or work available** on the market in Germany. Irrespective of statutory information duties, the supplier shall inform Neptun Werft in writing and a reasonable time in advance of any features of the goods and/or work, which may have a significant effect on its marketing. The agreement of other delivery clauses merely involve a variation of the provisions as to transportation and transportation costs and does not modify the provisions laid down in this paragraph.
6. The supplier is obliged to fulfil the obligations imposed on him timely and in particular hand over the goods and/or work to Neptun Werft by unloading them at the **place of delivery** indicated in Neptun Werft's Order or – if a place of delivery is not indicated – at the premises in Rostock-Warnemünde/Germany. Only employees of Neptun Werft working in the receiving department and the warehouse are entitled to receive the goods.
7. Subject to promises providing for more, the supplier is obliged to hand over to Neptun Werft newly produced, state-of-the-art goods and/or work of the agreed kind and quantity, which are of the **quality** and in the **packaging** and which comply with the **labelling** and marking requirements, which comply with the provisions and standards applicable to making the goods and/or work available on the market in Germany, especially in regard to product safety, prevention of accidents, industrial safety regulations and health protection, non-application of banned substances, the adherence to limiting values etc. and which fulfil the latest DIN and VDE regulations. Particularly, the supplier shall ensure that the goods and/or work are not subject to deviations which might adversely affect their normal use or their economic value in Germany or the purpose made known to the supplier. Furthermore, the supplier shall hand over all required manuals, instructions and technical documentation as well as material on the goods and/or work to Neptun Werft in German. If the goods and/or work require **further specification**, the supplier shall invite Neptun Werft to exercise its right to determination in writing and a reasonable time in advance. The supplier is not entitled to make **part deliveries** or to invoice them separately.
8. The supplier guarantees that the goods and/or work are free from **rights or claims of third parties** at the time of delivery, in particular those based on title, industrial property or any other intellectual property, which might hinder the unrestricted usability of the goods and/or work by Neptun Werft in Germany or abroad.

9. The supplier is obliged to hand over to Neptun Werft in Rostock-Warnemünde/Germany any **supplier's declarations** as well as **certificates of origin, customs certificates** and **certificates of conformity** desired by Neptun Werft for the goods. The supplier shall inform Neptun Werft on his own accord of any import and/or export restrictions by third states on the delivered goods and/or work of which he has knowledge. The agreement of other clauses of the Incoterms or other transport clauses merely involve a variation of the provisions as to transportation and transportation costs and does not modify the provisions laid down in this paragraph.
10. Any delivery shall be accompanied by a **delivery note** clearly stating the order number of the Order by Neptun Werft. **Invoices**, delivery notes and transportation documents shall correspond with the details stated in the Order by Neptun Werft, comply with all legal requirements and shall be forwarded to Neptun Werft separately by post and additionally by electronic means. Invoices shall clearly state the order number and the date of the Order by Neptun Werft as well as the the supplier's tax number and the name of Neptun Werft's employee in charge of the respective transaction. Partial deliveries or final instalment deliveries agreed upon shall be identified as such in the delivery note and in the invoice.
11. **Strict compliance with agreed dates or periods** shall be a fundamental obligation of the supplier. Neptun Werft is entitled to select the date of delivery within an agreed period. The supplier can only rely on technical questions not having been clarified by Neptun Werft in due time after he has requested Neptun Werft to do so in writing and a reasonable time in advance. Without prejudice to any other claim, which Neptun Werft may have against the supplier, any delay in delivery shall be communicated to Neptun Werft in writing immediately after discovery thereof stating the new delivery date; the new delivery date is a fixed date ("Fixtermin") according to § 376 German Commercial Code. In case deliveries do not take place in due time, Neptun Werft's claims to performance remain without any special notice becoming necessary. The supplier is only entitled to perform his obligations outside the agreed dates and periods insofar as Neptun Werft has agreed thereto in writing in each individual case.
12. Agreed **penalties** (contractual penalties and/or liquidated damages) shall be paid in addition to the agreed performance, shall not exclude the claim for further damages and may be claimed by Neptun Werft regardless of whether it accepts the delivery without reservation or not.
13. Statutory rights of the supplier to **withhold** or to **suspend performance** imposed on him and to raise **defences** or **counterclaims** are excluded, except when the corresponding counterclaim of the supplier against Neptun Werft is due and undisputed or has been finally adjudicated upon or when despite written warning, Neptun Werft has committed a fundamental breach of its obligations, which are due and arise out of the same contractual relationship, and has not offered any adequate security.
14. The supplier is obliged to exclusively use environmental-friendly packaging material and to collect packaging material and delivered goods and/or work, as far as these are subject to particular **legal provisions on waste disposal** and for which disposal is necessary and not ensured otherwise, at his own cost from the place of delivery indicated in the written Order by Neptun Werft and – if a place of delivery is not indicated – at the premises in Rostock-Warnemünde/Germany or having it collected by third parties. Irrespective of any statutory provisions, the supplier shall at his own cost take care of or in any other way ensure renewed utilization, material recycling or otherwise prescribed waste-disposal of the goods delivered and/or work

produced and of the packaging material and at Neptun Werft's request provide relevant evidence thereof.

15. The supplier is obliged to comply with the statutory obligations according to the law on the posting of workers ("Entsendegesetz") as well as the law on minimum wage ("Mindestlohngesetz") to the full extent and to ensure that the sub-contractors engaged by the supplier in order to fulfil his contractual obligations towards Neptun Werft do the same.

#### **IV. Obligations of Neptun Werft**

1. Neptun Werft is obliged to **pay the agreed purchase price**. Subject to subsequent invoice checking, the payment is made at Neptun Werft's option via transfer to a bank, with which the supplier maintains accounts.
2. The claim to payment of the price **comes into being** after the goods and the documents have been handed over to Neptun Werft completely and according to the contract and after the supplier's work have been accepted completely. Without prejudice to the compliance with more far-reaching legal requirements, the payment is due within thirty (30) days net. The payment period does not start before Neptun Werft has received an invoice in **due** form.
3. The price **covers** all of the supplier's performances including any accessory expenses, in particular taxes and charges as well as banking fees incurred. An increase of the price agreed upon at the conclusion of the contract – irrespective of the legal ground – is excluded.
4. Third parties not involved in the conclusion of the contract are not entitled to request payment. The supplier's **entitlement to receive payment** remains even if the supplier assigns claims arising out of the contract to third Parties.
5. Statutory rights of Neptun Werft to reduce the price or to exercise a **set-off** against the price or to **withhold the performance** of its obligations and/or to raise **defences** or **counterclaims** are not restricted by the provisions laid down in these General Purchasing Conditions and Neptun Werft shall be entitled to these rights irrespective of any further statutory remedies even if cash-payment terms are agreed. Without any previous notice to the supplier being necessary, Neptun Werft is entitled to suspend the performance owed by Neptun Werft as long as there is a concern in Neptun Werft's view that the supplier will not wholly or partly perform in accordance with the contract its duties arising under the particular contract or any contract made with Neptun Werft which has not been completely fulfilled. Neptun Werft is also entitled to exercise a set-off against the price or to withhold the performance of its obligations or to raise defences or counterclaims when the claim against the supplier has been acquired by Neptun Werft by assignment or when Neptun Werft is entitled to request payment for any other reason or when the claim against the supplier exists but has not yet fallen due or is in another currency or is subject to the exclusive jurisdiction of a court or an arbitral tribunal different to the one having jurisdiction for the claim of the supplier.
6. Neptun Werft **is not obliged to performance** not laid down in the written Order by Neptun Werft or in these General Purchasing Conditions.
7. The **taking over** of the goods and/or work by Neptun Werft is **subject to the condition** that the goods and/or work are free of defects in every respect according to the terms of the contract, these General Purchasing Conditions and the applicable statutory provisions.

## **V. Material Defects and Legal Defects**

1. Further to legally defined material defects (“Sachmängel”), any deviation from the agreed amount, quality or suitability for a certain purpose or any deviation from declarations made in adverts or made towards Neptun Werft by the supplier or any deviation from statutory provisions, in particular any statutory provisions in product law, as well as any deviation from the description or labelling by the supplier constitutes a **material defect** according to § 434 German Civil Code and/or § 633 German Civil Code unless a differing term is set out in the written [Order] by Neptun Werft or the supplier proves that Neptun Werft was well aware of the respective material defect at the conclusion of the contract and agreed to accept the defective goods and/or work. Likewise a material defect according to § 434 German Civil Code and/or § 633 German Civil Code is constituted when claims in favour of a third party based on product liability law occur due to the goods. Neptun Werft’s clearance of samples or specimens as well as Neptun Werft’s approval of drawings, calculations or other, in particular technical documents of the supplier does not imply that Neptun Werft has knowledge of the defect of the goods and/or work and does not discharge the supplier of his liability for the conformity of the goods and/or work. The existence of **legal defects** is judged in consideration of the provisions set forth in section III.-8., and otherwise according to § 435 German Civil Code and/or § 633 para. 3 German Civil Code; the time of delivery is decisive.
2. The confirmation to Neptun Werft by the supplier as to the quality or suitability of the goods and/or work constitutes an unconditional and unrestricted **guarantee** of the supplier within the meaning of the law unless the supplier has declared in writing vis-à-vis Neptun Werft that he cannot give such a guarantee. The same applies to all references made by the supplier to generally accepted standards or quality marks or to similar declarations by the supplier indicating that the goods and/or work have certain qualities and/or are suitable for a certain purpose. In case of subsequent transactions involving the same goods and/or work, the confirmations, references or other declarations by the supplier continue to apply without any particular reference being necessary.
3. With the exception of very obvious material defects, the **duty to examine** the goods only arises when the goods are processed or used by Neptun Werft, however at the latest three (3) months after the goods have been handed over to Neptun Werft. The duty to examine exists only in respect of typical deviations of a factual kind in type, quantity, quality and packaging of the goods delivered and is sufficiently fulfilled by applying Neptun Werft’s usual methods of examination and limiting the examination to spot checks undertaken by Neptun Werft. In case of delivery in instalments or partial deliveries, the examination of individual deliveries is sufficient. The consulting of external experts is not required. Neptun Werft is not obliged vis-à-vis the supplier to examine the goods in respect to compliance with legal regulations or legal defects. If the supplier delivers late, the duty to examine becomes invalid insofar as a reasonable time for examination is no longer available in consequence of the late delivery. If the supplier remedies a notified material defect, the duty to examine is suspended until Neptun Werft has received a written notice by the supplier stating that the remedial measure has been completed. Except for very obvious non-conformities, the duty to examine is not applicable in case the goods are to be re-sold without any alterations. Neither is the duty to examine applicable to work to be produced by the supplier, to which pursuant to § 651 German Civil Code the sale of goods law does not apply.
4. Neptun Werft shall give notice of very obvious material defects within five (5) working days after the handing-over of the goods to Neptun Werft and of material de-

facts discovered pursuant to the examination within ten (10) working days after the completion of the examination. **Notice** of material defects not discovered during the examination **shall be given** within fifteen (15) working days after the material defect and the supplier's responsibility for such defect are finally determined and at the latest until the expiration of the limitation period. There is no obligation of Neptun Werft to give notice, if the supplier knew or could not have been unaware of the material defect. Apart from that, notice shall be given to the supplier or its agents. The notice shall describe the material defect in general terms; more detailed information on the type of material defect or the extent of the goods affected is not required. If required, the supplier is obliged to ask Neptun Werft in writing for further details of the type of the material defect or the extent of the goods affected. Notice of legal defects or defects in the work to be produced by the supplier, to which pursuant to § 651 German Civil Code the sale of goods law does not apply, may be given without adhering to any time limit.

5. Without prejudice to further contractual or statutory rights, namely according to §§ 478, 479 German Civil Code, in accordance with these General Purchasing Conditions, Neptun Werft is entitled to rely on the remedies provided in section V.-6. if the goods and/or work are defective pursuant to these General Purchasing Conditions **at the time** the notice period stipulated in section V.-4. commences, unless the supplier sets forth that the defect was caused after the taking over of the goods and/or work by Neptun Werft and is attributable to Neptun Werft's sphere of responsibility. The remedies available to Neptun Werft shall not be restricted when Neptun Werft takes measures in order to eliminate or reduce material defects and such measures are performed properly.
6. In case of defective goods and/or work in accordance with these General Purchasing Conditions, Neptun Werft is entitled to rely without restrictions on the **remedies** provided by law and/or to advance extra-contractual claims against the supplier and in addition, to retain from the purchase price up to the amount of three-times the costs for repair until the complaint has finally been settled. Neptun Werft is neither obliged to require remedy of any failure ("Nacherfüllung") first, nor to grant the supplier the possibility of such remedy but is directly entitled to reduction of the price, avoidance of the contract and/or claims for damages. Excess quantities delivered may be returned totally or partially by Neptun Werft without a notice of non-conformity being necessary. Moreover, the stipulations in VI.-1. on the avoidance of the contract and in VI.-2- on damages also apply to the delivery of defective goods and/or work. The supplier shall collect any goods put at his disposal within ten (10) calendar days from Neptun Werft's premises. The return of goods shall be at the supplier's risk and expense. In case of avoidance of the contract, Neptun Werft shall solely compensate the supplier for the actually remaining benefits after reduction of all expenses caused by the defect; Neptun Werft shall not pay for any benefit which could not be realised. In case of non-obvious defects, without prejudice to any other claims and irrespective of a fault by the supplier, Neptun Werft is entitled to claim reimbursement for any **expenses** incurred by Neptun Werft during the time between the delivery of the goods and/or work and the elimination of the defect including corresponding indirect costs and to claim indemnification of the expenses incurred by Neptun Werft towards its customers or third parties insofar as the expenses are the consequence of any material or legal defects attributable to the supplier according to these General Purchasing Conditions and the underlying obligations were not entered into by Neptun Werft after the defect had been discovered. Furthermore, the supplier shall pay Neptun Werft an administrative fee of EUR 150.00 plus VAT for any justified material or legal defect.
7. The **limitation periods** pursuant to § 438 German Civil Code and/or § 634 a German Civil Code begin to run as of the taking over of the goods and/or work by Neptun Werft at the place of delivery indicated in the written Order or – if a place of de-

livery is not indicated – at the premises in Rostock-Warnemünde/Germany und after complete performance of all of the supplier's primary obligations; furthermore, the limitation periods shall amount three (3) years or respectively ten (10) years for the violation of third parties' rights, insofar as the law does not provide for longer limitation periods. The limitation period for remedies for goods remedied subsequently or substitute goods commences as of the completion of the remedial measure unless the supplier declares in writing before the remedy of any failure ("Nacherfüllung") that such measures shall be taken without prejudice. In no case shall the limitation period expire before the expiration of six (6) months as of the giving of notice of the defect if the notice was given before the limitation period elapsed.

## **VI. Avoidance and Damages**

1. Complying with the applicable legal requirements, the **supplier** is entitled to declare the contract avoided. Without prejudicing its other legal rights, **Neptun Werft** is entitled to **avoid** the contract in whole or in part if the performance of the contract is or will be legally prohibited, if the supplier objects to the application of these General Purchasing Conditions, if the written Order Confirmation by Neptun Werft is received by the supplier more than fourteen (14) calendar days after its date of issue, if insolvency proceedings are applied for relating to the assets of the supplier, if the supplier without providing a reason justifiable in law does not meet fundamental obligations due towards Neptun Werft or third parties, if Neptun Werft is entitled to remedies according to these General Purchasing Conditions and due to the delivery of defective goods, if the supplier has failed to comply with other obligations and an additional period of time for performance set by Neptun Werft has expired to no avail, or if Neptun Werft cannot be expected to fulfil its obligations by means, which, taking into consideration its own interests and that of the supplier as far as ascertainable and legitimate at the time of the conclusion of the contract, are unreasonable in particular in relation to the agreed counter performance. In case of avoidance of the contract, Neptun Werft shall solely compensate the supplier for the actually remaining benefits after reduction of all expenses caused by the defect; Neptun Werft shall not pay for any benefit which could not be realised.
2. Without prejudicing other claims including claims of an extra-contractual nature, Neptun Werft is entitled to claim **damages from the supplier** for any kind of breach of contract without any restriction pursuant to legal requirements. The taking of delivery of the goods and/or work or the paying of the price without any reservation shall not result in a waiver of the right to damages. Subject to the supplier proving that damage was either not caused or was caused in a significantly smaller amount and without prejudice to Neptun Werft claiming further damages, in each case of **late delivery or non-delivery** by the supplier, Neptun Werft is entitled to claim **liquidated damages** of 0.5 % of the value of the respective delivery for each week of delay commenced up to a maximum of 5 % without any evidence being necessary.

## **VII. Other provisions**

1. On delivery, the goods and/or work as well as all related papers and documents become the unrestricted property of Neptun Werft. If Neptun Werft puts material at the supplier's disposal, this does not affect Neptun Werft's property. Any processing, adjunction or mingling is made on behalf of Neptun Werft. If a **reservation of title** in favour of the supplier has been agreed upon, this has only the effect of a simple reservation of title ("einfacher Eigentumsvorbehalt"); regardless of the reservation of title, Neptun Werft is entitled to utilise the goods and/or work and/or to sell them as well as to transfer property in the goods and/or work to third parties even if such



utilisation by Neptun Werft has the consequence of destroying the reservation of title.

2. Without prejudice to Neptun Werft's more far-reaching claims, the supplier shall indemnify Neptun Werft against all claims of third parties, which may be brought against Neptun Werft based on **product law or product liability law** or similar provisions insofar as the product was delivered by the supplier or the causation of the product defect by materials or parts delivered by the supplier cannot be excluded. In particular, the indemnification also includes compensation for expenses incurred by Neptun Werft and the costs of any precautionary campaign to redress or recall potentially defective goods and is granted by the supplier waiving further conditions or other objections, in particular without requiring compliance with any duty of examination, giving notice, supervision or recall and waiving any defence of limitation. Insofar as the contract with the supplier is not covered by a supplier liability insurance by Neptun Werft and Neptun Werft has informed the supplier about the extent of the cover in writing, the supplier shall maintain irrespective of any additional claims of Neptun Werft a **product liability insurance and a product recall insurance**, each with a cover figure of not less than EUR five million for each event of damage or loss and to prove to Neptun Werft the existence of such insurance at any time upon request.
3. Without prejudice to Neptun Werft's more far-reaching claims, the supplier shall furnish the due particulars and technical documentation regarding the goods and/or work in writing to Neptun Werft and give Neptun Werft unlimited security or compensation on first demand and waiving all further conditions or other defences, in particular waiving the observing of all duties of examination, giving notice, supervision or recall or the prior taking of administrative or legal proceedings as well as waiving the defence of limitation if in consequence of an **administrative order**, Neptun Werft is threatened with detriment or if Neptun Werft is subject to administrative fines or if Neptun Werft suffers of other detriment and the administrative order is based on provisions of product law, the observance of which is within the supplier's sphere of obligation according to the provisions of these General Purchasing Conditions. The same applies if Neptun Werft is obliged on the basis of applicable statutory provisions to recall goods and/or work, which have been delivered by the supplier or which contain parts delivered by the supplier as far as their causation for the **recall** cannot be excluded.
4. **Data** on the supplier, which were gathered during the business relationship, may be **processed and used** by Neptun Werft for its own business purposes according to the Data Protection Act.
5. In relation to illustrations, drawings, calculations and other **documents** as well as computer-software, which have been made available by Neptun Werft in a material or electronic form, Neptun Werft reserves all proprietary rights, copyrights, other industrial property rights as well as know-how rights. Such documents shall be treated confidentially towards third parties and may exclusively be used for completing Neptun Werft's order. After the completion of the order, said material shall be completely returned to Neptun Werft without retention of any copies and without having been asked and waiving any right of retention.
6. Neptun Werft may use delivered **Software** in respect of the performance features agreed upon with the supplier and/or the intended use of the goods and/or work or any relating products without restrictions to any use regulated by law or otherwise agreed with the supplier. Neptun Werft is entitled to make back-up copies at any time.

7. The requirement of **written form** is met without a personal signature or an electronic signature being necessary. Communications by means of fax or e-mail as well as any other kind of textual form fulfil the requirement of being in writing without a special marking of the end of the communication becoming necessary.

### **VIII. General Basics of Contracts**

1. The **place of delivery** results from the provisions set forth in section III.-6. of these General Purchasing Conditions and applies also to the delivery of substitute goods or repair of delivered goods. The **place of payment and performance** for every other obligation arising from the legal relationship between Neptun Werft and the supplier is Rostock-Warnemünde/Germany. These provisions also apply if the supplier produces work for Neptun Werft somewhere else or if payment is to be made against the handing-over of the goods or documents or in the case of restitution of performance already rendered. The agreement of other clauses of the Incoterms or other delivery clauses merely involve a variation of the provisions as to transportation and transportation costs and do not modify the provisions laid down in this paragraph.
2. The contractual and extra-contractual legal relationship with the supplier shall be **exclusively governed by German law**. Where commercial terms are used, in case of doubt, the Incoterms® 2010 of the General Chamber of Commerce apply taking into account the provisions stipulated in these General Purchasing Conditions.
3. For all contractual and extra-contractual disputes arising out of or in connection with contracts, to which these General Purchasing Conditions apply, the **exclusive local and general jurisdiction of the courts which have jurisdiction for Hamburg/Germany** is agreed. This competence excludes especially every competence, which is legally provided by reason of a personal or substantive relation. The supplier is not entitled to bring a counter claim, set-off, third party notice ("Streitverkündung") or a right of withholding before any court other than the courts having jurisdiction for Hamburg/Germany. Instead of bringing an action before the court having jurisdiction in Hamburg/Germany, Neptun Werft is entitled to bring an action before the State Court of the supplier's place of business or any national court with jurisdiction according to domestic or foreign law.
4. If provisions of these General Purchasing Conditions should be or become partly or wholly ineffective, the remaining terms shall continue to apply. The parties are bound to replace the ineffective provision with a legally valid provision as close as possible to the commercial meaning and purpose of the ineffective provision.
5. These General Purchasing Conditions have been translated from the German Allgemeine Einkaufsbedingungen of Neptun Werft. In case of doubt, in the event of any discrepancy between the German Allgemeine Einkaufsbedingungen und this translation thereof, the German Allgemeine Einkaufsbedingungen shall prevail.