

## General Terms and Conditions of MOLABO GmbH

### § 1 Preamble

(1) The following terms and conditions apply to contracts concluded by the Buyer with MOLABO GmbH ("Seller"). Unless otherwise agreed, the inclusion of the Buyer's own terms and conditions, if any, is objected to.

(2) These General Terms and Conditions shall only apply if the Buyer is an entrepreneur. An entrepreneur is any natural or legal person or a partnership with legal capacity who, when concluding a legal transaction, acts in the exercise of his or her independent professional or commercial activity.

### § 2 Formation of the contract

(1) The subject of the contract is the sale of boat drives, components and complete system solutions.

(2) The presentation of goods on the Internet site does not constitute a legally binding offer, but an invitation to the Buyer to make his own offer to conclude a purchase contract. MOLABO GmbH points out that the color of the goods may differ from the representation on the Internet site.

(3) By sending the form on the website [www.molabo.com](http://www.molabo.com), the Buyer submits a non-binding request to conclude a contract. The Seller may then send a binding offer.

(4) The contract shall be concluded upon acceptance of the offer by the Buyer and dispatch of the order confirmation by the Seller, subject to the terms and delivery periods specified in the order confirmation. The Seller reserves a period of five (5) working days for acceptance of the Buyer's offer to enter into a contract.

No contract shall be concluded for goods listed in the offer that are not listed or sent in the order confirmation or shipping notification. This may also apply to products that are shown on the website but are not available, for example, when the order is received.

(5) Individual contractual provisions as well as the conditions and delivery periods specified in the order confirmation shall take precedence over these General Terms and Conditions.

(6) The processing of the order and transmission of all information required in connection with the conclusion of the contract shall be carried out by e-mail, in part automatically. The Buyer must therefore ensure that the e-mail address he has deposited with the Seller is correct, that the receipt of e-mails is technically ensured and, in particular, that it is not prevented by SPAM filters.

(7) The stated delivery periods and dates are subject to correct and timely delivery by suppliers of the Seller. The statutory rights of both contracting parties remain unaffected. If subsequent amendments to the contract are agreed, the delivery periods shall be extended by the same period of time that lies between the conclusion of the contract and the amendment to the contract, unless the parties have agreed otherwise.

(8) Should the Seller not be able to meet a binding delivery deadline for reasons other than those mentioned in No. 7 of this paragraph, for which the Seller is not responsible, e.g. for reasons of force majeure, the Seller shall inform the Buyer immediately of the non-availability and notify the Buyer of the new expected delivery deadline. If the Buyer does not wish this or if the goods are also not available within the new delivery period, the Buyer as well as the Seller can withdraw from the purchase contract. Any payments made in return will be refunded to the customer by the Seller

without delay. The statutory rights of both contracting parties remain unaffected.

(9) The delivery period begins with advance payment on the day of receipt of payment by the Seller. In case of payment by Paypal, credit card, direct debit and on account, the delivery period begins with the conclusion of the contract. The delivery period ends with the expiration of the last day of the period. If this last day of the period falls on a Sunday or other public holiday at the place of delivery, the next working day shall take its place. The Seller shall only be in default with its delivery obligation if it has received notice from the Buyer after expiry of the deadline, setting a reasonable cure period. This does not apply if the delivery deadline was bindingly determined.

(10) Partial deliveries are permissible insofar as this is reasonable for the Buyer.

### § 3 Prices and terms of payment

(1) Unless otherwise stated in the Seller's product description in the order confirmation, the prices quoted are aggregate prices plus the statutory value-added tax at the applicable rate, if any. Any additional delivery and shipping costs will be stated separately in the offer acceptance and order confirmation of the Seller.

(2) If unforeseen changes in raw materials, wages, energy or other costs occur which make it unreasonable for the Seller to fulfill the contract, the Seller is entitled under the conditions of § 313 BGB (German Civil Code) to demand negotiations on a price adjustment and, in the event of non-agreement, to withdraw from the contract if fulfillment of the contract has become overly burdensome for the Seller.

(3) The payment options will be communicated to the Buyer on the Seller's website or in the Seller's order confirmation.

(4) If prepayment by bank transfer has been agreed, payment shall be due immediately after conclusion of the contract, unless the parties have agreed on a later due date.

### § 4 Right of Retention, Retention of Title

(1) A right of retention may only be exercised insofar as it concerns claims from the same contractual relationship.

(2) The goods remain the property of the Seller until the purchase price has been paid in full. If the Buyer is in default of payment for more than 14 days, the Seller has the right to withdraw from the contract and to reclaim the goods.

(3) The following shall apply in addition:

a) The Seller retains title to the goods until all claims arising from the current business relationship have been settled in full. Prior to the transfer of ownership of the goods subject to retention of title, pledging or transfer of ownership by way of security is not permitted.

b) The Buyer may resell the goods in the ordinary course of business. In this case, he therewith assigns to the Seller all claims in the amount of the invoice that accrue to him from the resale; the Seller accepts the assignment. The Buyer is further authorized to collect the claim. However, insofar as he does not properly meet his payment obligations, the Seller reserves the right to collect the claim itself.

c) The Seller undertakes to release any collateral to which it is entitled upon the Buyer's request to the extent that the realizable value of the security

interest exceeds the claim to be secured by more than 10%. The selection of the collateral to be released is incumbent upon the Seller.

## **§ 5 Transfer of risk during shipment**

(1) Shipping is only part of the contract if it is also part of the offer.

(2) If the Buyer is an entrepreneur and unless otherwise agreed in writing, the goods shall be provided EXW (INCOTERMS 2021) ex works of the Seller, whereby the risk shall pass to the Buyer.

(3) The same effects as in the case of handover shall also occur if the Buyer is in default of acceptance.

## **§ 6 Warranty**

(1) It shall be incumbent upon the Buyer to inspect the item for proper functioning. Claims for defects on the part of the Buyer require that immediately after receipt of the goods the Buyer has inspected the goods and has informed the Seller without undue delay but at the latest one week after receipt of the delivery item and in writing of any defects. Defects that cannot be discovered within even after careful inspection must be reported to the Seller in writing immediately after discovery.

(2) The following shall apply in deviation from the statutory warranty provisions:

a) Only the Seller's own specifications and the manufacturer's product description shall be deemed agreed as the quality of the item, but not other advertising, public promotions and statements by the manufacturer.

b) In the event of defects, the Seller shall, at its discretion, provide warranty by rectification or subsequent delivery. If the rectification of the defect fails, the Buyer may, at his discretion, demand a reduction in price or repudiate the contract. The rectification of the defect shall be deemed to have failed after a second unsuccessful attempt, unless the nature of the item or the defect or other circumstances indicate otherwise. In the event of rectification of defects, the Seller shall not be obliged to bear the increased costs arising from the transfer of the goods to a place other than the place of performance, provided that the transfer does not correspond to the intended use of the goods.

c) The warranty period is one year from delivery of the goods. The shortening of the period shall not apply:

- for culpably caused damages attributable to the Seller arising from injury to life, body or health and for other damages caused intentionally or by gross negligence;
- insofar as the Seller has fraudulently concealed the defect or has assumed a guarantee for the quality of the item;
- in the case of statutory rights of recourse which the Buyer has against the Seller in connection with rights arising from defects.

(3) An additional warranty exists for products delivered by the Seller only if this was expressly stated in the order confirmation for the respective product.

## **§ 7 Intellectual Property**

(1) If a third-party asserts claims against the Buyer for the infringement of an intellectual property right with regard to the goods that are delivered by the Seller and are used by the Buyer in a contractually appropriate manner, the Seller's liability is subject to the following provisions.

(2) The Seller will, at its discretion and at its own expense, either acquire the necessary licenses for the goods, design the goods in a non-infringing

manner, substitute the goods with an alternative non-infringing product of equal efficiency or withdraw the goods in return for the reimbursement of the contract price.

(3) Liability of the Seller can only be established if the Buyer immediately notifies the Seller in writing of the claims asserted by the third party, if the Buyer refuses to recognize the infringement and if all measures of defense against the third party are reserved for the benefit of the Seller. If the Buyer desists from using the goods in order to mitigate damages or for any equally important reason, the Buyer shall inform the third party that no recognition of the infringement of the intellectual property right in question shall be inferred from such desistance.

(4) Liability of the Seller is excluded either if the Buyer is responsible for the infringement of the intellectual property right, if the infringement is the result of the Buyer providing the Seller with individual specifications, if infringement arises from an application of the product not foreseeable by the Seller or from adaptations of the goods individually requested by the Buyer, or from alterations of the goods or combinations thereof with other products not delivered by the Seller or with other devices. In these events the Buyer shall hold the Seller free and harmless from any and all third-party claims that ensue from such infringement.

(5) The sale of the goods and/or the license of the rights to the Buyer does not entail the acquisition from the Seller of any license to use the industrial property and copyright in combinations of the goods with other devices.

(6) Further claims of the Buyer are, notwithstanding para. 8, excluded.

## **§ 8 Limitations of liability**

(1) In the event of slight and ordinary negligent breaches of duty, the Seller shall only be liable for the breach of material contractual duties, otherwise liability shall be excluded. The liability for the breach of essential contractual obligations is limited to the foreseeable, for the contract typical, direct damage. Material contractual obligations are obligations of the Seller to which the Buyer is entitled according to the specific content of the contract and the purpose of the contract and the fulfillment of which makes the proper execution of the contract possible in the first place and on the observance of which the contractual partner may regularly rely.

(2) The limitation of liability according to paragraph 1 of this section of these General Terms and Conditions also applies to the personal liability of the legal representatives, employees, workers, and vicarious agents, insofar as they act in the performance of their duties for the Seller.

(3) These limitations and exclusions of liability shall not apply to claims of the Buyer in case of damages attributable to the Seller due to injury to body, health, loss of life of the Buyer, fraudulent intent, claims under the Product Liability Act as well as from guarantees in the legal sense.

## **§ 9 Foreign and export regulations**

(1) The observance of the relevant foreign trade regulations and other laws of the country in which the Buyer has its registered office and of the country to which delivery is to be made shall be the responsibility of the Buyer. In particular, the Buyer shall be responsible for obtaining and maintaining, at its own expense, all necessary import licenses and other required documents and otherwise complying with all applicable laws or regulations relating to the importation and distribution of the goods into the country to which delivery is to be made. The Buyer assures to carefully observe these provisions.

(2) Upon conclusion of the contract, the Buyer must inform the Seller in writing of any special features resulting from these provisions.

(3) The Seller does not check prior to the conclusion of the contract whether foreign trade regulations of the exporting or importing country and other laws of the country of the Buyer conflict with the fulfillment of the contract and therefore does not assume any warranty for the non-existence of corresponding obstacles, in particular not for the granting of any necessary permits.

(4) In the event of non-compliance with the provisions of the above paragraphs, the Buyer shall be liable to the Seller for any damages and hereby already indemnifies the Seller in the external relationship from any claims of third parties resulting therefrom.

#### **§ 10 Confidentiality, Documentation**

(1) All documentation like sketches plans, instructions, specifications and other material provided for by the Seller as well as all information included therein regarding the application and maintenance of the subject-matter remain the exclusive property of the Seller irrespective of their delivery to the Buyer.

(2) Such documentation and materials are confidential and the Buyer shall not reproduce, make available to third parties or exploit on behalf of third parties this documentation or material without prior written consent notified by the Seller. This does not apply to the communication thereof to the Buyer's employees which are required or allowed to use such documents in performance of their obligations under their employment contract.

(3) The Buyer shall enforce the aforementioned obligations in a suitable and reasonable manner vis-à-vis his employees.

#### **§ 11 Data protection**

(1) The Buyer has taken note that the Seller has the possibility to read out and process technical data, location data (GPS) as well as the IP address of the sold boat drive. Whether the Seller makes use of this is at the sole discretion of the Seller.

(2) The Seller is entitled to use the data obtained under paragraph 1 for the purpose of product improvement, customer support and for marketing purposes, in particular for offering suitable additional products.

(3) The Buyer is not entitled to view and/or use the data.

(4) The Buyer shall be solely responsible for any consent from customers to be obtained pursuant to Art. 6, 7 DSGVO as well as any other measures required pursuant to the DSGVO.

(5) In all other respects, reference is made in connection with the Buyer's consent and further information, such as the purpose, scope, type and place of data collection, processing and use, to the data protection declaration of the Seller, which is available in printable form at <https://molabo.com/en/privacy-policy/> at any time.

(6) If the buyer, as an entrepreneur, in particular as a boat builder, dealer, or other entrepreneur, passes on the contractual products to third parties, in particular boat owners, or integrates them into boats, they shall ensure that, upon delivery of the boat, all functions for data transmission, telemetry, remote access, or comparable data processing functions that can be activated via a slider or comparable technical setting are deactivated by default, unless the respective boat owner has given their effective consent in accordance with data protection law. The buyer is obliged to pass on this obligation to other third parties by contract and to ensure compliance in an appropriate manner. The seller is not responsible for setting up, checking, or monitoring the relevant settings at the buyer's premises or at downstream customers.

#### **§ 12 Severability Clause, Choice of Law, Place of Performance, Place of Jurisdiction**

(1) Should individual provisions of these General Terms and Conditions be or become invalid, the validity of the remaining provisions of these General Terms and Conditions shall remain unaffected. In place of the invalid provision, the relevant statutory provisions shall apply. This shall apply accordingly to the filling of any regulatory gaps in these General Terms and Conditions.

(2) German law shall apply. In the case of consumers, this choice of law only applies insofar as the protection granted by mandatory provisions of the law of the state of the consumer's habitual residence is not thereby excluded.

(3) The place of performance is the registered office of the Seller. If the place of performance is to be another place, this must be expressly agreed. If products are shipped to a place other than the agreed place of performance at the request of the Buyer, the additional transport costs shall be borne by the Buyer.

(4) The exclusive place of jurisdiction for all disputes arising from or in connection with this contract shall be Munich (Landgericht München I), if 1. the Buyer is a merchant or  
2. the Buyer has no general place of jurisdiction in Germany or  
3. the Buyer had his domicile or habitual residence in Germany when the contract was concluded and has moved out of Germany at the time the action is brought or the domicile or habitual residence is unknown at the time the action is brought.

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