

France Hélices general conditions of sale, V5, 25th October 2013

1. Scope / Enforceability

The present general conditions of sale apply counting from 1st November 2013 to all product orders placed with France Hélices (referred to hereafter as "France Hélices") by its customers (referred to hereafter as Customer(s)) notwithstanding any contract, clause or condition to the contrary emanating from the Customer and are systematically sent or given to each Customer. Any Customer placing an order implicitly accepts, in full and unreservedly, the present general conditions of sale, which constitute the basis for the commercial negotiations in accordance with Article L441-6 of the Trade Code. In the case of cooperative groupings and franchises of independent affiliates, the present general conditions of sale will be sent to the central agency, which undertakes to bring them to the attention of all its members, against which they will therefore be enforceable. Consequently, any contrary conditions, notably any general or specific conditions emanating from the Customer, including any purchase conditions and order forms, are unenforceable against France Hélices except with the latter's prior acceptance in writing. Any failure by France Hélices to take advantage of any of the present general conditions of sale at any given time may not be interpreted by the Customer as equivalent to the former renouncing the right to take advantage thereof subsequently. The present general conditions of sale are subject to change at any time, on the understanding that the Customer will be notified of any amendments, which will take effect immediately after receipt of the notification.

2. Catalogues, manuals and drawings

Product information in catalogues, manuals, drawings and any other documents issued by France Hélices is provided for guidance only and does not constitute a firm offer for which France Hélices might be liable. Dimensions, weights and other data are provided for guidance only and are not binding on France Hélices, which reserves the right to make any changes that it thinks fit to such documents in order to take account of specific Customer data. Moreover, each installation is dependent on a great number of factors relating to both the construction and use of the vessel. Such data are not all brought to France Hélices' attention and are available solely to the naval architect or consulting engineer. In any event, the Customer is informed that the characteristics of the products offered by France Hélices must have been approved by the naval architect, the shipyard or the consulting engineer in charge of building or fitting out the vessel taking account of such data. Such approval will result from the order confirmation and installation of the equipment offered by France Hélices and will exonerate the latter from any liability for the choice of product installed.

3. Designs and plans

Designs and calculations made by France Hélices and any relevant documents delivered to the Customer remain the former's property in full and must be returned to it immediately on demand. The Customer will be invoiced for the cost of France Hélices producing designs unless it places an order, in which case it will not be invoiced. In any event, France Hélices is and will remain the sole owner of the intellectual property rights attached to the designs and plans that it produces so such designs and plans may not be disclosed or implemented without its prior permission in writing.

4. Orders / Formation of the contract

Orders must be sent to France Hélices by post to 12 allée des Gabians, 06150 Cannes-La-Bocca, by e-mail to info@francehelices.fr or by fax to 0493470859.

Orders are accepted as a result of confirmation thereof by fax or e-mail. Orders sent to France Hélices become definitive solely after the latter's acceptance thereof and payment to it of the advance indicated in the quote or order. In the case of complex orders, acceptance is conditional on the signing of the contract by France Hélices' management and payment to France Hélices of the advance indicated in the contract.

No orders sent to France Hélices may be amended or cancelled without the latter's prior agreement in writing. In the event of the Customer cancelling an order, France Hélices will retain the advance, if paid, without prejudice to the latter being paid damages for any prejudice that it may have suffered.

5. Prices

Prices are shown net, excluding taxes and packaging, ex-works. Duties, taxes and levies of any nature are not included in product prices. Unless otherwise specified, all packaging, handling, carriage, making ready for work, insurance and customs operations are borne by the Customer and are carried out at its risk. The cost of France Hélices assembling products at the Customer's premises is also borne by the latter. The product prices charged are those applying at the time when the order is placed and the Customer is reminded that the placement of any order is equivalent to acceptance of the price. If a quote is drawn up by France Hélices (in the case of complex services), the quoted price will be valid solely for orders placed within the quoted timescale.

6. Delivery

Unless specifically agreed otherwise, delivery is made by the products being made available to the Customer in France Hélices' workshops. Unless agreed otherwise in advance between the Customer and France Hélices, the former must take delivery of the products within a fortnight of being notified by the latter that they are available in its workshops. Should the Customer fail to take delivery of products on time or at all without giving reasonable grounds it will bear all the risks thereof and in any event must pay the order price in full, while France Hélices will be entitled to store the products in a warehouse at the Customer's expense, to terminate the sale contract and to resell the products without prejudice to being paid damages for any prejudice that it may have suffered.

Delivery deadlines specified in orders are provided for guidance only so France Hélices will not be liable for damages or fixed penalties in the event of late delivery notwithstanding any clause to the contrary in the Customer's general purchase conditions. Any delivery deadlines accepted by France Hélices will be suspended *ipso jure* by any events outside its control that result in delivery being delayed, notably cases of *force majeure* as defined in the "*Force majeure*" article below. Any order amendments occurring during fulfilment, even if accepted by France Hélices, will postpone any specified delivery deadline according to the arrangements communicated by the latter to the Customer.

7. Transfer of risks

Goods travel at the Customer's risk irrespective of the delivery and payment method for the specified carriage notwithstanding the provisions on reservation of ownership below.

8. Acceptance

8.1 In the event of the Customer collecting products from France Hélices' workshops:

The Customer must check product compliance upon collection as no claims in respect of the quantity collected, visible defects or non-compliance will be considered after acceptance of the goods upon collection.

8.2 In the event of delivery to the Customer's premises by a carrier:

Without prejudice to the steps to be taken with respect to the carrier, claims in respect of visible defects, ullage or non-compliance of the delivered products with the ordered products or the consignment note must, on penalty of foreclosure, be stated on the carrier's waybill and notified by fax confirmed by letter on the day of delivery to France Hélices, which reserves the right to refuse to consider any claims that it receives after this deadline. The addressee receiving the products has sole responsibility for checking whether the contract of carriage has been properly performed and, if not, for taking all appropriate measures to retain recourse against the carrier so if packages are missing or arrive damaged or for any other reason [*sic – translator*] the addressee must:

- establish, immediately and indisputably, the nature and extent of the damage observed on receipt and specify this on the waybill;

- confirm the protest with grounds by recorded delivery letter as required on penalty of foreclosure by Article 133-3 of the Trade Code to the carrier within at most three days (not including public holidays) of receipt of the carried items.

Both these conditions are essential for the carrier to be held liable and in the event of non-compliance with this procedure any consequences will be borne solely by the addressee.

9. Returns

Any product returns are subject to prior agreement in writing between France Hélices and the Customer, in which case the products will be returned and travel at the Customer's expense and risk.

10. Payment

Unless otherwise agreed, invoices are paid in ready money upon the products being collected by the Customer or the carrier from France Hélices' workshops (less any advance paid by the Customer with the order) by interbank transfer, cheque, draft subject to acceptance, direct draft or cash (maximum amount defined by decree). No discount will be granted in the event of payment before the due date. Solely payment by the agreed due date will constitute settlement.

Any non-fulfilment by the Customer, in whole or in part, of its payment obligations or any delay in so doing will entail:

- the application of penalties equal to three times the legal interest rate applying on the due date;

- fixed compensation of €40 for collection expenses provided for by Article L441-6 of the Trade Code, though this does limit any other expenses that may be incurred by our company for the collection of its invoices.

Interest will accrue from the payment date stated on the invoice until payment in full of the monies due to France Hélices, with any part month due in full. France Hélices will be entitled to set off the above-mentioned default penalties against any price reduction due to the Customer.

Under no circumstances may payments be suspended or set off in any way on the Customer's sole initiative without France Hélices' prior agreement in writing, notably in the event of the Customer alleging a delivery delay or non-compliance of the delivered products in accordance with Article L442-6-1-81 of the Trade Code, irrespective of any contrary provisions of the Customer's purchase conditions. Any offsetting unauthorised by France Hélices will be considered as equivalent to payment defaulting entitling France Hélices to refuse any product orders and to suspend deliveries in progress immediately after informing the Customer.

In the event of notorious insolvency, payment after the due date, company protection or official administration / liquidation, France Hélices will be entitled, subject to the provisions of Article L622-13 of the Trade Code, to:

- take back, *ipso jure* and without any other formality, the products corresponding to the relevant order and any previous unpaid orders, whether payment for such orders is due or not;

- cancel, *ipso jure*, any orders in progress, in full, simply by serving notice on the Customer by recorded delivery letter with acknowledgement of receipt, without any other formality and without prejudice to exercising all its other rights.

11. Reservation of ownership

The parties explicitly agree that sold products remain the property of France Hélices until payment in full of the invoices. This ownership clause complies with the operative statutory and regulatory provisions and, accordingly, with the Sureties Order, No. 2006-346, of 23rd March 2006. The delivery of a draft, bank / giro cheque or any instrument creating an obligation to pay does not constitute payment within the meaning of the present clause and payment will be considered as having been made only once the price has actually been collected by France Hélices. If products covered by reservation of ownership are resold by the Customer, the debt owed to France Hélices will automatically be passed onto the debt owed for the price of the products sold by the Customer, which hereby assigns to France Hélices any debts arising from reselling products subject to reservation of ownership that have not been paid for.

Products may be reclaimed in the event of the Customer's court protection or official administration / liquidation in accordance with the operative statutory and regulatory provisions. In the event of goods being reclaimed on grounds of non-payment in whole or in part, the products in stock will be deemed to correspond to the unpaid debts. In accordance with Articles L624-9 and L624-16 of the Trade Code, the present reservation of ownership clause is enforceable against the Customer notwithstanding any other clause to the contrary. France Hélices is hereby authorised by the Customer, which agrees, to have products held by the latter that have not been paid for inventoried and/or sequestered. Any advances paid will be rightfully retained in full by France Hélices on the basis of a penalty clause.

Notwithstanding the present reservation of ownership clause, all risks relating to sold products are borne by the Customer upon acceptance of the said products on delivery so it will bear sole liability for all risks of damage, loss and destruction, in whole or in part, irrespective of the cause of damage, even in the case of a fortuitous event or *force majeure*, and must therefore insure products subject to reservation of ownership, stipulate in the insurance policy that any compensation will be paid directly to France Hélices and supply the latter with proof that such insurance has been taken out immediately on demand.

Until payment in full, the Customer undertakes to refrain from granting any pledge on sold products subject to reservation of ownership and from using them as security. The Customer undertakes to inform third parties, notably in the event of seizure, that products subject to the reservation of ownership clause belong to France Hélices and to inform the latter immediately of any seizure or similar operation.

12. External product assembly

Should the order specify assembly by France Hélices of ordered products at the Customer's premises, the former's fitters will be sent to the said premises once the latter has explicitly informed the former that the preparatory work for assembly has been completed and that assembly can proceed unhindered and the cost of assembly will be borne by the Customer according to the time spent at our labour rate or at an all-inclusive charge. In the event of any delay in product assembly due to the Customer, the latter will be invoiced separately for the necessary additional time by France Hélices.

13. Accidents

In case of accident occurring at any time and for any reason whatsoever, France Hélices' liability is strictly limited to our staff and our own supplies.

14. Guarantees / Liability

14.1 Statutory guarantee for hidden defects

Products are guaranteed against all hidden defects. Any purchaser discovering a hidden defect must inform France Hélices thereof by recorded delivery letter with acknowledgement of receipt, specifying the nature and extent of the defect, within 8 (eight) working days of discovery, though if the Customer is a professional specialising in the same field as France Hélices the latter excludes any guarantee for hidden defects and cannot be obliged to pay any damages.

14.2 Commercial guarantee

The products marketed by France Hélices comply with the required specifications and the operative legislation, regulations and/or standards. It guarantees its products against all manufacturing and material defects, though this guarantee:

- does not apply in the case of defects arising from materials supplied by the Customer or resulting from a design imposed by the Customer;
- does not apply in the case of incidents relating to cases of *force majeure* or Customer negligence or that are caused by the Customer's lack of supervision / maintenance or misuse of the product;
- is valid for products on the territory of metropolitan France and Corsica so France Hélices will not carry out any on-site troubleshooting or repairs outside these territories except in the event of a specific agreement made with the Customer.

In the event of an ascertained manufacturing or material defect corresponding to the conditions of the commercial guarantee, France Hélices will repair the parts concerned or replace them with identical parts, though the cost of assembling and dismantling such parts will be borne by the Customer.

The present guarantee conditions are enforceable against the Customer and take precedence over any contrary clauses emanating from the Customer's purchase conditions or any other document.

14.3 Term and starting point of the commercial guarantee

The guarantee applies solely to defects appearing within six months of the product delivery date, though if the products are used by several teams or for more than ten hours per day the guarantee term is halved, i.e. three months from the product delivery date. Product repairs, modifications or replacements during the guarantee period will not have the effect of extending the guarantee period applicable to the product.

14.4 Implementation of guarantees

In order to benefit from the guarantee, the Customer must inform France Hélices of any defect affecting the product in the form of a written notification sent by recorded delivery letter with acknowledgement of receipt, enclosing all supporting documents, and must enable France Hélices to ascertain such defects unhindered. The Customer must refrain from carrying out any repairs, even temporary ones, directly or via a third party, except with France Hélices' explicit agreement otherwise the commercial guarantee will be cancelled immediately and the Customer will no longer be able to claim the benefit thereof.

In the event of the Customer failing to provide France Hélices with any technical information for making a product such that modifications have to be made to the product, France Hélices will be exonerated from any liability and the cost of modifying the product will be borne by the Customer along with any associated expenses.

In accordance with Article 2254 of the Civil Code, actions relating to non-compliance or defectiveness of any product sold by France Hélices or to the implementation of the guarantee are barred after one year following delivery.

14.5 Arrangements for repairs on the basis of the commercial and statutory guarantees

The Customer must send defective products back to France Hélices' workshops so that the latter can repair or replace them. Products will be transported to France Hélices' workshops and the repaired or replacement products returned to the Customer's premises at the latter's expense and risk. Should products be repaired by France Hélices in the Customer's installation area, the expenses for attendance by the former's staff will be borne by the latter.

Any defective parts replaced free of charge will be handed over to France Hélices and become its entire property again.

14.6 Liability limits

Should France Hélices prove to be liable, notably in the event of delivered products not complying with the order, missing products, hidden defects, breach of contract or proven negligence on its part, it will either repair or replace the products concerned at its expense and the reparations for any prejudice suffered by the Customer, irrespective of whether it is material or immaterial, will be capped at twice the price of the products invoiced by France Hélices or twice the charge for the works invoiced by it. Expenses for dismantling, reassembly, dry docking, immobilising vessels, etc will form an integral part of the prejudice suffered by the Customer and may be borne by France Hélices, if it is liable, solely up to the specified cap, which the Customer acknowledges is perfectly reasonable and appropriate for the nature and economics of the contract with France Hélices. The purchaser must provide France Hélices with all evidence of defects and faults, afford it every facility to ascertain any such defects or faults and refrain from taking action or instructing any third party for this purpose. Under no circumstances may France Hélices be held liable in the event of natural wear and tear of products, product use or maintenance that is abnormal or that does not comply with its specifications or in case of accident or product modifications. The Customer must take out all necessary insurance for such prejudice, costs and losses, with a waiver of recourse.

In accordance with Article 2254 of the Civil Code, liability actions against France Hélices are barred after one year following product delivery.

15. Intellectual property

France Hélices owns all the intellectual property rights over products sold to the Customer under the France Hélices brand or any other brand used by France Hélices. Products delivered by France Hélices under such brands may be resold solely in their original presentation and according to conditions that are appropriate to the image thereof. The Customer undertakes to respect France Hélices' industrial property rights, with which it declares that it is perfectly familiar, notably as regards trade marks, designs, patents and all other intellectual property rights held by France Hélices and its affiliated companies. Should the Customer, without first agreeing with France Hélices, incur any expenses concerning any type of proceedings involving France Hélices on the basis of which the Customer may be entitled to believe that it can validly claim damages, the latter will bear such expenses without being able to claim any reimbursement of the monies incurred. Should the Customer learn of any infringement of any intellectual property rights or trade marks belonging to France Hélices, it must inform the latter immediately by fax or e-mail with confirmation by recorded delivery letter with acknowledgement of receipt.

16. Penalties exclusion

Notwithstanding any clauses or provisions to the contrary in purchase conditions, listing contracts, logistical conditions, specific agreements, etc, no penalties of any nature whatsoever will be accepted by France Hélices except with prior agreement in writing irrespective of the reason for the penalty concerned. Any clause to the contrary is deemed unwritten. Accordingly, France Hélices does not accept any automatic debiting. France Hélices will be entitled to refuse all new product orders in the event of the present clause being breached by the Customer.

17. Force majeure

The parties' fulfilment of any or all of their obligations will be suspended in the case of a fortuitous event or *force majeure* hindering or delaying fulfilment, e.g. (non-exhaustive list) war, riots, insurrection, industrial action, strikes of any nature, transportation stoppages and procurement problems affecting France Hélices. In the case of a fortuitous event or *force majeure* France Hélices will inform the Customer at the earliest possible opportunity and within at most forty-eight hours. However, any such suspension will not apply to payment obligations. Should the suspension last more than a fortnight, the other party will be entitled to cancel the order in progress.

18. Jurisdiction / Disputes

All the contractual relations between France Hélices and the Customer resulting from the application of the present general conditions of sale and any specific agreements that may be concluded and any disputes arising therefrom, irrespective of the nature thereof, will be subject to French law in all respects. The parties agree to do their utmost to resolve amicably any disagreements over the interpretation, implementation or termination of the business relations between France Hélices and the Customer. Any disputes arising from the implementation of the contractual relations established between France Hélices and the Customer and from actions resulting therefrom will come within the competence of the commercial court with jurisdiction over the Cannes head office notwithstanding any incidental pleas, guarantee claims or plurality of defendants, unless the provisions resulting from the Decree of 11th November 2009 on courts specialising in restrictive practices apply. The present jurisdiction clause will apply even in the event of summary proceedings, though France Hélices will have the right to apply to any other competent court, particularly the one with jurisdiction over the Customer's head office or over the location of the delivered goods. Bills of exchange and acceptance of payment will not effect any novation or waiver of this clause.