

## Standard Terms and Conditions for Dock Work and Repairs

These Standard Terms and Conditions apply to the performance of ship repairs, ship conversions, work on equipment or parts of ships and dock work of any kind. They form an integral part of all quotations and contracts of GERMAN DRY DOCKS AG (hereinafter referred to as the “Shipyard”) for the above-mentioned supplies and services and shall apply to any current or future business relationship. In deviation from the preceding sentence 1, these Standard Terms and Conditions for Dock Work and Repairs shall not apply, but our Standard Terms and Conditions of Sale and Delivery shall apply instead in all cases where the subject matter of our supplies and services consists of services other than the performance of ship repairs, ship conversions, work on equipment or parts of ships and dock work. Agreements deviating from these Standard Terms and Conditions, including but not limited to conflicting terms and conditions of the customer (“Customer”) and collateral agreements shall become an integral part of any contract only upon the Shipyard consenting expressly and in writing to their inclusion.

### 1. Offer and conclusion of contract

1.1 Quotations and cost estimates of the Shipyard are subject to change. They shall include only the supplies and services explicitly specified therein.

1.2 Contracts shall not be deemed concluded unless and until the Shipyard has accepted in writing the work or purchase orders received by it, has confirmed in writing letters of acceptance sent to it, or has delivered the items or performed the services ordered by the Customer. This shall apply *mutatis mutandis* to any amendments or alterations of contracts as well as verbal collateral agreements

### 2. Scope of performance and document.

2.1 In cases of doubt regarding the scope of performance, the content of the Shipyard’s written confirmation of order and the documents specified therein shall govern. Any additional expenses due to errors in drawings

and other documents or other records provided by the Customer shall be borne by the Customer.

2.2 All data provided by the Shipyard to the Customer and the Shipyard’s documents forming the basis of the contract (such as drawings, measurements and weights or technical descriptions) shall be deemed mere approximations as customary in shipbuilding.

The Shipyard reserves the right to implement minor changes (e.g. changes in design, of form, or deviations in color, etc.).

2.3 The Shipyard reserves all proprietary rights, copyrights and industrial property rights in and to the documents mentioned under Clause 2.2 above. Unless authorized in writing by the Shipyard, said documents may not be used for any purpose other than the fulfillment of each of the contracts concluded with the Shipyard, and may in particular not be reproduced or disclosed to third parties.

- They must be returned by the Customer to the Shipyard without delay upon the Shipyard's request. The Customer's right of retention or to withhold performance shall be excluded in this respect.
- 2.4 If the Shipyard uses plans, documents and information provided by the Customer for the performance of its services, the Customer must indemnify and hold the Shipyard harmless against any third party claims based on infringements of proprietary rights, copyrights, and industrial property rights due to the use of such plans, documents or information provided by the Customer.
- 2.5 The decision regarding the scope of repairs and their usefulness shall be exclusively the responsibility of the Customer. The Shipyard will not review whether the contents of statements issued by a classification society or their agents are correct. The Shipyard is not obligated to examine the ship or the object of performance for latent defects.
- 2.6 The Shipyard may have third parties perform all or part of the work assigned to it.
- 3. Size, weight and nationality of the ship**
- 3.1 The measurements provided in the "Register of Ships" kept by the Lloyd's Register of Shipping, or, otherwise, those stated in the International Tonnage Certificate shall be applicable with regard to the dimensions and determination of a ship's volume in cubic meters.
- 3.2 In case of doubt, the nationality shall be determined by reference to the flag the ship was flying at the conclusion of the contract.
- 3.3 The ship's condition required for docking (trim and weight) must be jointly agreed with the Shipyard and brought about by the Customer. The provisions in Clause 15.3 below shall remain unaffected thereby.
- 4. Authorized representatives**
- 4.1 The Customer shall inform the Shipyard in writing no later than upon arrival of the ship or delivery of the object of performance of the person who, other than the ship's master, and in his absence, shall be the Customer's authorized representative entitled to give legally binding statements to the Shipyard and accept same from the Shipyard, and to enter into legally binding agreements.
- 5. Prices**
- 5.1 All prices are net in euro ex works plus value-added tax, if and to the extent that tax is levied.
- 5.2 In the event of cost increases (for wages, energy, taxes, materials, etc.) occurring between the conclusion of the contract and the time of the performance thereunder, and provided that this period exceeds four (4) months, the Shipyard shall, at its reasonable discretion, be entitled to charge a price that has been

- adjusted accordingly, not exceeding the Shipyard's generally applicable prices at the time of performance.
- 5.3 Initial filling and refills of lubricating and hydraulic oil as well as other materials and consumables shall be charged separately by the Shipyard. This shall apply accordingly to the costs of certificates attesting gas-free condition, or of any necessary degasifying of tanks, bilges, etc. carried out by the Shipyard.
- 5.4 Remuneration of tugboats, pilotmen and warping crews as well as port and lock dues are not included in the Shipyard's prices. The Shipyard will provide or procure tugboats, warping crews and pilotmen upon request for a special fee, but without assuming any responsibility for the risks involved in warping, tugging and towing the vessel.
- 5.5 The docking fees shall be charged at the Shipyard's prices applicable from time to time. The Shipyard reserves the right to enter into separate agreements for any cases involving average (ship damage), the docking of ships carrying cargo, or of ships of a special design.
- 5.6 In the event of impossibility of contractual performance on the part of the Shipyard, in whole or in part, for reasons beyond the Shipyard's control, the Customer shall owe the pro-rata share of the remuneration for delivered items and services performed up to that point.

## 6. Payments

- 6.1 All claims of the Shipyard for payment are due and payable without delay upon receipt of the invoice, without any deduction.
- 6.2 The Shipyard shall be entitled to interest at five percent (5%) p.a. since the due date of the claim for remuneration, and in the amount of nine (9) percentage points above the base rate applicable from time to time since default. The Shipyard may claim further damages on the grounds of default.
- 6.3 The ship or the object of performance worked on by the Shipyard shall not be returned until full satisfaction of the Shipyard's claims for remuneration due until then. If the return of the ship or of the object of performance worked on by the Shipyard is delayed due to the Customer's default in payment, any demurrage and other costs shall be at the Customer's expense.

The Shipyard shall be entitled, in individual cases, to insist on the full payment of its claims for remuneration upon the undocking of the ship, or request the provision of security for the full amount of its claim for remuneration, if and to the extent that there is reason to assume that the Customer will otherwise not satisfy the Shipyard's claim for remuneration, or will not do so in a timely fashion and/or not fully.

## 7. Set-off and retention

7.1 Customer may set off against claims asserted by the Shipyard only with claims that are undisputed, have been established as final and conclusive, or are ripe for judgment (proven).

7.2 The Customer may assert a right of retention only to the extent that its claim is based on the same contractual relationship.

## 8. Time limits and dates

8.1 Time limits and dates shall be binding for the Shipyard only if their binding nature has been expressly agreed upon in writing. If no time limits and dates have been agreed upon in writing, the time limits or dates estimated by the Shipyard shall apply. Otherwise, time limits and dates shall be deemed to apply that are considered reasonable taking the nature and extent of the contractual performance, difficulty of the task, etc. into account.

8.2 Agreed time limits and dates are based on working hours according to collective agreements applicable to shipyards. Prerequisite for the timely delivery of items or performance of services shall be the complete and timely fulfillment of all of the Customer's responsibilities and obligations of cooperation, including but not limited to the timely delivery of documents to be provided by the Customer, the timely provision of the ship in a condition allowing the performance of work on her (materials and components including proof of functionality) and the

clarification of all commercial (including price agreements) and technical questions. Agreed-upon time limits and dates shall be extended by the duration of any delay in the receipt of payments that are due, including in cases where the Shipyard has not asserted the right of retention or the right to withhold performance.

8.3 Subsequent changes of or supplements to the scope of supplies and services shall extend the time limits and dates in accordance with the additional time required therefore.

8.4 Any occurrence of force majeure or of other circumstances beyond the Shipyard's control – regardless of whether they affect the Shipyard or its suppliers – shall release the Shipyard from its contractual obligation to make deliveries or perform services for the duration of the effects thereof, or indefinitely if they result in the impossibility to make deliveries or perform services. This shall also apply to measures taken on the basis of the International Code for the security of Ships and of Port Facilities ("ISPS Code").

8.5 If the Shipyard is late in completing the ship or the object of performance, the Customer may, if it has sustained proven damage, and notwithstanding its right to rescind the contract subject to the statutory provisions for such rescission, claim - while maintaining the contract - compensation for the delay in the amount of 0.5% of the contract price

per full week of delay, but no more than five percent (5%) of the contract price, while any further claims for damages shall be excluded. This limitation shall not apply if the delay is due to gross fault (willful misconduct or gross negligence) or the violation of any other obligations of the Shipyard that are essential to the contract.

## **9. Provision of the ship or the object of performance**

9.1 The Customer must deliver the ship or the object of performance to the Shipyard in a condition that allows the performance of work thereon, the ship or the object of performance must in particular be gas-free, cleaned, and free and clear of hazardous cargo (goods, materials/substances, etc.) and must be made available in accordance with all applicable safety requirements at the agreed-upon place (pier/dock) and at the agreed-upon time in a manner to allow commencement of work. If the Customer fails to provide the ship or the object of performance in a condition that allows the performance of work thereon or fails to provide it on schedule, the Shipyard shall be entitled to refuse acceptance of the ship or the object of performance and/or to charge the costs incurred thereby to the Customer.

## **10. Access to the shipyard and performance of work**

10.1 Except for the ship's crew, no persons and entities other than those mandated by the Shipyard shall be

allowed to perform work on the ship or the object of performance without the prior written consent of the Shipyard for as long as the ship or the object of performance are on the Shipyard's premises. The Customer must notify the Shipyard in a timely manner and in writing of any work done by the ship's crew or by authorized third parties. Such work is performed at the exclusive risk and responsibility of the Customer

10.2 All facilities and areas of the ship or of the object of performance not worked on by the Shipyard must be protected by the Customer against the risk of accidents. Where work is performed in holds, the Customer must remove and safely store the hatch covers of such holds prior to the commencement of the work.

10.3 All scrap (replaced parts, materials/substances, etc.) removed in the course of the work shall, at the Shipyard's request, become its property without compensation.

10.4 Notwithstanding Clause 10.3, the Customer must dispose of all toxic substances or any hazardous waste at its own expense and without delay, unless such disposal by the Shipyard is the subject matter of the contract.

10.5 The ship's crew and the persons commissioned by the Customer or persons on board the ship must at all times during their presence at the Shipyard's premises abide by the provisions of the law and those issued by the Shipyard (such as the Shipyard's Rules) and must be able to prove their identity.

## **11. Taking delivery or acceptance and test runs**

11.1 The Customer must take receipt of, or accept, the ship or the object of performance without delay upon the Shipyard's request. Acceptance shall be deemed to have occurred at the latest upon the Customer making use of the ship or of the object of performance.

11.2 If the Customer fails to take receipt of, or accept, the ship or the object of performance within the time allowed, the Shipyard may, after a reminder subject to a reasonable period for acceptance has lapsed unsuccessfully, rescind the contract and/or claim damages at its discretion either in the form of compensation of the loss actually suffered, or - without furnishing proof of loss - in the amount of ten percent (10%) of the agreed-upon contract price. The Customer shall retain in particular the right to prove that the Shipyard did not sustain any loss or damage at all or suffered only a significantly lower loss or damage.

11.3 If the Customer fails to comply with the Shipyard's request to collect the ship on time, the Shipyard shall be entitled - after having unsuccessfully put the Customer on notice allowing a reasonable additional period to collect the ship and advising it of the consequences stated herein - to remove the ship and commission warping crews, tugboats and pilotmen for that purpose at the risk and expense of the Customer.

11.4 In cases where testing or a trial run is planned, the Customer shall provide the crew of the ship as well as any consumables, materials and other supplies required to carry out the testing or the trial run.

For the duration of testing or of the trial run the Customer shall assume the nautical responsibility, the risk of maloperation by the ship's crew or other persons employed in the performance of the Customer's obligations, as well as the risk of accidental loss, destruction or deterioration of the ship or the object of performance.

## **12. Place of performance and passing of risk**

12.1 Unless a different place of performance has been agreed upon, the place of performance for the services to be performed by the Shipyard shall be the Shipyard's premises.

12.2 The risk of accidental loss, destruction or deterioration of the ship or the object of performance shall pass in any event, except as provided under Clause 11.4, to the Customer upon the return of the ship or delivery of the object of performance to the Customer.

If this is delayed due to the Customer's fault, the risk of accidental loss, destruction or deterioration of the ship or the object of performance shall pass to the Customer as early as from the date of notice of readiness for return or delivery thereof.

12.3 The Shipyard is not liable for any damage not caused by the Shipyard or the persons employed by it in the performance of its obligations, regardless of the time of occurrence of damage, unless Clause 15.4 hereof applies.

### **13. Reservation of title**

13.1 The Shipyard reserves title to goods delivered and/or installed by it ("Conditional Goods") until full satisfaction of all claims to which the Shipyard is entitled now or later from the Customer under the respective contracts and all claims arising in connection with the business relationship with the Customer, regardless of the cause in law, that have arisen or existed at the time of conclusion of contract, or will arise in the future.

13.2 The Customer shall be entitled to resell, process, mix or combine and subsequently sell Conditional Goods within the scope of extended reservation of title as long as this is done in the ordinary course of business. The Customer may not pledge the Conditional Goods nor transfer ownership thereto by way of security to third parties.

The Customer must notify the Shipyard without delay in writing about any attachment or seizure of property, or any other disposal by third parties.

13.3 Any processing or remodeling of Conditional Goods shall be done by the Customer exclusively on behalf of the Shipyard. In cases where the Customer combines or mixes Conditional Goods with other goods which are not owned by the Shipyard, the Shipyard shall acquire co-ownership of the new product in proportion of the total value of this product to the invoiced value of the Conditional Goods. The new products resulting from such processing shall also be deemed to be Conditional Goods as specified herein.

13.4 The Customer shall assign to the Shipyard in advance and as a security all claims and accessory rights it has in connection with the resale of Conditional Goods as well as any claims it may have against its insurers, and shall do so upon the conclusion of each of the contracts of which these terms and conditions are an integral part. This assignment is hereby accepted by the Shipyard to apply as of the conclusion of each of the contracts of which these terms and conditions are an integral part.

If the Conditional Goods are sold by the Customer with other goods not belonging to the Shipyard, regardless of whether without or after processing, above claims shall be deemed to have been assigned to the Shipyard in the amount of the outstanding invoice value of the Conditional Goods. Above

- assignment shall not constitute a deferral of the Shipyard's claim for payment against the Customer.
- 13.5 The Customer shall retain its right to collect claims assigned to the Shipyard despite such assignment. The Shipyard's authority to collect the claims itself shall not be affected thereby. For as long as the Customer is not in default of payment, no petition has been filed for opening insolvency proceedings on the Customer's assets or such proceedings were rejected due to insufficiency of assets, and no suspension of payments has occurred, the Shipyard will not collect such claims. If any of such events has occurred, the Customer shall notify the Shipyard without delay in writing about the claims assigned and the debtors of such claims, shall provide the Shipyard with the necessary information and documents for collection of the claims, and shall inform the various debtors of the assignment of the claims to the Shipyard in writing.
- 13.6 The Customer shall maintain the Conditional Goods in proper condition and shall – to the extent the Conditional Goods are not built in – store them separately and mark the Conditional Goods as goods owned by the Shipyard.
- 13.7 Upon the Customer's request, the Shipyard shall reassign to the Customer the Shipyard's title to the Conditional Goods and the claims assigned to the Shipyard to such extent as the value of such collateral exceeds the value of all claims the Shipyard has against the Customer by more than twenty percent (20%).
- 14. Defects**
- 14.1 The Customer must notify the Shipyard of any defect in writing immediately upon its discovery. Except as provided in Clause 15.4 hereof, the Shipyard is not liable for the aggravation of defects occurring due to late notice of defects.
- 14.2 The Customer must first provide the Shipyard the opportunity to rectify the defect within reasonable time, which, at the Shipyard's choice, may be through elimination of the defect or the production of a new item.
- 14.3 The ships must be made available to the Shipyard for the purpose of rectification of defects at the place of performance specified in Clause 12.1 hereof. If this is economically inefficient, the Customer may, after consultation with the Shipyard, have the work done by another shipyard ("Third-Party Shipyard"). In this case, the Shipyard shall reimburse the Customer for all expenses proven necessary for such work.
- 14.4 The Customer's claims for reimbursement of expenses incurred for the facilitation of rectification including but not limited to the cost of making the ship or the object of performance available at the place of performance specified in Clause 12.1 hereof, shall be excluded.

14.5 In cases of notified defects, the Shipyard is obligated to rectify the defect only after the Customer has paid a portion of the contract price that is deemed reasonable considering the notified defect.

14.6 If rectification finally fails, or if such rectification cannot be reasonably expected to be acceptable to the Shipyard or the Customer, or if rectification is associated with disproportionate costs and is, for this reason, refused by the Shipyard, the Customer may, subject to statutory requirements, rescind the contract or reasonably reduce the remuneration without prejudice to claims for damages that the Customer may otherwise have.

14.7 The Shipyard's obligation for payment of damages shall be governed by Clause 15.4 hereof.

14.8 Upon request of the Shipyard, the property of replaced parts shall pass to it.

14.9 Except as provided under Clause 15.4 hereof, any claims and rights of the Customer in connection with defects shall be null and void if the items delivered or services performed are altered, processed or worked on, handled or repaired improperly by the Customer or third parties not authorized by the Shipyard.

14.10 Unless agreed otherwise between the Customer and the Shipyard, all claims of the Customer against the Shipyard regarding defects shall become time-barred upon the expiration of one (1)

year commencing upon passing of risk. This period of limitation, however, shall not apply if and to the extent the defect was maliciously concealed and/or any of the liability events specified under Clause 15.4 hereof apply.

14.11 The provisions above do not provide for a reversal of the burden of proof at the Customer's disadvantage.

## **15. Liability**

15.1 Except as provided under Clause 15.4 hereof, tugging and warping of a ship shall be exclusively done at the Customer's responsibility, expense and risk – also during the period of repairs – and even in cases where the Shipyard provides, procures or charges the equipment and/or workers for this purpose.

Tugboat crews, pilotmen and warping crews are neither persons employed by the Shipyard in the performance of its obligations nor its vicarious agents.

15.2 The Customer shall be responsible for keeping guard of the ship, the cargo and all things provided by the Customer, in particular for all watch guards, as well as for the observation of all relevant statutory and regulatory requirements (such as regulations for the prevention of accidents) by the Customer itself and the persons employed by it in the performance of its obligations and its vicarious agents. All other measures required for the prevention of damages (such as draining of piping and tubing and other frost protection

measures in winter) and mooring shall also fall within the province of the Customer. When potentially hazardous work is performed on board, the Customer must ensure through its own surveillance measures that all customary requirements of due care are observed. The Customer must notify the Shipyard in writing about any imminent danger.

15.3 Except as provided under Clause 15.4 hereof, the Shipyard is not liable for damages resulting from an incorrect docking plan, incorrect drawings or other documents provided by the Customer or the lack of stability or of seaworthiness of the ship. The Customer must expressly notify the Shipyard in writing about special circumstances affecting the stability or seaworthiness of the ship and which could create a risk of damage to the ship or her equipment despite proper execution of work by the Shipyard.

15.4 Claims other than those provided herein or in the contract entered into with the Customer shall be excluded unless such claims arise from the provisions of the Product Liability Act, the intentional or grossly negligent breach of contractual or legal obligations by the corporate bodies or senior management of the Shipyard, personal injury or impairment of health of the

Customer or its employees caused by a breach of duty for which the Shipyard is responsible, a warranty for the presence of particular characteristics, or the violation of essential contractual obligations by the Shipyard. Obligations that are essential to the contract are those the fulfillment of which allows the Shipyard to properly perform its primary contractual obligations in the first place and in the observance of which the Customer trusts and may trust as a matter of course. Regardless of the cases of liability stated above and unless essential contractual obligations have been violated, the Shipyard shall not be liable for any loss or damage suffered by the Customer resulting from a grossly negligent violation of duty, including, but not limited to, the violation of the duty of care and supervision by non-managerial persons employed by it in the performance of its obligations.

15.5 If the Shipyard has violated essential contractual obligations, the Customer's claim for damages against the Shipyard shall be limited to the foreseeable damage typical of this type of contract; provided that no willful misconduct or gross negligence are involved, and that the Shipyard is not liable for injury to health and physical injury of the Customer or its employees, or based on its warranty for the existence of a quality. A loss or damage that must be typically

expected when the essential contractual obligation has been violated is deemed typical of this type of contract/foreseeable.

15.6 In order to protect itself against the consequences of the exclusions and limitations of liability above, the Customer shall cover any resulting risks by taking out the necessary insurance policies. The Customer must specifically provide that for the duration of the maintenance, conversion or repair work assumed by the Shipyard, there is a hull policy and P&I insurance coverage in place and the corresponding insurance policy is extended by the coverage of risks in connection with ship building (including trial run). The Customer must include the Shipyard, its corporate bodies, executives and persons employed by it in the performance of its obligations in the insurance coverage by way of co-insurance.

15.7 Clause 14.11 shall apply *mutatis mutandis*.

15.8 Claims for damages shall become time-barred upon the expiration of twelve (12) months after the statutory commencement of the limitation period if and to the extent none of the liability events set forth in Clause 15.4 have occurred.

## **16. Place of jurisdiction, applicable law and translations**

16.1 The competent Local / Regional Court [Amtsgericht / Landgericht] at

Bremerhaven shall have exclusive jurisdiction for any litigation that may directly or indirectly arise out of the contractual relationship between the Shipyard and the Customer. The Shipyard is, however, at its option, entitled to assert claims against the Customer also before courts having jurisdiction over the residence, place of business, assets or the ship of the Customer being the subject matter of the work performed. Any mandatory statutory jurisdiction shall remain unaffected.

16.2 The laws of the Federal Republic of Germany shall govern exclusively as applicable among German nationals, without giving effect to the United Nations Convention on Contracts for the International Sale of Goods.

16.3 In the event these Standard Terms and Conditions for Dock Work and Repairs are translated in any other language than German, their German version shall govern in the event of doubts as to their interpretation and/or in case of incompleteness.

## **17. Severability**

17.1 Should any of the provisions contained in a contract of which these terms and conditions form an integral part, be or become invalid, the remaining provisions of that contract shall remain unaffected thereby. In the place of that invalid provision, the Shipyard shall agree on a provision with the Customer that corresponds to the closest possible extent to the purpose of the invalid one in a legally effective manner.