

SHIP AND BOAT BUILDERS' EMPLOYERS' ASSOCIATION

March 2012

GENERAL CONDITIONS FOR SHIP REPAIRS AND CONVERSIONS INCLUDING SLIPWAY AND DOCKING - AS WELL AS INSTALLATIONS AND REMEDY WORK ON SHIPS, BARGES, BOATS ETC. AS APPLYING FOR SHIPYARDS UNDER THE DANISH SHIP AND BOAT BUILDERS' EMPLOYERS' ASSOCIATION WITH OUR OWN CHANGES.

1. Application and Definitions

- 1.1. Unless otherwise agreed in writing, these General Conditions shall apply in their entirety and form an integral part of agreements - other than contracts for new ships - which the shipyard ("the Contractor") concludes with the orderer ("the Customer") for work on or supplies to a vessel or parts for a vessel ("the Vessel") comprised by the agreement regardless of type or use. For the sake of good order it is explicitly mentioned that these General Conditions also apply for work on and deliveries to the ship, even if it is at another place than on the shipyards area.
- 1.2. Thus, these General Conditions shall apply to any type of repairs, maintenance, installation and conversion works, inspections, overhaul and work performed under a guarantee clause - also on new-buildings constructed by the Contractor - as well as connected shipyard supplies and services, including docking, warping and laying up.
- 1.3. Besides the owner of the Vessel, the managing owner and the shipmaster, the Customer may be a business or a person authorized by any one of these, cf. also 16.1. Unless otherwise agreed in writing, by virtue of his position a supervisor shall be authorized to arrange for alterations or supplementary work with the Contractor on behalf of the Customer.

2. Commencement of Work

- 2.1. Any work will be executed in the order in which the vessels arrive at the shipyard, provided they arrive at the date agreed with the Contractor.
- 2.2. The Contractor may postpone stipulated work, including docking, if considered necessary by the Contractor due to urgent damage on other vessels or to weather and wind conditions.
- 2.3. On or before arrival, The Customer is obliged to inform the Contractor of points of construction, contents of tanks and holds, as well as any other matter or circumstance relevant to the repair and the stay at the shipyard, including docking, also comprising prevention of damage to employees, environment, vessel and/or the shipyard. The Customer is responsible for any consequence of violation of this obligation, and shall indemnify the Contractor accordingly.
- 2.4. Unless otherwise specifically agreed, the Customer guarantees that on arrival tankers are free of gas and danger of explosion.

3. Regulations and Protective Measures

- 3.1. The Contractor shall be entitled to carry out the overall coordination of protective and safety measures as well as regulations at the shipyard and on board the Vessel as long as it is at the Contractor's yard. Should the Contractor perform work on the Vessel outside the area of the Contractor's yard, the above-mentioned responsibility of coor-

dination lies with the Customer. Regardless of the above provisions, it is the Customer's duty to inform the Contractor of all relevant protective and safety regulations concerning the Vessel; and if the Customer's personnel stay on board the Vessel while the work is being performed, the Customer shall be responsible for the observance of any such regulation.

3.2. The following regulations shall apply while the Vessel remains at the Contractor's yard:

- a) While at the Contractor's yard the propeller of the Vessel may be operated only after the Contractor so directs, except when arriving and departing;
- b) Pumping of water, discharge water, oil, chemicals etc. is prohibited, and the Customer shall at all times observe the rules of the environmental legislation. The Customer shall indemnify the Contractor for any infringement in this respect which is not caused by the Contractor or his sub-contractors.;
- c) The outlets of the Vessel may not be used during docking. During this period, toilets and bath facilities for the personnel of the Vessel shall be provided for by the Contractor;
- d) The crew and the master of the Vessel shall at all times observe the Contractor's instructions as to the maintenance of good order and safety within the area of the Contractor's yard.

4. Regulations regarding the Stay at the Shipyard

- 4.1. Any work on the Vessel shall be carried out solely by the Contractor and his sub-contractors. Unless otherwise agreed in writing, the Customer shall not be entitled to have work carried out by the crew, fitters or any other person, including sub-contractors ordered by the Customer, while the Vessel remains at the shipyard. Further, the Customer shall not be entitled to make any orders by the Contractor's sub-contractors in the same period.
- 4.2. The Customer is obliged to make available special tools and qualified labor for the operation of machinery and equipment, and to carry out warping according to the Contractor's instructions, and to

do so without charge, within or outside regular working hours and at the Customer's own cost and risk without responsibility for the Contractor.

- 4.3. Bunkering and pumping of oil or water containing oil is subject to the Contractor's permission and shall be performed in keeping with his instructions. Pumping shall be understood as pumping to and from the Vessel, as well as pumping between the tanks of the Vessel or any other pumping operation aboard the Vessel. All bunkering and pumping shall be performed at the responsibility of the Customer.
- 4.4. The Contractor's order for a tug boat for the Vessel shall be regarded as made on behalf of the Customer who will be liable to pay for the cost of the tug boat.

5. Extent and Execution of the Work

- 5.1. The work shall comprise only what has been specifically agreed upon. An order shall not be binding on the Contractor until the Contractor has confirmed it without any reservations. This also applies for conversions and supplementary work.
- 5.2. If it has been agreed that the work shall conform to laws and regulations passed or adopted by public authorities or classification societies, the time of delivery and the price shall be valid only for the requirements in force at the time of the order confirmation. If the requirements are subsequently amended, the Customer shall accept such reasonable changes in time of delivery and price as will be charged by the Contractor as a consequence of the amendments.
- 5.3. The Customer shall notify the relevant authorities or classification societies and obtain from them any approval required for constructions and works, and to inform the Contractor accordingly. The Customer shall defray all expenses to classification societies and authorities.
- 5.4. The work shall be carried out in accordance with the Contractor's usual standards and practice. Drawings, illustrations or photographs serve for il-

illustration purposes only and any detail therein shall not be binding for the execution. Data on measure, weight and volume shall also be deemed approximate.

- 5.5. At the Contractor's option, sub-contractors may be employed for the execution of the work, which shall in any and all respects be regarded as part of the Contractor's performance.
- 5.6. If the required materials are not available in due time, the Contractor may claim for necessary amendments to the specification, as well as ensuing changes of delivery time, price and other agreed conditions.
- 5.7. If, during the execution of the work, it turns out that the work exceeds or deviates from what the Contractor had reason to presume when entering the agreement, the Contractor shall have the right to make such amendments regarding price, time of delivery and other agreed conditions as may within reason be considered necessary by the Contractor as a result of the amendment.
- 5.8. The Customer shall ensure that supplies ordered by him for delivery at the Vessel comply with Faroese/Danish rules and regulations valid at the time, and with any other demand from authorities or classification societies, as well as with special demands and regulations applicable to the Contractor.

6. Old Materials

- 6.1. Old materials which have been replaced by new - except from heavy machinery components, propellers, propeller shafts etc. and new surplus materials shall become the property of the Contractor free of charge, unless otherwise agreed.
- 6.2. Materials and equipment belonging to the Customer shall be removed from the Contractor's yard on the initiative and at the Customer's expense at the same time as the Vessel is handed over to the Customer. If the effects have not been removed within 30 days after delivery of the Vessel, the Customer shall have renounced his claim for the

effects, which shall become the property of the Contractor free of charge, unless otherwise agreed in writing.

7. Price

- 7.1. If the parties have not agreed upon a fixed price for the work, invoicing shall be made on a current account basis in keeping with the Contractor's usual practice.
- 7.2. If a fixed price has been agreed upon for a specified work, any work not included in the specification shall be charged in accordance with the Contractor's conditions for work carried out on a current account basis, unless otherwise agreed. Should the specified job be reduced because of the amendments, the Customer shall be credited with a prorated amount of the contract price.
- 7.3. 10% of the invoice price shall be added to the costs of materials supplied or services rendered by sub-contractors, unless such materials or services are included in the contract price.
- 7.4. The Customer shall indemnify the Contractor for any extra cost caused by delays on the part of the Customer, his employees or suppliers.

8. Delivery - Passing of Risk

- 8.1. Until delivery has been effected, the Contractor shall carry the risk for the repair work and for materials acquired for this purpose. Unless otherwise agreed the repair work is deemed to be delivered gradually as it is made onboard the vessel and equipment and material is deemed delivered when it has passed the ship's side.
- 8.2. Repairs that are not finished at the same time may be delivered successively, cf. 10.5. Equipment and materials ordered by the Customer shall be considered delivered when on board the Vessel.

9. Liability for Damage caused by the Customer

- 9.1. The Customer is liable to indemnify any loss or damage which the Vessel, the owner, the Custom-

er or any of their personnel or suppliers may cause to the Contractor, his personnel, sub-contractors or other third parties, unless the Customer can prove that the damage or the loss was not due to errors or negligence on the part of those concerned.

10. Testing

10.1. The Contractor shall be entitled to undertake such testing as he considers necessary to determine whether the order has been executed in accordance with the contract. When testing, the Contractor shall be entitled to make use of the Vessel's fuel etc. free of charge. The Contractor shall give reasonable notice to the Customer of the nature and time of such testing, and if required by the Contractor, the Customer shall be present when the testing is carried out.

10.2. During trial trips, the Customer shall carry the sole risk and responsibility for the Vessel, her machinery and equipment as well as any damage caused by the Vessel. The Customer shall also carry the risk for repair work, except for damage caused by errors or negligence on the part of the Contractor.

10.3. During trial trips, the Customer shall man the Vessel according to regulations and at no charge to the Contractor. Observing manning and safety regulations valid for the time being, the Contractor shall, however, be entitled to have his own crew operate the machinery of the Vessel.

10.4. In due time before and after testing, the Contractor's representatives shall be entitled to undertake any such examinations, measurements or observations as considered necessary for the satisfactory execution and control of the tests, and they shall have access to all details with regard to previous testing.

10.5. When the Contractor finds that the order has been executed in accordance with the contract, the Customer shall be notified accordingly, and the Contractor may require that a time be fixed for an inspection by both parties of the repair work. The Contractor shall summon the Customer at reason-

able notice and the Customer is obliged to attend the meeting.

10.6. At the delivery meeting, any defect in the work shall be entered in a record which shall be signed by both parties. Delivery shall not take place until the defects entered in the record have been remedied.

10.7. When the defects referred to in subsection 10.6. have been adequately remedied, the Customer shall be obliged to accept delivery of the Vessel. At the request of the Contractor, the Customer shall sign a final record accordingly. Similarly, subsection 5 shall apply to this meeting.

11. Time of Delivery and Delay

11.1. Unless otherwise agreed the work shall be carried out during the Contractor's regular working hours without overtime and as quickly as possible considering other engagements undertaken by the Contractor at the conclusion of the contract.

11.2. If a specific time of delivery has been agreed upon by the parties, this period will commence when

- a) the parties have agreed upon the extent and execution of the work;
- b) the Customer has made the Vessel available to the Contractor at the time and in the condition agreed by the parties;
- c) any and all steps agreed upon by the parties have been taken and
- d) advance payment, if any, has been made, or, according to agreement, security has been given. A stipulated date of delivery shall be postponed by the number of days spent on the fulfillment of the above-mentioned obligations.

11.3. Should the parties agree on any alterations or supplementary work while the work is in progress, or should the Customer fail to fulfill his obligations, the date of delivery shall be postponed by a period equivalent to the delay caused in this respect.

11.4. The agreed time or date of delivery shall be subject to conditions beyond the Contractor's control,

including, but not limited to, war, warlike events, revolt, civil commotion, legal and illegal strikes, lockouts, sabotage, fire, catastrophes, delays in the supply of parts, materials and auxiliary materials and services from sub-contractors, transport hindrances, energy supply failures, demands and regulations from authorities and classification societies, accidental damage to the Vessel as well as to parts and materials for the Vessel before delivery, Contractor's or sub-contractors' shortage of labor, as well as delay or delivery hindrance caused by flawed casting, rejecting of materials, manufacture failures, interruption of work, fire or other causes which the Contractor could not remedy by reasonable means. In such cases the Contractor shall be entitled to have the time or date of delivery postponed by as many working days as were lost due to the events in question.

11.5. In any case the Contractor shall only be liable in damages in connection with delays of work by him, which the Customer has ordered, whether or not a specific delivery time has been agreed upon, if the delay is substantial and if the Customer can prove that it is due to errors or negligence on the part of the Contractor or his employees, and the Contractor shall under no circumstances be liable to pay compensation for loss of operation, profit or time, or any other indirect loss sustained by the Customer because of delays, including remedy of defective work.

11.6. Further to the conditions laid down above it is explicitly agreed upon that the Contractor's liability for the consequences of a delay and the Customer's loss, if any, shall be limited to the payment of a fine, which shall be fixed with due regard being paid to the duration of the delay and usual demurrage or (at the Contractor's option) to the contract price, however in no event more than 5% of the contract price.

11.7. When the Contractor decides that the order has been executed in accordance with the contract, the Customer shall be notified accordingly, and the Contractor may require that a time for an inspection be fixed by both parties of the repair work. The Contractor shall summon the Customer at rea-

sonable notice and the Customer is obliged to attend the meeting.

11.8. Immediately after the meeting, the Customer shall be obliged to accept the repair work and to accept delivery of the Vessel, unless the Customer can point out and specify substantial defects in the repair work. If substantial defects exist, the Customer shall be obliged to accept the repair and to accept delivery of the Vessel when the defects have been satisfactorily remedied.

12. Defects and Remedying

12.1. In accordance with the regulations set out below the Contractor shall remedy all defects in the repair work which are due to detectable defects in the material or errors in the execution of the work.

12.2. Remedying shall comprise only defects which are discovered and notified within six months after the finishing and only when concerning work executed by the Contractor and materials supplied by the Contractor. The Contractor shall remedy defects in supplies from his sub-contractors only when such defects are proved to be due to acts or omissions of the Contractor. However, the Contractor shall assign his rights against the sub-contractor in case of defects in the sub-contractor's work or supplies to the Customer.

12.3. The same provisions shall apply to remedy work as to the original work. If remedy work (cf. 12.2) is required and less than three months remain of the six months remedying period, then the period shall be extended to cover three whole months.

12.4. When accepted in writing by the Contractor, the Customer is entitled to have the remedy work executed at another shipyard, in which case the Contractor's liability shall be limited to what the remedy work would have cost at his own shipyard.

12.5. Remedying shall not comprise compensation for costs in connection with positioning of the Vessel, shipment of materials or parts for the Vessel, or travel expenses for any person involved in the remedying, including the Contractor's personnel.

12.6. Remedying shall not comprise ordinary wear and tear, or accidents, damage, errors etc. due to incorrect usage or overloading of the Vessel. The Contractor's obligation to remedy shall also cease if the Customer disregards instructions from the Contractor or sub-contractors regarding operation, maintenance etc.

12.7. The Contractor's obligation to remedy shall not comprise damage to other parts of the repaired Vessel caused by the defect.

13. Extent of Liability

13.1. In addition to what follows of section 11 above, the Contractor shall not be liable for any damage incurred by the Customer, including damage to the Vessel and/or her equipment and/or cargo or objects whether or not these belong to the Customer or to any third party, unless it may be established that the damage is due to intentional errors or negligence on the Contractor's part.

13.2. In case of damage caused by the repair work, including materials or equipment supplied, or by the Customer's use thereof, and/or by the repaired Vessel (product damage), the Contractor shall only be held liable if personal injury is involved, and it may at the same time be established that the damage is due to errors or negligence on the part of the Contractor or his employees. Under no circumstances shall the Contractor be liable for product damage on real estate or other objects, including the repaired Vessel or part thereof. The Customer shall indemnify the Contractor for any liability towards a third party exceeding the limits provided by these conditions, and the Customer shall consent to be sued or joined in the proceedings at the same court in which claims for damages are tried against the Contractor regarding alleged product liability.

13.3. The Contractor shall under no circumstances be liable for loss of operation, profit, time or any other indirect loss (consequential damage), whether or not this is due to defects, product damage, or any

other matter of liability (in case of delay, cf. 11.5 and 11.6).

13.4. The Contractor's liability to pay damages shall in any event be limited to

DKK 20.000.000,00

writing *twenty million Danish kroner* for each claim. A series of damages which may be connected to the same circumstances shall be regarded as one case of damage.

13.5. If, in provision with these regulations, the Contractor is either free of liability or only liable to limited payment of damage, the Customer, hereunder the owners of the vessel and/or other rights holders in the vessel, shall renounce from claiming damages from any person from the shipyard, whether management, salaried or wage-earning employees, or others, and the Customer is obliged to indemnify such persons if claims for damages are made against them from a third party.

13.5. Due to increase in risk regarding hauling, launching and/or in- and out docking of vessels and regardless whether the shipyard has responsibility or not and/or regardless of cause, every expense and/or cost by the shipyard in connection with and/or due to hauling, launching and/or in- and out docking of the vessel is limited to a maximum of

DKK 2.000.000,00

to write **two million Danish kroner**. Every expense and/or cost by the shipyard above the mentioned maximum amount of **DKK 2.000.000,00** is to be paid by the Customer.

14. Complaints

14.1. Complaints regarding defects in the repair work shall always be made immediately when the defects are discovered or ought to have been discovered by due diligence. Failing that, no claim can be made for such defect.

14.2. The obligation for immediate complaint shall apply also for damage to the Vessel for which the

Customer or others wish to claim liability on the Contractor.

14.3. Objections regarding invoices shall be made no later than 30 days from the date of the invoice.

14.4. If no complaints have been made upon the finishing of the repair work, the Contractor shall be free of any responsibility, except concerning hidden flaws and latent defects which are reported within six months from the day of departure, if these could not have or ought not to have been detected earlier (cf. 12.2).

14.5. All complaints shall be specified and made in writing.

15. Insurance

15.1. The Customer shall take out proper insurance of the Vessel (the object), hull insurance as well as third party liability insurance, during her stay at the shipyard. The Contractor shall not take out any insurance for the Vessel, her crew, cargo or equipment, or for other objects owned by or at the disposal of the Customer, except at the Customer's explicit and written request, and if so at the Customer's expense. If deemed necessary, the Contractor shall, however, be entitled to take out, at the Customer's expense and subject to agreement with the Customer, additional insurance covering the Contractor's liability, if any, to the cargo.

16. Payment – Interest

16.1. Unless otherwise agreed, the owner of the Vessel shall be responsible for the payment of the total invoice of the Contractor and for any other obligation which lies with the Customer according to these provisions. If the work has been ordered by a third party, the third party shall also be responsible in this connection unless the responsibility has explicitly been renounced against the Contractor when the third party made the order.

16.2. Payment shall be effected net, in cash, upon the finishing of the work, and in any case before the Vessel leaves the shipyard.

16.3. During the execution of the work, the Contractor shall be entitled to claim payment on account for work performed, up to 80% of the estimated sum total of the invoice, comprising a.o. wages, materials, contribution margin, dock, rent of slipway and machinery, as well as value of supplies from sub-contractors.

16.4. If payment is not effected when due, the Customer shall pay interest from the due date at the rate of interest on overdue payments laid down in the Danish Interest Rate Act.

16.5. The Customer shall not be entitled to delay or withhold payment of any part of the invoice on the plea of counterclaims.

16.6. Claims payable at the date of the demand shall be settled by the Customer no later than 14 calendar days from receipt of the claim from the Contractor. If the Customer fails to do so, the Contractor shall be entitled to cancel the agreement and/or to claim damages according to the general principle of Faroese law.

17. The Contractor's Lien

17.1. The Contractor shall have a lien upon the Vessel and equipment for all claims against the Customer and the owner of the vessel, regardless of who ordered the work.

17.2. If the invoice of the Contractor is not paid, the owner of the Vessel and/or other rightful owners can only terminate the lien by

a) paying on account to the Contractor an amount equivalent to 80% of the Contractor's claim; and

b) making a deposit or having a Faroese bank, Faroese savings bank or Faroese insurance company guarantee payment of an amount covering the remainder of the claim plus two years' interest and costs, in both cases on terms accepted by the Contractor; and

- c) entitling the Contractor to satisfaction of his claim by the abovementioned deposit or guarantee, if legal action contesting the Contractor's claim has not been taken within three months from the day when payment should have been effected, and if the case is not duly proceeded with.

18. Arbitration

- 18.1. Any dispute between the parties regarding a matter arising from an agreement governed by the above provisions shall be settled according to Faroese Law at the Faroese Court as the court of first instance.
- 18.2. The Contractor shall, however, be entitled to bring actions before the ordinary courts of law in the country in which the Customer has his place of business or in the country in which the Vessel may be, for the purpose of obtaining a binding judgment for the recovery of the Contractor's claim.
- 18.3. For disputes regarding product liability relating to claims from any third party, special jurisdictional provisions shall apply, cf. 13.2.