

GENERAL CONDITIONS FOR SHIP REPAIRS AND CONVERSIONS

of June 1961, as subsequently amended (most recently in November 2000)*.

1.

Application and Definitions

1. Unless otherwise agreed in writing, these General Conditions shall apply in their entirety and constitute an integral part of agreements - other than contracts for new ships - which the shipyard ("the Contractor") concludes with the orderer ("the Customer") for work related to or supplies for a vessel comprised, by the agreement or parts for a vessel ("the Vessel") regardless of type or use.
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 in respect of newbuildings constructed by the Contractor - together with the pertinent shipyard supplies and services, including, but not by way of limitation, docking, hauling and laying up.
3. Apart from the owner of the vessel ("the Owner") himself, the acting shipowner or the master of the vessel, the Customer may be any other business or individual appointed by special authorization by any one of these. Unless otherwise agreed in writing, a supervisor shall be deemed to be authorized by virtue of his position to order alterations and extras.
7. If the materials specified cannot be procured in due time, either party shall be entitled to claim that a further agreement be made specifying the necessary alterations of the specifications.
8. The Contractor alone shall be responsible for co-ordinating protective and safety measures, as well as regulations within the area of the Contractor's yard. Should the Contractor perform work on the vessel outside the area of the Contractor's yard, responsibility for the above mentioned co-ordination shall devolve upon the Customer.
9. The Contractor's personnel and business invitees shall observe the public and local protective and safety measures as well as their regulations and observe the instructions issued by the Contractor. The Customer shall instruct his personnel and business invitees with respect to the above mentioned regulations and instructions, and is responsible towards the Contractor for their due observance.
10. Apart from the crew, the Customer shall not be entitled to employ any workers other than those of the Contractor, unless the latter has granted its special permission. However, in any event the Contractor shall be given a written account of the nature, scope and time indication of the work which the Customer wishes the crew to execute. However, the crew is not allowed to carry out any work requiring docking or hauling up on a slip.

2.

Scope and Execution of the Work

1. No work is to be carried out unless specified in writing. No order shall be binding on the Contractor unless confirmed in writing by it without any reservations as to subject unsold. This also applies to alterations and extras.
2. If it has been agreed that the work is to conform to laws and regulations passed or adopted by public authorities or classification societies, the time agreed upon for delivery and the price shall apply only to the requirements ruling at the time of the order confirmation. If such requirements are amended, Clause 3(4) and Clause 6(2) shall apply.
3. The Customer shall notify the pertinent authorities as required to ensure that the work is carried out in keeping with the rules and regulations of such authorities. Routine summoning of surveyors representing classification societies and public authorities for the supervision of tank tests, inspection of machinery, etc. is not comprised by this provision, however. The Customer shall defray all expenses in connection with such classification societies and authorities.
4. The work shall be carried out in accordance with the Contractor's usual practice. However, the Contractor shall comply with any reasonable requests made by the Customer in respect of materials and the execution of the work to the extent to which such requests fall within the scope of the agreed work. Drawings, illustrations or photos serve for illustration purposes only and shall not be binding in detail with respect to execution. Moreover, data relating to measurements, weights and volumes shall be deemed to be approximate.
5. The Contractor shall carry out the work competently and use good materials.
6. At the Contractor's option, sub-contractors may be employed for the execution of the work.
11. The Customer shall ensure that supplies ordered by him for delivery within the area of the Contractor's yard comply with Danish rules and regulations from time to time in force, and furthermore any special demands and regulations applicable to the Contractor's yard.
12. Bunkering and pumping of oil or water containing oil is subject to the Contractor's permission and shall be performed in keeping with the Contractor's instructions in this respect. Pumping shall be understood as pumping to and from the vessel, as well as pumping between the vessel's tanks or any other pumping operation aboard the vessel.
13. All bunkering and pumping shall be performed at the responsibility of the Customer. Unless other liability follows from legal provisions or a convention, the Customer shall indemnify the Contractor for any damage and costs in connection with oil and chemical leakages from the vessel, where acts have been performed in contravention of the Contractor's instructions or where the Customer or his personnel have acted negligently in other respects.
14. Cleaning the vessel's tanks using chemicals, emulsifying agents or in any other way within the area of the Contractor's yard is subject to the Contractor's approval.
15. Work involving paints, including (but not by way of limitation) sand blasting and any other type of surface treatment or treatment using other materials which are subject to special public environmental requirements may only be performed by the Contractor or its sub-contractors within the area of the Contractor's yard.

3.

Delivery time

1. Unless otherwise agreed, the work shall be carried out within the Contractor's regular working hours, without working overtime, and

* Previously issued as "GENERAL CONDITIONS FOR SHIP REPAIRS AND CONVERSIONS, of June 1961, drawn up by The Association of Danish Shipbuilders (Foreningen af Jernskibs- og Maskinbyggerier i Danmark)."

as quickly as possible, due regard being paid to other commitments already entered into by the Contractor on conclusion of the contract. (cf. also Clause 4).

2. If a fixed period of time has been stipulated for delivery, this period shall not commence until the day on which the parties have agreed upon the scope and execution of the work, and until any stipulated payment in advance (or guarantee) has been made or issued, as the case may be.
3. The Customer shall ensure that the vessel is available, to the Contractor at the time, place and in the condition agreed upon between the parties, and such that the work can be commenced immediately upon agreed delivery from the Customer and can proceed uninterrupted until completion. The period stipulated for delivery shall not begin to run until the Customer has discharged the above-mentioned obligations, and should delays of the above-mentioned nature occur during the execution of the work, the Contractor shall be entitled to suspend the work until such obligations have been discharged. In that event, the period stipulated for delivery shall be extended by the same number of days as the delay.
4. Should the parties agree on any alterations or extras while the work is in progress, the period stipulated for delivery shall be extended or postponed to a later date, as the case may be, by the period required for the preparation and execution of these works.
5. The agreed time of delivery shall be subject to the usual force majeure clause. Force majeure shall be deemed to exist if, after the conclusion of the contract, delivery is prevented or delayed owing to circumstances or events which the Contractor could not reasonably be expected to anticipate on the conclusion of the contract, including - but not limited to - such unforeseeable events in or outside Denmark as war or warlike events, military call-up, mobilization, civil commotion, strike, lockout, compulsory shortening of working hours, prohibition of import or export, delay in the delivery of parts, materials, auxiliary materials, goods supplied or services rendered by sub-contractors, transport hindrances, energy supply failures, removal of undisclosed asbestos materials or other like materials in order to meet requirements set up by public authorities, accidental damage to the vessel and parts and materials thereof before delivery, the Contractor's or subcontractors' shortage of labour, natural disasters, hindrances caused by ice, storm or other events or results of events beyond the Contractor's control. Force majeure shall moreover be deemed to include delays or any delivery holdup in consequence of defective castings, scrapping of materials, manufacturing mishaps, irregularities of operation, interruptions, fire or any other causes which the Contractor could not remedy by any reasonable means.
6. In case of force majeure, the Contractor shall be entitled to claim extension of the delivery time by the same number of days as were lost owing to the event in question.
7. The right to claim extension of the period stipulated for delivery is acquired even if the event causing the delay in delivery does not occur until the stipulated period has been exceeded. Such extension, however, does not rule out liability for such delay in delivery as may have taken place before the occurrence of the subsequent event.
8. If a fixed date of delivery has been agreed upon, the above conditions shall apply *mutatis mutandis*.
9. Where circumstances occur which, in the Contractor's opinion, will cause a delay in delivery, the Contractor shall notify the Customer hereof without delay, stating the cause of the delay and whether, in Contractor's opinion, the delay is attributable to force majeure. As far as it is practicable, the Contractor shall also state the probable duration of the delay. The provisions contained in this sub-clause shall also apply in the event that no fixed time for delivery or delivery date has been agreed upon.
10. If any person or persons in the Customer's service assist in the execution of the work, the Contractor shall not be responsible for any delay caused by any such person or persons, whether directly or indirectly.
11. If a contract stipulates a specific time of delivery or a fixed date of delivery and no agreement has been made as to the consequences of delay, the Contractor's liability for such consequences and any loss

sustained by the Customer shall be limited to the payment of a penalty to be fixed with due regard being paid to the duration of the delay and the amount of the contract price, however in no event more than 5 % of the contract price.

4.

Docking

Docking agreements shall be subject to the proviso that the dock has not become occupied by any other absolutely necessary docking in the interim period. The Contractor shall be entitled to give priority of docking to disabled vessels in distress.

These provisions shall also apply to vessels to be hauled up on a slip

5.

Old materials

1. Unless otherwise agreed, all materials replaced in the course of repairs - with the exception of heavy machinery parts, propellers, propeller shafts, etc. - as well as new surplus materials - shall become the Contractor's property, free of charge.
2. Materials and equipment that are the property of the Customer shall be removed from the area of the Contractor's yard at the same time as the vessel is handed over to the Customer. Such removal shall be made at the initiative and for the expense of the Customer. Should these objects not be removed 30 days at the latest after handing over of the vessel, the Customer shall be deemed to have renounced his rights to the objects, which shall become the property of the Contractor free of charge, unless otherwise agreed.

6.

Price

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 usage.
2. Unless otherwise agreed, if a price has been agreed upon for a specific job, any work not included in the specification shall be charged for in accordance with the Contractor's usual rules for work carried out on a current account basis. Should the specified job be reduced in consequence of any alterations, the Customer shall be credited with a pro-rated amount of the contract price.
3. A supplement in accordance with the Contractor's usual rules 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.
4. The Customer shall indemnify the Contractor for any extra costs accruing as a result of delays attributable to the Customer, his personnel or suppliers.

7.

Payment

Unless otherwise agreed in writing, the following provisions shall apply:

1. During the execution of the work, the Contractor shall be entitled to claim payment on account of an amount covering approx. 75% of the value of the work performed up to the time in question, estimated without commitment. The balance is payable when the vessel is handed over to the Customer.
2. The Contractor shall be entitled to refuse to release the vessel until payment has been made. In the event of a dispute as to the amount payable, the Customer shall be entitled to demand an adequate banker's guarantee or other security for the amount in dispute against payment to the Contractor of the amount claimed. In that event, the Contractor cannot refuse delivery of the vessel. If the Contractor refuses to furnish a guarantee for the part of the invoice in dispute, the Customer shall be entitled to claim release of the vessel against payment of the amount on which the parties agree and an adequate banker's guarantee or other security for the payment of the part of the invoice in dispute. The guarantee furnished by the Customer shall be submitted to the Contractor for approval. When the guarantee has been furnished, the Customer shall initiate arbitration within three months of the issuance of the guarantee. If the Customer fails to do so, the amount of the guarantee shall be released for the benefit of the Contractor; if the guarantee has been furnished by the Contractor, he may claim that the Customer covers

the incidental costs. If the Customer brings an action, the arbitral tribunal shall decide on the allocation of costs between the parties.

3. Disputes in respect of counterclaims which are not recognized by the Contractor shall be settled in accordance with the provision of Clause 7(2) hereof.
4. The due date for payment for work carried out according to a quotation accepted by the Customer shall be the date on which the vessel is handed over to the Customer. The due date for payment shall be the 15th day following the date of the invoice for work carried out on a current account basis.
5. If payment is not made on the due date, interest is chargeable as from that date and until payment is made at a rate equal to the penal interest from time to time in force according to the Danish Interest Rate Act.
6. If the Customer fails to settle accounts within 14 calendar days after a claim in that respect has been made by the Contractor, the Contractor may terminate the agreement and claim compensation according to the general rules of Danish law, provided that such accounts were outstanding as of the date on which the claim for payment was made.

8.

Handing over; Passing of Risk

Unless otherwise agreed, the following provisions shall apply:

1. The vessel shall be handed over moored and be fetched by the Customer without any charge for the Contractor at the Contractor's quay, in the dock of the Contractor's yard, or at a quay used by the Contractor.
2. Except as provided for in Clause 9(2), until the vessel is handed over to the Customer, the Contractor shall bear the risk for the repair work and for materials purchased therefor. If repair jobs agreed upon separately are not finished at the same time, the Contractor may hand them over successively.
3. The question of title to the repair work and/or materials purchased therefor shall be settled in accordance with the general principles of Danish law in this respect.

9.

Testing

1. The Contractor shall be entitled to undertake such testing as he deems necessary to determine whether the order has been executed in accordance with the contract. The Contractor is entitled to make use of the vessel's fuel, etc. free of charge for testing purposes. The Contractor shall give the Customer reasonable notice of the nature and time of such testing, and - if the Contractor so requests - the Customer shall be represented when such testing is made.
2. During trial trips, the Customer shall bear the sole risk and responsibility for the vessel, its machinery, equipment and any damage caused by the vessel. Moreover, the Customer bears the risk for repair work, except damage thereto, which is caused by errors or negligence on the part of the Contractor.
3. During trial trips, the Customer shall man the vessel according to rules and regulations, free of charge for the Contractor. However, the Contractor shall be entitled to have his own crew operate the machinery.
4. The Contractor's representatives shall be entitled to undertake any such examinations, measurements or observations on board the vessel in due time before and after testing as the Contractor deems necessary for the satisfactory execution and control of the tests. In addition, such representatives shall have access to all details regarding previous testing.
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 then claim that a time be fixed for an inspection by both parties of the repair work. The Contractor shall give the Customer a reasonable term of notice, and the Customer is obliged to attend the meeting.

6. At the handing-over meeting, a note shall be made in a minute book of any defects in the work, such minute book to be signed by both parties. Handing over shall not take place until the defects stated in the minute book have been remedied.
7. When the defects referred to in sub-clause 6 above have been adequately remedied, the Customer is obliged to accept the repair work and accept handing over of the vessel. At the request of the Contractor, the Customer shall sign a final protocol of delivery and acceptance in this respect. The provisions in sub-clause (5) above shall apply mutatis mutandis to this meeting.

10.

Drawings, etc.

Drawings, patterns, data on weights and volumes, information regarding prices, etc. prepared or procured by the Contractor shall be the property of the Contractor. The Customer may not use this material to the prejudice of the Contractor's interests. This shall also apply to drawings, etc. supplied under the contract. The Contractor may not make the Customer's drawings, patterns, etc. available to any third party without the Customer's consent.

11.

Remedying

1. Subject to the provisions set out below, the Contractor shall remedy any defects in the repair work that are due to demonstrable faults in material, workmanship or the design.
2. Remedying comprises only defects ascertained and reported within six months after handing-over day, and in such event only work executed by the Contractor and materials supplied by the Contractor or his sub-contractors (including, but not limited to, designs prepared by the Contractor or procured by him or from any person or enterprise other than the Customer or his advisers).
3. In the event that the Contractor makes replacement of, or performs repairs to sections of the order, a new remedying period shall commence for such part, subject to the provisions in sub-clause (2) above. This provision shall not apply to the other parts of the order, in respect of which the remedying period is only extended by the period in which the vessel could not be used as a result of the defects referred to in sub-clause (1) above. However, the obligation to repair shall not apply to any part of (or the entire) repair work in excess of 12 months as from the commencement of the original remedying period.
4. The same remedying obligation shall apply to individual parts in or materials for the repair work not manufactured by the Contractor as for the Contractor's own services. To the extent to which a more extensive remedying obligation exists for sub-contractors, the Contractor may assign his rights vis-à-vis the sub-contractor to the Customer.
5. Where the Contractor receives a complaint in due time from the Customer, cf. Clause 14, about a defect comprised by the remedying obligation, the Contractor shall - free of charge and without delay - arrange for repair or replacement of the materials in question or for the execution of the work required to remedy the defect. For this purpose, the Customer must make the vessel or the part thereof to be remedied freely available to the Contractor in the period of time required for the remedying job.
6. In consultation with the Contractor, the Customer shall be entitled to have the remedying work carried out at another yard. If so, the Contractor's liability shall be limited to the price of the remedying job as executed at his own yard, and it may not in any way exceed the actual direct cost.
7. When the Contractor replaces defective parts, the original parts shall become the Contractor's property, free of charge.
8. Remedying does not comprise ordinary wear and tear, nor accidents, damage, errors or the like that are the result of incorrect handling or overloading of the vessel. The remedying obligation shall moreover cease to apply if the Customer disregards the instructions of the Contractor or his sub-contractors with regard to operation, maintenance, etc.
9. The same provisions shall apply to remedying jobs as to the original work, except with respect to what follows from Clause 11(3).

12.

Scope of Liability

1. In addition to what follows from Clause 11 above, the Contractor shall not be liable for any damage occurring at the Customer's, including, but not limited to, damage to the vessel and/or her equipment and/or cargo or objects on board the vessel, regardless of whether they belong to the Customer or any third party, unless it is substantiated that the damage is attributable to negligence on the part of the Contractor, or has even been wilfully done.
2. It is expressly agreed and understood that the Contractor shall assume no liability for compensation whatsoever in respect of loss of profit, loss of time, trading loss or any other kind of consequential loss.
3. Thus, the liability which the Contractor may incur shall be limited to DKK 15,000,000 (in words, fifteen million Danish kroner) in respect of each instance of damage. A series of accidents arising out of the same fault or act of negligence shall for this purpose constitute one single event of damage.
4. If necessary, the Customer shall defer to a claim for compensation for damage to the property of a third party.
5. To the extent to which the Contractor might be held liable in connection with the use to which the Customer might put the repair work and/or the vessel repaired, the Customer shall indemnify the Contractor for any liability which the Contractor might incur and which exceeds the limit agreed upon hereinbefore. The Customer is obliged to let himself be sued before the same court which deals with the claim for compensation against the Contractor concerning the repair work in question.

13.

Insurance

The Customer shall keep the vessel (the subject matter of the contract) adequately insured, hull insurance as well as third-party liability insurance during her stay at the Contractor's yard. The Contractor shall not take out any insurance covering the vessel, her crew, cargo or equipment on board or any other objects whatsoever owned by, or at the disposal of the Customer, except at the Customer's express request in writing, and in such event for the Customer's account. Under special circumstances, however, the Contractor reserves the right to take out, for the Customer's account and subject to agreement with the Customer, an additional insurance covering the Contractor's liability, if any, for damage to cargo on board the vessel.

14.

Complaints

1. Complaints regarding materials or work which, in the Customer's opinion, does not conform to the contract, shall always be made immediately upon discovery of the defect.
2. The Customer's failure to do so before the vessel is delivered by the Contractor shall have the effect of releasing the Contractor from any liability whatsoever in respect of the work performed, provided always, however, that claims in respect of latent defects in materials or workmanship which the Customer could not, or ought not to have discovered prior to delivery, must be made within three months of delivery, cf. also Clause 12.
3. Complaints relating to invoices shall be made not later than 15 days after the date of the invoice.
4. All complaints shall be made in writing and be accompanied by specifications.

15.

Arbitration

1. Any dispute or controversy between the parties regarding a matter arising out of or in connection with an agreement governed by the provisions hereof shall be settled according to Danish law in Copenhagen, which city shall be adopted as the legal venue. The disputes shall be settled with final effect by an arbitral tribunal composed of three members, of whom either party shall select one. Prior to commencement of proceedings, the two arbitrators selected by the parties shall appoint the third arbitrator to conduct proceedings as the umpire of the arbitral tribunal. If the two arbitrators selected by the parties shall be unable to select the third arbitrator, the parties shall consent to the selection of the third arbitrator by the President of the Maritime and Commercial Court of Copenhagen. The arbitrators selected by the parties shall be appointed within 14 days of one of the parties having filed the demand for arbitration with the other party.

If either party fails to appoint his arbitrator, the latter shall be appointed by the President of the Maritime and Commercial Court of Copenhagen.

2. In other respects, the provisions of existing Danish law on arbitration shall apply.
3. 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 might be with a view to obtaining a nonappealable decision to enforce the Contractor's demand.