

# General Terms and Conditions for Dock Work and Repairs (as at 2014)

## Theodor Buschmann GmbH & Co. KG

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These General Terms and Conditions apply to the performance of ship repairs, ship conversions, work on equipment or parts of ships and any kind of dock work, work on slipways or patent slips. They form an integral part of all quotations and contracts of the shipyard for deliveries and services and shall apply to any current or future business relationship. Agreements deviating from these General Terms and Conditions, including but not limited to contradictory terms and conditions of the customer, and side agreements shall only become an integral part of the contract upon the shipyard consenting expressly and in writing to its inclusion.

### 1. Offer and Conclusion of Contract

- 1.1 Our quotations and cost estimates are not binding. They shall only include such deliveries and services that are explicitly specified therein.
- 1.2 Contracts are only deemed to have been concluded once we have accepted in writing the work or purchase orders placed with us, have confirmed in writing letters of acceptance sent to us, or have delivered the items or performed the services ordered by the customer. This shall apply *mutatis mutandis* to all amendments to or alterations of contracts.
- 1.3 If the contract does not come about for reasons for which we are not responsible, we are entitled to charge any cost estimates prepared and project work performed at the customer's request at customary and reasonable prices.

### 2. Scope of Performance, Deliveries and Services

- 2.1 In cases of doubt regarding the scope of performance, the content of our written confirmation of the contract and the documents specified therein shall govern. Additional expenses due to errors in drawings and other documents or information provided by the customer shall be borne by the customer.
- 2.2 All data provided by us to the customer and our documents forming the basis of the contract (such as drawings, illustrations, details of measurements and weights or technical descriptions) contain approximate descriptions only as customary in shipbuilding. We reserve the right to implement minor changes (such as alterations of design, form, or color).
- 2.3 The customer must provide us with binding drawings (such as the docking plan) in a timely manner prior to the arrival of the ship in our shipyard.
- 2.4 The scope of repairs and their expediency shall be determined exclusively by the customer. If there are statements provided by a classification society or its agents or by the customer's agents, we are entitled to base our work on the content of these statements; we will not review the substantive correctness of any such statements. Likewise, we are not obligated to examine the ship or the object of our performance for the purpose of identifying latent defects.
- 2.5 We are entitled to have third parties execute all or part of the work assigned to us. Partial deliveries and the partial performance of services shall be permitted.

### 3. Documents

- 3.1 We reserve all proprietary rights, copyrights and other industrial property rights in our documents. All documents must be treated as strictly confidential. Unless authorized in writing by us, above documents may not be used for any other purpose but the fulfillment of the respective contracts entered into with us; they may, in particular, not be reproduced or disclosed to third parties. Upon our request, they must be returned to us without delay. This non-disclosure obligation shall remain in effect beyond the termination of our business relationship.
- 3.2 If we use plans, documents and information provided by the customer for the performance of our services, the customer must indemnify and hold us harmless against any claims from third parties based on violations of copyrights, patents and other industrial property rights of third parties resulting from the utilization of such plans, documents or information provided by the customer.

### 4. Customer's Authorized Representatives, Crew

- 4.1 The customer shall inform us in writing no later than upon arrival of the ship or delivery of the object of performance which person or persons other than the master or the agent acting as the customer's representative shall be authorized to make and receive legally binding declarations to and from us and enter into agreements with us.
- 4.2 The customer must ensure that its representatives, the crew or any person present at the shipyard on its behalf are in possession of the required residence permit (visa), and are properly insured and licensed. This shall also include the customer's obligation to carry the tax burden resulting from the presence of any such person. The presence of these persons at the shipyard shall be at the risk and sole responsibility of the customer.

### 5. Size, Weight and Nationality of the Vessel

- 5.1 The measurements provided in the "Register of Ships" kept by the Lloyd's Register of Shipping or, in case of doubt, those stated in the International Tonnage Certificate shall be applicable with regard to the dimensions and determination of the cubic meter capacity of a ship.
- 5.2 In case of doubt, the nationality shall be determined by reference to the flag the ship was flying at the conclusion of contract.
- 5.3 The ship's condition required for docking (trim and weight) must be coordinated in advance with us and effected by the customer. The provisions under paragraph 15.2 hereof shall remain unaffected.

### 6. Prices

- 6.1 All prices are net in euros (EUR) ex our shipyard (ex works pursuant to Incoterms © 2000) plus, where applicable, value-added tax in the statutory amount in force and effect from time to time. Any additional costs for services performed at the customer's request outside regular or collectively agreed working hours shall be borne by the customer.

- 6.2 Remuneration of tugboats, warping crews and pilotmen are not included in our prices. We will provide or procure tugboats, warping crews and pilotmen upon request against a special fee, but without assuming any responsibility – except as provided in paragraph 15.4 – for the referral of, or for any risks involved in, warping, tugging and towing the vessel. Paragraph 9.2. shall apply in addition. The provisions set forth above shall apply accordingly to any lock and port dues or any other transport costs. The Costs for certificates attesting the gas-free condition, for any necessary degasifying of tanks, bilges, etc. as well as for disinfections are not included in our prices and will be charged separately. This shall apply accordingly to the initial filling and refills of lubricating and hydraulic oil as well as other materials and consumables.
- 6.3 In the event of cost increases (for wages, energy, taxes, materials) occurring between the conclusion of contract and the time of performance, and provided that this period exceeds four (4) months, we shall, at our reasonable discretion, be entitled to charge a price that has been adjusted accordingly but is not to exceed our prices generally in force at the time of performance.
- 6.4 The docking fees shall be charged by us at our prices valid from time to time. We reserve the right to agree upon special terms, for the docking of ships having suffered average, carrying cargo or of a special design.
- 6.5 In the event performance of the contract by us becomes entirely or partially impossible for reasons beyond our control, the customer shall owe the pro rata share of the remuneration for delivered items and services performed so far.

### 7. Payments

- 7.1 All payment claims are due and payable immediately upon receipt of our invoice/request for payment and payments must be made without delay to any of our accounts specified in the invoice/request for payment.
- 7.2 We may also issue an invoice or invoices for partial work prior to the completion of our overall performance, which shall reflect the progress of work until then.
- 7.3 We are entitled to interest at 5 % p.a. from the date payment is due and at 8 percentage points above the then applicable base rate from the date of default. We may claim further damages on the grounds of default. The customer must reimburse us for costs and legal fees as well as for the costs of litigation or arbitration proceedings, as applicable, that we incur in order to enforce claims from any payable invoice after default has occurred.
- 7.4 We shall not accept bills of exchange unless they are discountable. Amounts paid by bills of exchange or checks shall be credited to the customer's account only when and on condition that we can dispose of the countervalue without reservations. Any costs incurred by us must be reimbursed to us by the customer.
- 7.5 The ship or the object of our performance will be returned to the customer only upon full payment by the customer of all amounts due until then under the contract. If the return of the ship or of the object of our performance is delayed on the grounds of default of payment by the customer, all demurrage and other costs related to the failed return shall be at the customer's expense.

### 8. Time Limits and Dates

- 8.1 Time limits and dates shall be binding on us only if their binding nature has been expressly agreed in writing in the individual contract. Otherwise, any dates given are estimates only. The time limits and dates that are appropriate considering the nature and extent of performance, difficulty of the task, etc. shall apply as estimated by us. Agreed time limits and dates are based on working hours according to collective agreements applicable to shipyards.
- 8.2 Prerequisite for the timely delivery or performance of services – also in cases where a delivery period/date has been agreed upon – is the complete and timely fulfillment of all of the customer's responsibilities and obligations of cooperation such as (i) the timely delivery of documents, information or permits, (ii) the timely provision of the ship in a condition allowing the performance of work on her, and the clarification of all commercial (including price agreements) and technical questions, and (iii) receipt by us of all payments that are due. Agreed time limits and dates shall be extended by any delay in the receipt of due payments even in cases where we have not asserted the right of retention or the right to refuse performance, and any delay due to the failure of the customer to fulfill its responsibilities and obligations of cooperation and any other matters agreed in the contract.
- 8.3 Subsequent changes of or supplements to the scope of deliveries and services shall extend the time limits and dates in accordance with the additional time required therefore. This shall also apply to unforeseen conditions and obligations imposed by the classification society and/or authorities.
- 8.4 Any occurrence of force majeure or of other circumstances beyond our control, such as labor disputes, machine breakdown, bottlenecks in the raw material supply, acts of governments, insolvency of a subcontractor or supplier or their filing for insolvency, and interruptions of traffic, regardless of whether they affect us or our suppliers, shall release us from our 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 include measures taken in pursuance of the International Code for the Security of Ships and of Port Facilities ("ISPS-Code").
- 8.5 If the completion of the ship or of the object of performance by the shipyard is delayed, the customer may, if it has suffered a proven damage, and notwithstanding its right to rescind the contract in accordance with the statutory requirements for such rescission, claim without rescinding the contract compensation for such delay in the amount of 0.5% of the contract price per full week of delay with a maximum of 5% of the contract price to the exclusion of any further claim for damages and any further rights. This limitation shall not apply if the delay is due to serious default (wilful misconduct or gross negligence) or the violation of other essential contractual obligations.

## 9. Provision / Removal of the Ship or the Object of Performance / Warping

- 9.1 The customer must deliver the ship or the object of performance to us in a condition that allows the performance of work thereon, in particular gas free, cleaned, without hazardous cargo (goods, materials, etc.) and in accordance with all applicable safety requirements, at the agreed place (dock/slipway/pier) and at the agreed time in a manner to allow immediate commencement of the works. Upon completion of the work, the customer must remove the ship from, or pick up the object of performance at, the place of performance. If customer does not provide the ship or the object of performance in a condition allowing the performance of work thereon, or not at the agreed time, we are entitled to refuse taking delivery of the ship or of the object of performance and/or to charge the costs incurred thereby to the customer.
- 9.2 Subject to paragraph 15.4 hereof, tugging and warping of a ship shall be exclusively done at the customer's responsibility, cost and risk – also during the period of deliveries and services provided by us – and even in cases where we provide, procure or charge the equipment and/or workers for this purpose. In the event we provide or procure tugboats and warping crews or if we dock the ship for the customer, this shall always be done on behalf, at the risk and at the expense of the customer. Tugboat crews, pilotmen and warping crews are neither agents employed by us in the performance of our obligations nor our vicarious agents.

## 10. Acceptance

- 10.1 The customer must take receipt of or accept the performance in any event upon the completion thereof, but no later than immediately upon our request. Receipt/acceptance shall be deemed to have occurred at the latest upon the customer using the ship or the object of performance.
- 10.2 Upon acceptance, the customer must remove the ship/the object of performance without delay. In the event the customer does not comply with our request to remove the ship on time despite having been sent a reminder setting an appropriate time limit and warning of these consequences, we are entitled to have the ship removed and relocated on behalf, at the risk and at the expense of the customer and to order warping crews, tugboats and pilotmen for this purpose. Paragraph 9.2 shall apply in addition.
- 10.3 If the customer does not accept the performance within the time allowed despite having been sent a reminder setting an appropriate time limit, we are entitled to rescind the contract and to claim damages at our option either in the form of compensation of the loss actually suffered or – without furnishing proof of loss – in the amount of 5% of the agreed contract price. The customer shall retain in particular the right to prove that we did not suffer any loss at all or suffered only a significantly lower loss.
- 10.4 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 for the implementation of testing or of the trial run. For the duration of testing or of the trial run, the customer shall assume the nautical responsibility, the risk of errors in operation by the ship's crew or other agents employed in the performance of the customer's obligation, as well as the risk of accidental loss or accidental deterioration of the ship or the object of performance.

## 11. Assignment / Set-off / Retention and Lien

- 11.1 The customer is not entitled to assign any claims or rights it may have against us to third parties without our prior written consent.
- 11.2 The customer may only set-off such claims against our claims as are uncontested or have been established as final and binding and no longer subject to ordinary legal remedies.
- 11.3 The customer may assert a right of retention only to the extent its claim is based on the same contractual relationship.
- 11.4 Notwithstanding any statutory lien, the client shall grant us a contractual lien to the ship or the object of performance for our receivables under each contract based on these terms and conditions.

## 12. Place of Performance and Passing of Risk

- 12.1 The place of performance for our deliveries and services shall be our shipyard or any other of our affiliated shipyards unless another place of performance has been agreed upon in any individual contract. If we provide deliveries to EU Member States, the customer must provide its VAT identification number as well as all other information required for the management of the contract (among others the confirmation regarding transportation and final destination) without delay.
- 12.2 Subject to the provisions of paragraph 10.4 hereof, the risk of accidental loss or accidental deterioration of the performance shall pass to the customer upon acceptance. Should the performance be handed over prior to acceptance (e.g. for the purpose of a trial run), the risk of accidental loss or accidental deterioration shall pass to the customer at that time. Should the acceptance be delayed for reasons for which the customer is responsible, the risk of accidental loss and accidental deterioration of the performance shall pass to customer on the day on which notice of readiness for acceptance is made to the customer.
- 12.3 An insurance against damage to or loss of goods in transit, breakage or other risks will be taken out by us for the customer only upon the customer's express request and on its behalf and its expenses, with us being included in the insurance policy as a co-insured party.
- 12.4 We are not responsible for any damage not caused by us or the agents employed by us in the performance of our obligations, regardless of the time when the damage occurs, unless any of the events mentioned in paragraph 15.4 hereof has occurred.

## 13. Reservation of Title

- 13.1 We reserve title to goods delivered and/or installed by us ("Conditional Goods") until full satisfaction of all claims to which we are 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 legal basis thereof, that have arisen or existed at the time of conclusion of contract, or will arise in the future.
- 13.2 The customer is 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 us promptly in writing about any attachment or seizure of property, or any other disposal by third parties.

- 13.3 Any processing or refashioning of Conditional Goods shall be done by the customer exclusively on our behalf. In cases where the customer combines or mixes Conditional Goods with other goods which are not our property, we shall acquire co-ownership in the new product in the 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 us 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. If the Conditional Goods are sold by the customer with other goods not belonging to us, regardless of whether without or after processing, above claims shall be deemed to have been assigned to us in the amount of the invoice value of the Conditional Goods. Above assignment shall not constitute a deferral of our claim for payment against the customer.
- 13.5 The customer shall retain its right to collect claims assigned to us despite such assignment. Our authority to collect the claims ourselves is not 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, we will not collect such claims. If any of such events has occurred, the customer shall promptly notify us in writing about the claims assigned and the debtors of such claims, shall provide us with the necessary information and documents for collection of the claims, and shall inform the various debtors of the assignment of the claims to us 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 us.
- 13.7 Upon the customer's request, we shall reassign to the customer our title to the Conditional Goods and the claims assigned to us to such extent as the value of such collateral exceeds the value of all claims we have against the customer by more than 20 percent.

## 14. Defects

- 14.1 The customer must notify us of any defect in writing immediately upon its discovery. Subject to paragraph 15.4 hereof, we are not liable for the aggravation of defects occurring due to late notice of defects.
- 14.2 The customer must first provide us the opportunity to rectify the defect within reasonable time, which, at our choice, may be through elimination of the defect, the delivery of an item free from defects, or the production of a new item.
- 14.3 The ship or the object of performance must be made available to us for the purpose of rectification of defects at the place of performance specified in paragraph 12.1 hereof. If this is economically inefficient, the customer may have the work done by another shipyard ("Third-Party Shipyard"); provided that the customer notifies us in a timely manner, i.e. prior to the commencement of the work, has given us the opportunity to inspect the defect, and observes our directives for the purpose of limiting the costs. In this case, we 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 paragraph 12.1 hereof, shall be excluded.
- 14.5 In cases of notified defects, we are 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 us or the customer, or if rectification is associated with disproportionate costs/time/effort and is, for this reason, refused by us, 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 Upon our request, the property of replaced parts shall pass to us.
- 14.8. Unless agreed otherwise with the customer in individual cases, all claims of the customer against us regarding defects shall become time-barred upon the expiration of 12 months 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 paragraph 15.4 hereof apply.
- 14.9 Our obligation for payment of damages shall be governed by paragraph 15.4 hereof. Subject to paragraph 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, treated, processed, or handled, repaired, maintained or serviced improperly by the customer or third parties not authorized by us, and for defects that are based on natural wear and tear.
- 14.10 The provisions above do not provide for a reversal of the burden of proof at the customer's disadvantage.

## 15. Damages / Liability

- 15.1 The customer shall be responsible for keeping guard of its ship, the cargo and all things provided by the customer, in particular for its own watch guards, as well as for the observation of all relevant rules and regulations (such as regulations for the prevention of accidents) by the customer itself and the agents 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) and mooring shall also fall within the province of the customer. When 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 us in writing about any imminent danger. The customer or the ship's management appointed by it, as applicable, must also provide for proper lighting of the ship-based access to the ship.
- 15.2 Subject to paragraph 15.4 hereof, we are 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 us 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.
- 15.3 If objects are placed in our custody, we reserve the right to charge the customer with storage and other costs (such as the costs for re-storing) on the basis of rates that are reasonable and customary at the place of storage if the storage period exceeds six (6) weeks.

- 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 our shipyard, personal injury or impairment of health of the customer or its employees or representatives caused by a breach of duty for which we are responsible, our warranty for the presence of particular characteristics, or the violation of our essential contractual obligations. Obligations that are essential to the contract are those the fulfillment of which allows us to properly perform our primary contractual obligations in the first place and the observance of which the customer regularly trusts and is entitled to expect. Regardless of the cases of liability stated above and unless essential contractual obligations have been violated, we 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 us in the performance of our obligations.
- 15.5 In the event of the violation of an essential contractual obligation, the customer's claim for damages against us shall be limited to the foreseeable damage typical of this type of contract, to the extent that there is neither willful misconduct or gross negligence, nor are we liable for injury to health and physical injury of the customer or its employees or representatives, or due to a 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. The essential contractual obligations shall be governed by the provisions set forth in paragraph 15.4.
- 15.6 A violation of any of our obligations shall also be deemed to have occurred if committed by our duly authorized representative or any person employed by us in the performance of our obligations.
- 15.7 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 provide that for the duration of the work done by our shipyard or while the ship or the object of performance is in our shipyard or any other of our affiliated shipyards, there is sufficient insurance coverage, in particular 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, ship conversions, repair and maintenance (including trial run). The customer must include our corporate bodies, executives and persons employed by us in the performance of our obligations in the insurance coverage by way of co-insurance.
- 15.8 Paragraph 14.10 shall apply accordingly.
- 15.9 Claims for damages shall become time-barred upon the expiration of 12 months after the statutory commencement of the limitation period if and to the extent none of the liability events set forth in paragraph 15.4 have occurred.

## **16. Access to our Premises and Performance of Work**

- 16.1 Access to our premises, especially the area of the shipyard itself is permitted to the customer, its agents, representatives or other authorized persons only during our regular working hours and subject to the observance of all laws, rules and regulations as well as our own rules, including but not limited to safety regulations and the shipyard's rules. These persons must show proof of identity and their access to the ship or the object of performance and/or the shipyard's facilities is restricted to the areas where parts for the ship or the object of performance are made; otherwise, the access to other parts of the shipyard is permitted only with our prior consent.
- 16.2 The customer is liable to us for any and all loss, damage or injury sustained by any of our employees or third parties, caused by persons acting on behalf of the customer or with the customer's consent who are at our premises in violation of paragraph 16.1 above, and the customer must hold us harmless against any claims of our employees or third parties.
- 16.3 As long as the ship or the object of performance is on the shipyard's premises, no persons and entities other than those mandated by us shall be allowed to execute work on the ship or the object of performance without our prior written consent. The customer must notify us in a timely manner and in writing of any work the customer wishes to have done by the ship's crew or third parties. Such work is performed at the exclusive risk and responsibility of the customer.
- 16.4 All facilities and areas of the ship or of the object of performance not worked on by us must be protected by the customer against accident hazards. Where work is performed in holds, the hatch covers of such holds must be removed and stored by the customer in an accident-proof manner prior to the commencement of work.
- 16.5 All scrap (replaced parts, substances, etc.) removed in the course of the work shall, at our option, become our property without compensation. In derogation hereof, the customer must dispose of all toxic substances and hazardous waste at its own expense and without delay, unless such disposal by us is expressly included in our contractual performance.

## **17. Jurisdiction / Applicable Law and Translations**

- 17.1 The Local / Regional Court [Amtsgericht / Landgericht] at the principal place of business of the shipyard shall have exclusive jurisdiction for any litigation that may directly or indirectly arise out of the contractual relationship between us and the customer, including litigation referring to documents, bills of exchange and checks. We are, however, at our 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.
- 17.2 The laws of the Federal Republic of Germany shall apply to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.
- 17.3 In the event these General Terms and Conditions are translated in any other language than German, the German version shall exclusively govern the interpretation hereof.

## **18. Severability**

- 18.1 Should any of the provisions contained in a contract of which these General Terms and Conditions form an integral part, be or become invalid, the remaining provisions shall remain unaffected thereby.
- 18.2 In the place of that invalid provision, we shall agree on a provision with the customer that matches fully – or if this is not legally possible – to the closest possible extent the economic purpose of the invalid one in a legally effective manner.