

## VNSI GENERAL YARD CONDITIONS 2018

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### **1 In general**

- 1.1 These conditions shall apply to all offers by and contracts with the contractor (hereinafter "the Yard") for the execution of the Work by the Yard. Wherever these terms and conditions refer to (execution of) the "Work" this term shall include (the design, construction and/or delivery of) any goods and/or services, unless the provisions concerned read otherwise herein. The term "Work" as used in these terms and conditions shall include (but not be limited to) the following meaning: any and all goods to be designed, constructed and/or delivered by the Yard including (but not limited to) any vessel, vessels and/or other material works, goods and/or services to be built, repaired, refitted, converted, sold, and/or delivered and/or executed by the Yard whether based on or stemming from a sale-purchase agreement (*koopovereenkomst*), an agreement of contracting of work (*aaneming van werk*), or on/from any other form of agreement.
- 1.2 By entering into the agreement the other party or customer (hereinafter "customer") shall be deemed to waive other conditions and/or stipulations even if the same are expressly referred to and/or are stated expressly in or on any offer, acceptance or other documents. Such other conditions and stipulations are hereby expressly repudiated by the Yard.
- 1.3 Acceptance of these conditions by customer shall be deemed to also extend to all future offers to and agreements with the Yard.

### **2 Information and particulars**

- 2.1 Customer shall provide to the Yard free of charge, in time and without request all information and particulars required for the execution of agreements by the Yard. The consequences of errors and lacunae therein and in designs or specifications provided by customer are at customer's risk.

### **3 Offers, orders and agreements**

- 3.1 Any offer made by the Yard shall be without engagement.
- 3.2 Orders and acceptances by customer shall be deemed irrevocable offers.
- 3.3 The Yard shall only be bound if and insofar as it has accepted the offer in writing or has begun implementation thereof. Verbal promises by or arrangements with its personnel shall not bind the Yard except if and insofar as the Yard has confirmed the same in writing.

### **4 Prices**

- 4.1 Prices set by or agreed to with the Yard are net, therefore exclusive of taxes and duties or charges levied by any Governmental body or authority, including V.A.T. They shall apply only with respect to execution of the Work at regular working hours on and/or off the Yard premises.
- 4.2 If the costs of execution increase after the closing of the agreement the Yard shall be entitled to charge customer a price-increase if and to the extent that such increase is reasonable. In any case the Yard shall reasonably be entitled to a price-increase in case of, but not limited to, any increase in wages, in costs of raw materials and/or other deliverables and/or services to the Yard, and/or in any taxes/levies which might apply.
- 4.3 For Work, not included in the original agreement, the Yard shall charge customer prices based on standard rates applicable at the time of execution.
- 4.4 The Yard is entitled to charge extra the costs connected with the treatment and/or collection and/or sample taking and/or removal, storage, transportation and destruction of materials, waste, scrap and the like.
- 4.5 The Yard is entitled to charge any and all costs related to or stemming from the consequences of situations as referred to in article 6.3.

### **5 Execution and deviations**

- 5.1 The Yard is entitled to assign third parties to the execution of the Work. Any Yard's liability towards customer for defaults of such third parties of whatever nature shall always be limited in accordance with the provisions of article 13.
- 5.2 In addition to the customary and agreed tolerances in measure, performance or otherwise, such variations as are necessary to achieve the desired results, or that are the result of a changed method of Working and/or changed manufacturing process shall also be permitted.
- 5.3 Customer shall enable the Yard to execute the Work unhindered. Customer shall place the Work and all goods to be delivered or provided by customer for execution of the Work on time and ready for the execution of the Work, at the Yard's disposal.
- 5.4 The Yard shall be entitled to relocate the Work and other goods of customer (including shifting, launching, undocking and dry-docking).

### **6 Period of execution**

- 6.1 The Work commences at the agreed time. The Yard shall be entitled to suspend the commencement until the Yard disposes of all goods, information and particulars to be supplied by customer and until advance payment, if agreed, is received or payment to the Yard is guaranteed.
- 6.2 The Yard shall only be bound by express, written agreed-upon delivery dates. The exceeding of the delivery date by the Yard gives customer the right to collect liquidated damages insofar as these are agreed-upon in writing. The amount of such liquidated damages shall never exceed 5% of the agreed-upon price for the delayed Work. Delay by the Yard shall not otherwise entitle customer to indemnification, rescission of the contract, or non-performance or suspension of any of his contractual obligations. Customer, however, is entitled to terminate the contract in respect of the non-performed part, if the Work is not delivered within a final reasonable period notified to the Yard in writing. In case of such termination, customer's right to claim liquidated damages is waived.
- 6.3 The time for delivery as agreed or notified by customer as provided in clause 6.2., shall be extended by the period of delay, caused by Force Majeure, irrespective of whether the circumstances causing Force Majeure have occurred prior to or after (i) the time the Work should have been completed or (ii) any other situation causing Force Majeure occurs. The time for delivery shall also be extended by the amount of time any payment or the discharge of any other obligation of customer is later than agreed or later than the Yard could reasonably expect irrespective of whether or not customer is in default.

### **7 Work by customer or third parties**

- 7.1 Without written consent of the Yard customer is not entitled to carry out or order to carry out work on or to the Work or other goods on or adjacent to the Yard, other than daily routine work of the vessel's crew.
- 7.2 Customer is liable for any damage caused to the Yard, to the Yard's subcontractors and/or to the Yard's personnel by the Work or other goods of customer, by the ship's crew, by his personnel, or by third parties employed by him, regardless whether such damage was caused by any fault of customer. Customer shall indemnify the Yard for all claims by the vessel's crew, his personnel or by any other third party, for damage related to their presence at the Yard, regardless whether such damage was caused by any fault of the Yard.

## **8 Environment, safety and rules of the Yard**

8.1 Customer shall assure safe working conditions and shall at all times comply with the current environmental and safety regulations and with the rules of the Yard. Customer shall inform the Yard, prior to commencement of the Work, of the presence of hazardous materials including but not limited to asbestos and chemical or radioactive waste and which measures have been taken in the last 90 days in this respect. Customer shall lend its cooperation to the investigation by the Yard of safe working conditions. The Yard is entitled to suspend and/or to cease the Work or its work if there is reasonable doubt as to the safety of these conditions and/or to take (or have taken) measures for improvement. All costs and damages arising therefrom shall be for the account of customer. It is recognized by customer that removal of asbestos and other hazardous materials is subject to strict regulations of Dutch law.

## **9 Delivery and testing**

- 9.1 The Work shall be delivered when the Work is accepted and approved by customer.
- 9.2 The Work shall be deemed delivered:
- if customer does not cooperate in acceptance and testing on the time notified by the Yard for delivery, or wrongfully or without proper motivation refuses to approve;
  - if the Work has left the Yard or customer appears to have in fact taken control of the Work or, respectively, the part of the Work upon which was worked;
  - if customer does not immediately inform the Yard of possible shortcomings at the time of delivery and/or does not give a written confirmation thereof within 48 hours thereafter.
- 9.3 Minor or usual shortcomings are no reason for refusal of acceptance and approval. These shortcomings will be recorded in writing by customer and the Yard, in addition to which the Yard will state within which period of time the remedying of these shortcomings will take place.
- 9.4 The Yard is entitled to partially deliver the Work if the delivery of the rest of the Work is rendered (temporarily) impossible or hindered by Force Majeure.

## **10 Risk and title**

- 10.1 The risk in respect to the Work and other goods of customer, or to be supplied by customer shall always be for customer. The risk in respect of goods to be delivered by the Yard, shall be for customer upon installation in, respectively upon incorporation in, goods (including goods which are part of the Work) of customer.
- 10.2 Unless otherwise agreed in writing, all goods, including the Work, delivered by the Yard shall remain the property of the Yard until such time as customer has paid in full all that is owed to the Yard in connection with the underlying agreement, and insofar as is permitted by law, in connection with other agreements with customer.
- 10.3 The industrial and intellectual property rights to or associated with the Work remain with the Yard or third parties entitled thereto, and are never transferred to customer.

## **11 Force Majeure**

11.1 The Yard is entitled to invoke Force Majeure if the execution of the Work is, in whole or in part, temporarily or not, prevented or hindered by circumstances reasonably to be considered beyond its will, including but not limited to, requirements of civil or military authorities, fire, accidents of any nature, damage to the Work, failure of metal casting and/or forging Work, unworkable weather conditions, delay in the supply of parts, goods or services by third parties, transportation difficulties, business or labour disturbances, illness of personnel and strikes. In the event of such occurrence the Yard may invoke Force Majeure with respect to any Work execution of which is prevented or hindered, irrespective of whether the occurrence is directly connected to that same Work. The Yard may also invoke Force Majeure if execution of the Work is delayed due to priority given to other Work if such priority is reasonably required.

11.2 In case of Force Majeure on the part of the Yard its obligations are suspended. If the Yard invokes Force Majeure for a period longer than 1 month, the Yard will be authorized to rescind the agreement in as far as not yet executed, by a written declaration to the customer, without being liable for any damage. In case of such a rescission the settlement mechanism as described in article 15.2 will apply.

## **12 Guarantee**

- 12.1 On delivery, all liability of the Yard ends, except for the guarantee pursuant to this article.
- 12.2 The Yard shall repair free of charge on its own location all defects not visible at delivery and due to faults in material, workmanship or design which become apparent within the guarantee period, provided that the defect is notified to the Yard in writing within 7 days after its discovery.
- 12.3 By means of sole and exclusive remedy in case of defects, the obligation to repair is limited to repair or replacement of the defective part and shall not extend to any obligation to reimburse any kind of material and/or immaterial damage, direct or indirect, which is the consequence of any defect. For any such damages article 13.2 applies.
- 12.4 All costs and expenses to be incurred by customer in taking the Work to and keeping the same at the Yard shall be for customer's account.
- 12.5 If reasonable, the Yard shall allow customer to have the repair work executed at another Yard by a third party. If so, the Yard's liability shall be limited to the amount of costs and expenses that the Yard would have incurred in executing the repair work at its own Yard within the guarantee period.
- 12.6 The guarantee period shall be for 3 months and shall commence as from the delivery of the Work in accordance with article 9.
- 12.7 All guarantee obligations lapse if customer fails in the performance of any obligation pursuant to this agreement.
- 12.8 No guarantee applies to works supplied or prescribed by customer. All painting and coating are likewise excluded from this guarantee.
- 12.9 In regard to works supplied by and work executed by third parties, the guarantee obligations of the Yard shall never be greater or of longer duration than the guarantee obligations of the supplying party towards the Yard. The Yard shall be discharged with respect thereto when it transfers to customer its possible claims against the third party (parties).
- 12.10 Work, including inspection, performed upon unjustified guarantee demands by customer including travel and lodging costs made by the Yard, shall be charged to customer, in accordance with article 4, clause 3 and these general conditions shall apply thereto.

## **13 Liability and indemnification**

- 13.1 The Yard's liability in connection with any shortcomings in the executed Work by means of sole and exclusive remedy is limited to the fulfilment of the guarantee described in the previous article.
- 13.2 Except in case of intent (*opzet*) or wilful recklessness (*bewuste roekeloosheid*) of the Yard and except in case article 7:762 Dutch Civil Code applies, the Yard shall not be responsible or liable to customer in contract, tort or on any other ground or legal theory, howsoever and whatever the cause thereof, for any direct, indirect, consequential or any other losses, damages, costs or expenses, all including but not limited to loss of time, loss of profit or earnings or demurrage directly or indirectly incurred. The terms 'intent' or 'wilful recklessness' of the Yard shall mean the intent or wilful recklessness of the Yard, of organs of the Yard (*organen van de vennootschap*), its managers (*leidinggevenden*), and/or other managerial or executive employees (*de leidinggevende ondergeschikten*).
- 13.3 In all cases in which the Yard despite the previous provision (article 13.2) is obliged to pay damages, this liability shall never exceed the lesser of (i) 25% of the price of the executed Work as a consequence of which or in connection with which the damage was caused or (ii) the sum of EUR 1,000,000.-).
- 13.4 Every claim against the Yard, except those which the Yard has expressly acknowledged in writing, expires by the mere lapse of 12 months after its arising.

- 13.5 Stipulations which limit, exclude or determine the liability towards the Yard in connection with goods or services supplied by the Yard's suppliers or subcontractors can also be asserted against customer by the Yard.
- 13.6 Customer hereby fully indemnifies (*vrijwaren*) the Yard and holds the Yard harmless from and against any third party claim, such as, but not limited to, tax claims, civil claims, social security laws related claims and/or claims for damages (penalties, whether or not imposed by a government body or any party affiliated with the government, included) and/or from and against any other third party claim, insofar as these claims relate to the agreement, future agreements and/or other contractual documents or shall be based upon the law and/or any other (legal) ground or theory.
- 14 Payment and security**
- 14.1 Payment must take place within thirty days after the invoice date and in any case no later than on the date on which the Work shall be (deemed to be) delivered unless another payment period is agreed in writing. The Yard has, however, at all times the right to demand full or partial payment in advance, and/or to demand advance guarantee of payment. An agreed credit period does not diminish this right.
- 14.2 Customer shall within 30 days after the invoice date both submit in writing to the Yard objections against invoices, if any, and discuss these objections at the offices of the Yard, in person or represented by an expert appointed by him, in the absence of which the charged amount shall be deemed to have been accepted by customer and disputing the same shall no longer be admissible.
- 14.3 Customer renounces any right to set off against and/or compensate with amounts due between parties. Customer waives any and all of its rights to suspend any of the obligations towards the Yard. Guarantee claims do not suspend the payment obligations of customer.
- 14.4 If customer does not settle any of the amounts payable by him in accordance with the foregoing he will be in default without prior notice of default. As soon as customer is in default with any payment, all remaining claims by the Yard against customer are payable and customer is immediately in default without prior notice of default with respect to those claims. As from the day on which customer is in default, he owes to the Yard interest of 1,5% per month or part of a month during which the default continues.
- 14.5 In case of default customer shall pay the out-of-court expenses. These costs shall be deemed to amount to no less than 15% of the amount due.
- 14.6 The Yard is entitled to retain the goods and documents belonging to customer (if applicable including the Work and all constituent parts thereof as defined here above), which are or will be in the Yard's custody, until all customer owes to the Yard shall have been received by it. If at delivery of the aforementioned goods and documents, a claim is not yet payable by customer, the Yard is entitled to retain such goods and documents until payment is sufficiently guaranteed. The Yard shall be compensated by customer for the costs made in connection with the retention of the goods and/or documents.
- 14.7 All goods of customer which the Yard or third parties may have and in connection with which any work is executed by the Yard, shall constitute collateral for all debts, including those concerning damage, costs and interest, which are receivable from customer in connection with the underlying agreement and/or other agreements with customer.
- 15 Rescission, termination, annulment**
- 15.1 If customer does not, not in time or not adequately fulfil one or more of its obligations or if there are good reasons to fear that customer is or shall not be able to fulfil its contractual obligations towards the Yard, or if the customer is declared bankrupt, requests (temporary) moratorium (*surcéance van betaling aanvraagt*) or proceeds to liquidate its business, as well as when its assets are attached in whole or in part, the Yard to its sole discretion either has the right to suspend its performance under the agreement or to rescind (*ontbinden*) the agreement in whole or in part by means of a written declaration and without prior notice of default and always without prejudice to any rights to which the Yard is entitled with respect to compensation for costs, damage and interest.
- 15.2 Customer is authorized to rescind only in the case referred to in article 6.2 of these conditions, and in such case only after payment to the Yard of all amounts owed to the Yard at that time, whether or not payable and including payments for all obligations entered into by the Yard with third parties regarding the Work at the moment of such rescission. Customer waives any and all other rights it has or might have to rescind (*ontbinden*), terminate (*opzeggen*), or annul (*vernietigen*) the agreement, be it in whole or partially and whether in court or extra-judicial, or to have the competent court change any of the effects of the agreement as stated in article 6:230 paragraph 2 DCC.
- 15.3 If the agreement is rescinded pursuant to article 15.1. before the agreed Work is finished or the period of time in which the Work should be executed has elapsed, the Yard shall be entitled to the full agreed price for the agreed Work, less the savings arising directly from the rescission. If the agreement ends by rescission by customer, the Yard shall be entitled to full payment of such part of the agreed price as is in proportion to the part of the Work already executed.
- 16 No assignment or pledge of rights or claims under the agreement**
- 16.1 Save in case of the Yard's prior approval in writing, which shall not unreasonably be withheld, customer shall not be permitted, either in whole or in part, to assign to others the agreement or any of his rights as against the Yard thereunder. All costs related to any such assignment in accordance with this Article 16.1, including all costs of the Yard itself, shall be borne by customer.
- 16.2 Save in case of the Yard's prior approval in writing, which shall not unreasonably be withheld, customer shall not be permitted to pledge to any third party or otherwise encumber any of his rights or claims as against the Yard under the agreement or otherwise.
- 16.3 The provisions of the articles 16.1 and 16.2 of these conditions are intended to exclude the pledging or otherwise encumbrance or transfer by customer of any of its rights or claims under the agreement without the prior written approval of the Yard and contains a stipulation as referred to in Article 3:83 par 2 Dutch Civil Code. Consequently no such transfer, encumbrance or pledge will have any legal effect and therefore this article under Dutch law shall have property law consequences (*goederenrechtelijk effect*).
- 16.4 Passing of rights pursuant to article 6:251 of the Dutch Civil Code is excluded towards the Yard with respect to rights of action (*vorderingsrechten*).
- 17 Disputes and applicable law**
- 17.1 All disputes arising out of or in connection with the agreement or any agreement entered into between the Yard and customer related to or stemming from the agreement shall be finally settled in accordance with the arbitration rules of the Netherlands Arbitration Institute. Unless the parties shall agree otherwise, the arbitral tribunal shall be composed of three arbitrators. The place of arbitration shall be Rotterdam, the Netherlands. The arbitral procedure shall be conducted in the English language, unless when both parties are based in the Netherlands and/or are native Dutch speakers. In such case the arbitral procedure shall be conducted in the Dutch language. Regardless of the previous provisions of this article 17.1, the Yard shall always be entitled to file any dispute as mentioned herebefore with the competent civil court at Rotterdam, the Netherlands (*rechtbank Rotterdam*).
- 17.2 The agreement is subject to Dutch Law. However, the United Nations' Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
- 18 Language**
- 18.1 Terms in these conditions refer to Dutch legal concepts only (as in some cases referred to above in italics) and shall be interpreted accordingly. The use of these or similar terms in any other jurisdiction shall be disregarded.