

# GENERAL TERMS AND CONDITIONS

## 1. General

1.1 These general terms and conditions apply to the offering and completion of the services from or on behalf of Diamond Ship Management nv ("DSM") to the Customer and apply to similar dealings between DSM and the Customer.

1.2 If any term or provision of these general terms and conditions proves to be illegal, invalid or unenforceable, the other terms or provisions shall not be affected thereby. Additional terms and conditions may only be applicable, only if expressly agreed upon by DSM in writing.

1.3 "Services" of DSM include and are not limited to vessel attendance and support; vessel attendance in emergency; spot safety inspections; ships staff support during Port State/Flag/ P&I/ Class Inspection; Tailored Vessel Inspection Reports; Audits by Certified Personnel-ISM, ISO 9000, ISO 14000, ISPS; Organizing shore support; turnkey project management, supervising projects on site; providing riding gang and supervision; damage assessment/coordination and supervision of repairs; investigation of non-conformities and provision of root cause analysis; procurement of spare parts and stores to meet urgent demands as agents of the Customer; preparation of dry dock specification, request for tender, cost analysis and dry dock supervision as agents of the Customer; pre sale/ pre purchase inspection of the vessel; organising and coordinating completion of services by sub-contractors; ship support consultancy services.

## 2. Quotations, orders and confirmations

2.1 Quotations, made by DSM are not binding upon DSM and merely constitute an invitation to Customer to place an order. All quotations issued by DSM are revocable and subject to change without prior notice. Orders are not binding until accepted by DSM in writing.

2.2 The Customer shall set out in writing the service which it requires DSM to provide. DSM will confirm in writing that it accepts those instructions, or in the alternative, DSM will reduce to writing the work it will perform in connection with the Customer's instructions. Once DSM and the Customer have agreed in writing upon the services that are to be provided, any subsequent changes or additions must be agreed by both parties in writing.

## 3. Status of Goods

3.1 The goods are required to be procured in order to provide the services as required by the Customer under this agreement, shall emanate from DSM but shall be made in the name of and for the account of the Customer, and are always without the engagement of DSM. The Order constitutes an offer by DSM which is contracting as agent only in the name and on behalf of the Customer to purchase the goods subject to the conditions which apply to this agreement "Purchase Order". The terms goods also include goods, spares, equipment.

3.2 DSM, for the purpose of this article and the agreement, contracts as agent only in the name of and the behalf of the Customer. DSM has no authority to incur any lien of whatsoever nature on the vessel whether maritime or possessory.

3.3 In no event shall any liability of damages be affixed on DSM for wrongful non-acceptance of the goods or cancellation by the Customer, in case of such a liability arising, the Customer undertakes to compensate and indemnifies DSM for the costs incurred or the damages and loss suffered thereto:

3.4 Under no circumstances shall goods become the property of DSM; the status of DSM shall be one of care and custody and completion of services for the Customer. The Customer shall obtain the necessary insurance coverage.

## 4. Price

4.1 The price to be paid for the work provided is the amount and currency stated in the invoice. The price set by or agreed to with DSM are net and therefore exclusive of taxes and duties or charges levied by any Governmental body or authority, V.A.T. (Value Added Tax) if applicable. The amount of any taxes levied in connection with the services provided to Customer shall be for Customer's account and shall be added to each invoice or separately invoiced by DSM to the Customer.

4.2 If the costs of execution increase after the closing of the agreement, DSM shall be entitled to charge the Customer a price-increase, in the event the cost price determining factors have been subject to an increase. These factors include, but are not limited to: raw and auxiliary materials, energy, products obtained by DSM from third parties, wages, salaries, freight costs and insurance premiums. DSM shall notify Customer immediately of such increase.

4.3 For services not included in the original agreement, DSM shall charge the Customer prices based on standard rates applicable at the time of execution.

## 5. Payment

5.1 Unless expressly stated, payment shall be made on the basis of net cash, to be received by DSM within thirty (30) days upon receipt of the invoice by the Customer. All payments shall be made to DSM without any deduction on account of any taxes and free of set-off or other counterclaims.

5.2 DSM reserves the right to demand advances against the agreed price, to be paid on the dates and in the manner as stipulated from time to time.

5.3 DSM may, without prejudice to any other rights of DSM, charge interest on any overdue payment at the higher rate of either twelve percent (12%) per annum or one and a half times the prevailing rate under applicable law per annum, but not to exceed the maximum interest rate permitted under applicable law, from the due date computed on a daily basis until all amounts outstanding are paid in full. All cost and expenses incurred by DSM with respect to collection of overdue payments (including, without limitation, reasonably attorney's fees, expert fees, court costs and other expenses of litigation) shall be for the Customer's account.

5.4 Any complaint with respect to the invoice must be notified to DSM within the first five (5) days of the thirty (30) day period as referred to in clause 5.1 herein above. Thereafter Customer shall be deemed to have approved the invoice.

5.5 Breach or non-compliance with this article shall attract action for rescission under article 11 herein below.

## 6. Transfer of risk and property

6.1 The risk of the goods shall pass to the Customer the moment the goods leave the control of the manufacturer and/or supplier. The risk in respect of goods to be delivered by DSM, shall be for the Customer upon installation.

6.2 The Industrial or Intellectual Property Rights to or associated with the work remain with DSM or third parties entitled thereto, and are never transferred to the Customer.

6.3 Until full payment is made by the Customer the Customer is entitled to use the goods solely to the extent required in its ordinary course of business, and, to the extent possible shall:

6.3.1 Keep the goods separate and in a clearly identifiable manner;

6.3.2 Notify DSM immediately of any claims by third parties which may affect the goods; and

6.3.3 Adequately insure the goods.

## 7. Right to Sub-Contract and Assign

7.1 DSM shall be entitled to procure performance, sub-contract, assign, transfer the service/work required to be performed or the benefits or the obligation thereof or any part thereof to any other person including parent, subsidiary or associated companies or sub-contractors or third parties as it deems fit. DSM shall not be personally liable for its sub-contractors.

7.2 The Customer is not entitled to claim recourse of any nature against the group companies of DSM.

## 8. Liability

8.1 Any liability in connection with the completed services, regardless of its cause or origin, shall be limited to the amount invoiced to the Customer in consideration of the service(s) provided or goods procured in terms of article 3, in respect of which DSM's liability is called upon.

8.2 Under no circumstances can DSM be held liable for an amount in excess of the cover extended by its professional liability insurer.

8.3 Under no circumstances shall the services of DSM be construed as "ship repairs". The Customer shall procure the necessary insurance and indemnify DSM in this regard.

8.4 The goods, spares, equipment procured by DSM for Customer under article 3 herein above, shall be under guarantee by their respective manufacturers ("goods") and these guarantees will be passed on to the Customer for the period specified therein, subject to restrictions in the guarantees of the goods. The Customer shall obtain the necessary insurance coverage. DSM will carry out installation, maintenance and other related work within the guarantees provided by the manufacturers for the goods, under the supervision and satisfaction of a technical representative of the Customer. The Customer shall protect DSM against claims from third parties in respect of damage incurred by these third parties as a result of defects to goods that the Customer has obtained either by itself or through DSM.

8.5 The Customer is not entitled to make any claim against DSM for the goods used and shall proceed against the manufacturer in terms of all obligations imposed upon manufacturers by EC Directive 89/392/EC of 14 June 1989 on the safety of machines, inclusive of its subsequent amendments (inter alia EC Directive 91/368/EC of 20 June 1991), as well as the national laws and rules and regulations transcribing these directives into national law, and DSM is indemnified in this regard.

8.6 After completion of the service (s), DSM shall hand over the technical documentation and technical instructions on proper use of the goods, which form part of the services provided by DSM, to the Customer. DSM shall not be liable for damages caused to the goods, by any act(s) of the personnel of the Customer due to non-compliance with the provided technical documentation and instructions. DSM may assist the Customer to remedy the damage and/or rectify the defects caused and all costs incurred will be borne and paid by the Customer.

8.7 The Customer shall, within a period no later than forty eight (48) hours from completion of the service (s), notify DSM in writing by fax or e-mail, describing the defect or non-conformity resulting from faulty workmanship of DSM. The Customer loses his right to have the defect remedied if he fails to notify defect or non-conformity resulting from faulty workmanship of DSM within the stipulated forty eight (48) hours period. The Customer indemnifies and keep indemnified DSM in this regard. On receipt of the notice, DSM shall remedy the defect without undue delay. In the event, it is discovered that there is no fault as notified by the Customer; DSM is entitled for compensation of costs it has incurred as a result of the notice.

8.8 The Customer shall hold harmless and indemnify DSM and its employees for each claim by third parties in connection with the performance for DSM of the agreement, insofar as those claims exceed or differ from the liability of DSM towards the Customer.

8.9 DSM shall not be responsible to the Customer or any third party, in the following circumstances:

8.9.1 Incorrect or negligent operations, improper use, accidents, injury or death to workers, Customer or third party due to their negligence and mala fide behaviour, improper or faulty maintenance after the title of goods passed.

8.9.2 Any alterations made otherwise than by or without the prior written consent of DSM.

8.9.3 Normal wear and tear.

8.9.4 Deterioration.

8.9.5 Visible, latent or other defects in the goods/spares that form part of this agreement.

8.9.6 Defects arising out of the material provided, or a design stipulated or specified by the Customer or its representative thereof.

8.9.7 Any acts of third parties or contractor/ service providers, also employed or contracted by the Customer, whether connected or unconnected with the services provided by DSM, that occur during or after the services of DSM are rendered, and which are beyond the reasonable scope and control of DSM.

8.10 In no event shall DSM be liable to the Customer or third party, for any damage or loss, whether incidental, special or consequential, including but not limited to, for faulty or negligent design or manufacture of goods, delay, loss of revenue, detention, seizure, wharfage, demurrage, tug expense, pilotage, crew wages, salvage, loss of use, loss of profit, indirect loss.

8.11 The Customer, at its own costs, shall provide for a proper support facilities and safe environment and sufficient insurance cover for DSM to complete the service(s). DSM shall not be liable for any damage or loss caused during such the performance of the service by DSM, to the machinery, equipment, property, person of the Customer and/or third party. The Customer indemnifies and keep indemnified DSM in this regard.

8.12 DSM shall not be liable for any damage or loss arising from service(s) that has not been fully completed, that is, service in progress, temporary service, and make-shift service.

8.13 On completion of the service(s), all liability of DSM ends.

8.14 DSM shall not be held liable in any manner whatsoever for goods or objects supplied or prescribed by the Customer.

8.15 Service (s), including inspection (s), performed upon unjustified guarantee demands by the Customer, shall be charged to the Customer.

## 9. Completion

9.1 The completion date shall be binding only if expressly agreed and stated on this agreement or otherwise agreed between the parties in writing. After the completion date, the aggrieved

Customer shall give a reasonable period in writing to DSM for completion, if however, DSM fails to complete these services within this reasonable time period, the Customer will be entitled to terminate the contract with respect to the services that have not been completed and it is agreed between the parties that any claim for liquidated damages shall never exceed 5% of the agreed price of the delayed service. However, this article 9.1 does not apply if the vessel has to prematurely leave the designated place of service, for whatsoever reason, before the scheduled date of departure pursuant to completion of the service.

**9.2** Without prejudice to the above, the service shall be deemed completed to the full satisfaction of the Customer:

**9.2.1** If the Customer does not cooperate in acceptance and testing on the time notified by DSM for complete handover, or wrongfully or without proper motivation refuses to approve;

**9.2.2** If the object has left the control of DSM or the Customer appears to have in fact taken control of the object or, respectively, the part of the object upon which was worked;

**9.2.3** If the Customer does not immediately inform DSM of possible shortcomings at the time of delivery and/or does not give a written confirmation thereof within 48 hours thereafter.

**9.3** Completion of the service or handover, whichever is earlier, is deemed acceptance by the Customer of the service.

**9.4** Any visible flaws, defects and non-conformities in respect of the specifications in the service provided by DSM shall be nullified and made good by this acceptance. The Customer shall protect DSM against all actions by third parties based on concealed defects (Article 1641 of the Civil Code) and/or the law on product liability (Belgian law of 25 February 1991) that result from defects in the products delivered by the manufacturer or supplier for the Customer or a shortcoming in the instructions, information or warnings concerning its goods.

**9.5** Minor or usual shortcomings in the service (s) do not entitle the Customer to reject to entire work of DSM. These shortcomings will be recorded in writing by the Customer and DSM within a period of fifteen (15) days of such delivery, in addition to which DSM shall state within which period of time the remedying of these shortcomings will take place.

**9.6** Complaints about hidden or concealed flaws in the service (s) shall be made within fifteen (15) days by registered mail after the discovery or when the flaws ought to have been apparent. DSM shall not be held responsible in any manner for hidden or concealed flaws in the goods connected to the services under this agreement.

**9.7** DSM is entitled to partially complete the service if the completion of the rest of the service is rendered (temporarily) impossible or hindered by Force Majeure, or if the vessel has to prematurely leave the designated place of service, for whatsoever reason, before the scheduled date of departure pursuant to completion of the service.

**9.8** All the services of DSM shall be in accordance with the instructions of the Customer who has the obligation to monitor, test and verify the progress of the services at his own expense and under his own responsibility.

**9.9** The Customer shall supply DSM any and all information and data which DSM deems relevant to the performance of its duties under the agreement at the latter's first request.

**9.10** Prior to any action on DSM's part, the customer shall of his own initiative inform DSM of the nature, the location and the instructions regarding the handling of the ship's cargo and/or the goods held at the site and supply any and all additional information which the Customer deems relevant to the performance of DSM's duties. The Customer shall bear sole responsibility for any all damage and losses resulting from the failure to disclose such relevant information or from the imparting of false, incomplete or inaccurate information.

**9.11** The Customer shall ensure safe working conditions and shall at all times comply with the current environmental and safety regulations and with the rules of DSM;

**9.12** The Customer shall inform DSM, prior to the commencement of the service, 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. The Customer shall lend its cooperation to the investigation by DSM of safe working conditions. DSM is entitled to suspend and/ or end the service(s) 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 there from shall be for the account of the Customer. It is recognised by the Customer that removal of any harmful or hazardous substances and chemical or radioactive waste is subject to strict regulations of Belgian Law.

**9.13** The Customer shall be responsible and liable for compliance with the latest laws, rules and regulations in force, and those that were in force at the time the agreement came into being, that are applicable as regards safety and hygiene of all materials, components, services, drawings, instructions and technical specifications, as well as environmental, maritime, electrical and other provisions. The foregoing shall be assessed on the basis of the codes and

standard in force in Europe. In the event of there being no European code or standard applicable, the parties shall consult as to the applicable standard.

Should the aforementioned laws, rules and regulations be amended between the date on which the agreement comes into being, the Customer shall immediately notify DSM of this and the parties shall decide in mutual consultation as to the consequences that this will have for the agreement.

**9.14** The Customer shall be in full compliance with ISM code, class requirements, Flag requirement, P&I requirements, hazardous waste management and handling, IMO Conventions and amendments, SOLAS convention and protocols, STCW, MARPOL, Loadlines convention and protocol, Tonnage and other relevant maritime laws/conventions/directives. The Customer indemnifies and continues to indemnify DSM in this regard.

## **10. Force Majeure**

**10.1** In case of Act of God, labour disputes, civil commotion, governmental or official actions or any other event which was unforeseeable or outside the reasonable control of the Party affected, the Parties shall be temporarily relieved from their obligations during the period of time such events continue and to the extent their liabilities are affected. The afore-stated shall also be applicable to DSM if a sub-supplier/contractor of DSM is affected by such event and/or in case the Party concerned is already in default.

**10.2** The parties are committed to give each other the necessary information which may reasonably be expected without delay, and to adjust their obligations in good faith to the changed circumstances.

**10.3** DSM is entitled to invoke Force Majeure if the providing of the service 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 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 and services by third parties, transportation difficulties, business or labour disturbances, illness of personnel and strikes. In the event of such occurrence DSM may invoke force majeure with respect to any service provided of which is prevented or hindered, irrespective of whether the occurrence is directly connected to the same service. DSM may also invoke Force Majeure, if the service being provided is delayed due to priority given to other work if such priority is reasonably required.

**10.4** In case of Force Majeure on part of DSM its obligations are suspended. If DSM invokes Force Majeure for a period longer than one (1) month, DSM and the Customer, without prejudice to the provision in Article 11 (Rescission), are both authorized to rescind the agreement in as far as not yet executed, by a written declaration to the other party, without being liable for any damage.

## **11. Rescission**

**11.1** If the Customer does not in time or adequately fulfill one or more of its obligations, is declared bankrupt, requests (temporary) moratorium or proceeds to liquidate its business, as well as when its assets are attached in whole or in part, DSM has the right at its option to suspend its performance under the agreement or to rescind the agreement in whole or in part by means of a written declaration and without prior notice of default and always without any prejudice to rights to which DSM is entitled with respect to compensation of costs, damage and interest.

**11.2** The Customer is authorized to rescind only in the cases referred in articles 5 and 10 of these Articles, and in such case only after payment to DSM of all amounts owed to DSM at that time, whether or not payable.

**11.3** If the agreement is rescinded pursuant to article 11.1 before the agreed service is finished or the period of time in which the service should be provided had elapsed, DSM shall be entitled to the full agreed price for the agreed service (s), less the savings arising directly from the rescission. If the agreement ends by rescission by the Customer, DSM shall be entitled to full payment of such part of the agreed price as in proportion to the part of the service (s) already executed.

## **12. Severability**

**12.1** In the event that any provision of these Conditions shall be held to be invalid or unenforceable, the same shall not affect in any respect whatsoever, the validity or enforceability of the remaining provision between the parties and shall be severed there from.

## **13. Applicable Law and jurisdiction**

**13.1** This agreement shall be governed by and construed in accordance with Belgian law. In case of dispute, the courts of Antwerp, Belgium shall have exclusive jurisdiction