

## TERMS & CONDITIONS – Drydocking

### 1.2.0 Definitions and Interpretation

1.2.1 In this Agreement, save where the context otherwise requires, the following words and expressions shall have the meanings hereby assigned to them.

"Additional Work" means all work in addition to or modification of or alteration to the Specification agreed in writing between the Parties by way of a Variation Order.

"Classification Society" means the Vessel's Classification Society.

"Contractor", means the Company named in Box 2 and all references to the Contractor shall be deemed to include its sub-contractors, agents and representatives.

"Contractor's Representative" means the person(s) named in Box 4 appointed by the Contractor to manage the Work and any Additional Work, or any substitute(s) nominated in writing from time to time.

"Invitation to Tender" means the invitation to tender referred to in Box 7 issued on behalf of the Owner to the Contractor which contains the instructions given to all tenderers included with the Tender Documents and to be taken into account whilst tendering.

"Manager" means the Owner's Manager named in Box 5.

"Owner" means the registered Owner of the Vessel named in Box 1.

"Owner's Representative" means the person(s) named in Box 3 appointed on behalf of the Owner to represent the Owner's interests in overseeing that the contracted repairs are performed in accordance with this Agreement or any substitute(s) nominated in writing from time to time.

"Parties" means the Owner and the Contractor (and each a "Party").

"Specification" means the Dry-dock & Repair Specification attached hereto inclusive which shall be an integral part hereof. In the event of a conflict, the provisions of these General Terms & Conditions shall prevail over the provisions of the Specification to the extent of such conflict.

"Subcontractor" means any firm other than the Contractor engaged to perform any service to the Vessel whether or not hired by the Contractor or by the Owner.

"Tender Documents" means the documents which accompanied the Invitation to Tender.

"Variation Order" means an order issued to the Contractor for any Additional Work. This Order will be costed by the Yard and if found acceptable by the Owner's Representative, the Additional Work will be confirmed by both parties signing the Variation Order.

"Vessel" means the Vessel named in the Specification.

"Work" means the work specified in the Specification. References hereinafter to Work shall be deemed to include Additional Work.

"Yard" means the Contractor's repair facility named in Box 6.

### 1.3 Performance of Work

- 1.3.1 The Contractor shall carry out the Work in accordance with first class international ship repair standards, to the satisfaction of the Owner, the Parties' regulatory bodies and the rules of the Classification Society. Decisions of the Classification Society as to compliance or non-compliance with its rules shall be final and binding upon the Parties. The Work shall also comply with all rules, regulations and requirements of other regulatory bodies which apply to the Work whether or not specifically referred to in the Specification, in order that the Vessel will retain and/or obtain all approvals and/or licences required thereby. Each such confirmation of compliance shall constitute a determination that such repair, replacement or material meets the requirements of this Agreement, except to the extent that the Specification exceeds the Classification Society standards.
- 1.3.2 It is agreed by the Contractor that all workmanship and materials used in performing the Work shall be the best quality throughout and conform to those now in the Vessel, except where otherwise agreed in writing and shall also meet the requirements of the Specification and rules of the Classification Society. Any dispute that may arise during the progress of the Work as to the meaning of the Specification and Work to be done, or as to the materials and/or workmanship, shall be resolved by the Owner's Representative in his sole discretion.
- 1.3.3 Any particulars of the Work specified herein are given for the guidance only of the Contractor, who shall be responsible for securing all necessary dimensions and details from the Vessel as may be required to carry out the Work. Should the Contractor discover any workmanship, material or performance which is not in conformity with this Agreement (in which event, the Contractor shall promptly notify the Owner of such discovery), the Contractor shall promptly take effective measures to correct the same.
- 1.3.4 All new work (piping, steel plates and shapes, brackets, etc.) alterations, repairs, modifications, etc. in cargo holds, on deck or other areas which are to be coated (or being coated during this dry-docking) are to be suitably prepared and after approval by the Owner's Representative, coated with the same type coatings as have been or are being applied to the remainder of these areas, it being the requirement of the Owner that all steel surfaces of such areas be coated. All adjacent coated areas disturbed during the foregoing work shall be similarly prepared and coated. The Contractor shall ensure that the Vessel is maintained in a reasonable state of cleanliness throughout the repair period in order not to affect adversely the quality of paint work.
- 1.3.5 The Contractor must provide for good communications between the Owner's Representative and the Contractor's Representative. A meeting is to be held with the Owner's Representative, Contractor's Representative and responsible staff from the Yard before the arrival of the Vessel to plan the details of the Work, review the Specification, agree work programme with time bar chart and establish points of contact, followed by daily work planning meetings to be held onboard the Vessel to assess progress against the time bar chart, review any issues in connection therewith, discuss change orders and any risk, safety, quality, weather, security, technical or commercial issues.

## 1.4 Approval and Certification

- 1.4.1 The Contractor shall be responsible for obtaining and maintaining all necessary approvals and certificates of whatsoever nature relating to the Work as required by the Contractor's regulatory bodies, whether or not specifically stated in the Specification. The Owner shall provide any reasonable assistance that may be required in this respect.
- 1.4.2 All fees and charges incidental to the Classification Society and with respect to compliance with the above referred rules, regulations and requirements shall be for the account of the Contractor.

## 1.5 Costs

- 1.5.1 All costs including but not limited to fitting, connecting, grit blasting, painting and testing new components, material, machinery and outfitting, removal of liquids from engine room and pump room, holds, upper/lower stools, water and oil tanks and other spaces in which the Contractor is required to perform work shall be for Contractor's account.
- 1.5.2 The Contractor is responsible for payment of all costs and expenses of wharfage, towage, dockage including, if relevant, costs of undocking and re-docking, dock trials, shifting and mooring, pilotage, boat hire, dry and wet dock charges, waste, garbage, sewage and scrap disposal and supply of fresh/ballast water and shore power, unless stated otherwise in the Specification or mutually agreed upon in writing between the Contractor and the Owner.
- 1.5.3 The Contractor shall use all best endeavours to perform Additional Work as requested by the Owner, within the Date of Completion specified in Box 18. No extra compensation or added time for Additional Work will be allowed without a Variation Order.
- 1.5.4 The Work shall be performed within normal working hours. No overtime shall be worked for the Owner's account unless the Owner's Representative has approved the items to be worked on, the maximum number of overtime hours, the department(s) authorised to perform the overtime and the resultant costs. It is understood that if no Work is carried out on Sundays and holidays, dry-docking or repair berth will not be charged for.
- 1.5.5 In the event of any technical problems or major Variation Orders, the Owner's Representative will be entitled immediately to initiate a meeting with Contractor's Representative and shipboard management team to clarify the problems and evaluate possible consequences. Variation Orders are likely to occur and the Owner must forward to the Contractor a uniquely numbered Variation Order detailing the additional work and the Contractor must provide a firm quotation for the described work within 24 hours after receipt of the Variation Order.

## 1.6 Repair Schedule

- 1.6.1 The total time required by the Contractor, in number of consecutive running days to complete the Work itemized in the Specification is as stated in Box 10, including working days, holidays, planned stoppages, restrictions applicable to weekend or overtime working, and based on the Contractor's regular and overtime shift timings as stated in the Tender Documents. If the Vessel is to be dry-docked during the repair period the number of days the Vessel is to be held in the dry-dock to carry out the Work outlined in the Specification is as specified in the Tender Documents and stated in Box 12. The Contractor shall prepare and submit to the Owner's Representative, prior to the commencement of the Work and during the period of Work, a detailed production schedule in the form of a bar chart showing details of the Work and any Additional Work through to completion and redelivery.
- 1.6.2 If the Vessel is being dry-docked and the total repair days stated in Box 10 is in excess of the scheduled days in dry-dock stated in Box 12, the Vessel shall be dry-docked immediately on arrival at the Yard, unless stipulated otherwise by the Owner. When dry-docking is for regular periodic maintenance, the Contractor shall allow sufficient time in dry-dock to properly apply hull coatings in accordance with the specification of the coatings suppliers or carry out other work as called for in the Specification. Additional time in dock for work not mentioned in the

Specification shall be mutually agreed upon between the Contractor and the Owner. Should the Contractor request an interruption of dry-docking, any cost involved relative to undocking, shifting, mooring, re-docking, interruption of repairs, etc, either direct or indirect, are to be borne by the Contractor. Should the Contractor request an extension of the time in Dry-dock (Box 12) for reasons unconnected with this Agreement (for example, due to delays caused by another vessel in the same dock), then all and any consequent costs, including without limitation costs of utility services, and changes, including without limitation time in Dry-dock, shall be solely for the Contractor's account.

- 1.6.3 Time shall be of the essence in the performance of the Contractor's obligations under this Agreement. The Contractor represents and warrants that it has no commitments which will prevent it from putting the Vessel into dry-dock on the date in Box 14 and completing the Work within the Date of Completion (Box 18) and agrees that it will not undertake any such commitments. The Contractor undertakes that it shall give the highest priority to the Work and any Additional Work and shall not assign a higher priority to any other work which may interfere with its diligent prosecution of Work and any Additional Work. Should the Contractor become aware of any pending go-slow, strike or other industrial action, this must be immediately brought to the Owner's attention. If the Contractor falls behind the progress indicated by the schedules described above, for reasons over which the Contractor has control, the Contractor shall present to the Owner a recovery plan and shall take all steps required (for instance, working overtime or on double shifts), at its sole cost, to accelerate the Work to ensure that the Date of Completion (Box 18) is met. A notification by the Owner's Representative to the Contractor to comply with this Clause shall not constitute a Variation Order or modification to this Agreement.
- 1.6.4 In the event that any of the materials required by the Specification or otherwise under this Agreement cannot be procured in time or are in short supply to maintain the Date of Completion (Box 18), the Contractor may, with the prior written agreement of the Owner, supply other materials capable of meeting the requirements of the Classification Society and of the rules, regulations and requirements with which the Work must comply.
- 1.6.5 Any delay in readiness of the dry-dock for accepting the Vessel on the date stated in Box 14 shall be subject to the liquidated damages stated in Box 15 independently of any other clause in this agreement.

## **1.7 Contractor's Right to Subcontract**

- 1.7.1 The Contractor may, with the prior written consent of the Owner, such consent not be unreasonably withheld, subcontract any part of the Work to good quality repairers/suppliers. The Contractor shall give prior written notice of such intention to the Owner, together with the name of the subcontractor; should the Owner reject the subcontractor, the Contractor shall itself perform that part of the Work or engage a subcontractor acceptable to the Owner. In general, no subcontractor will be accepted for work on principal equipment apart from its manufacturer or their licensee. The use of subcontractors by the Contractor shall in no way alter or diminish the Contractor's responsibilities and obligations under this Agreement and the Contractor shall remain solely responsible to the Owner for the performance of its obligations hereunder.

## **1.8 Owner's Right to Subcontract and Use of Ship's Staff**

- 1.8.1 Owner reserves the right to engage subcontractors to perform Owner's own work, furnish services and/or materials. The Contractor will permit Owner's subcontractors free access to the Yard and the Vessel and will give them such assistance as may be required by the Owner's Representative. Any services supplied to subcontractors by the Contractor including, by way of illustration, craneage, use of welding sets etc, shall be at the Contractor's tendered tariff rates. The Owner reserves the right for Vessel's staff to perform overhauls, repairs onboard



the Vessel while the Vessel is in the Yard, provided such work does not interfere with or delay the progress or completion of the Work, and complies with Yard safety regulations.

## **1.9 Supervision & Owner's Work**

- 1.9.1 The Owner's Representative or delegate will attend at the Yard throughout the repair period. Neither the presence of nor any act or omission of the Owner's Representative or delegate shall change or affect in any way whatsoever the Contractor's obligations hereunder or the Owners right to rely solely upon the Contractor's expertise.
- 1.9.2 The Owner's Representative shall at all times provide reasonable assistance to facilitate timely and efficient completion of the Work and shall, without limit to the generality of the foregoing, promptly bring to the attention of the Contractor any aspect of the Work which to his knowledge does not comply to the terms of this Agreement.
- 1.9.3 The Contractor shall, at its own expense, provide the Owner's Representative with reasonable accommodation and office facilities (including communication facilities), provided the Owner shall bear the costs of all communications by the Owner's Representative. The Contractor shall grant the Owner's Representative reasonable access to the Vessel, the Contractor's workshops and any other premises or site where the Work is being carried out, during normal working hours and whenever Work is being carried out outside such hours.
- 1.9.4 The Contractor shall give the Owner's Representative(s) twenty-four (24) hours' notice in writing in advance of the date, time and nature of all tests, inspections and trials of the Vessel or its machinery.
- 1.9.5 For the avoidance of doubt, the Contractor acknowledges that the Manager is agent only for and on behalf of the Owner and that the Manager shall not be under any liability to the Contractor hereunder whatsoever or howsoever arising.

## **1.10 Safety**

- 1.10.1 On the Vessel's arrival, a safety meeting with the Contractor's safety officer and Vessel's senior officers must be held, followed by regular safety meetings throughout repair period to discuss safety and accident prevention issues.

## **1.11 Gas Free Certification**

- 1.11.1 It shall be the responsibility of the Contractor to ascertain by actual tests made by a qualified chemist that spaces where repairs and/or hot work will be performed are gas free for man-entry and fit for hot work (as applicable), along with adjacent spaces where required as a safety precaution in line with best industry practice. The Contractor is to maintain the Vessel clean and gas free at all times and shall obtain gas free certificates, for the respective spaces in which, and adjacent to where, hot work will be performed.

## **1.12 Hotwork and Tank Entry**

- 1.12.1 Authorisation for Hot work to be done by the Contractor's personnel will be subject to:
  - Written notification from the Contractor's Representative to the master of the Vessel and the Owner's Representative of the area/spaces in which the work will be carried out.
  - The chief officer accompanying the Contractor's chemist on all of his inspections which are to be conducted at least daily, ensuring that all the necessary spaces are monitored, and maintained suitable for the work being performed within the space boundaries
  - All the requisite gas free certificates being passed to the chief officer, such certificates to be sighted and signed by the master to verify that the proposed area/spaces where hot work is to be performed are gas free.

- Organisation of Contractor's fire watch as applicable. 1.12.2 No hot work or risk-related works by the Vessel's crew, Owner's sea going maintenance team or Owner's subcontractors shall be permitted during the repair period without specific written approval from the Contractor and all company safety procedures shall also apply.

1.12.2 The Contractor agrees to undergo a JH143 risk assessment or similar if required by the Vessel's underwriters and to comply in full with any recommendations made as a result of such assessment.

### **1.13 Lighting, Access & Stability**

- 1.13.1 The Contractor shall be responsible at its own expense for the provision of sufficient lighting and safe access for work on deck, tanks, cargo spaces, machinery spaces and wherever required for the entire duration of repairs.
- 1.13.2 Sufficient lighting shall be provided by the Contractor in and around the Vessel to facilitate personnel movement, access, emergency escape and fire watch. The Vessel is to be maintained, whilst in Contractor's hands in a safe condition regarding fire and accident risk. Safe stability and adequate shoring of the Vessel in a floating dock is the responsibility of the Contractor.

### **1.14 Hull Integrity**

- 1.14.1 When the Work requires the opening of machinery, piping, heat exchangers, fittings etc which are directly or indirectly connected to a source of possible leakage into the Vessel, such as sea chests, over board discharge valves, crossovers, connections to the shell of Vessel, tanks or pipe lines containing liquid or any other source of leakage it shall be the responsibility of the Contractor to fit blanks as necessary to eliminate the possibility of leakage into any space or equipment of the Vessel and/or to remove the liquids ashore at its own expense. Upon completion of any such repairs, all blanks fitted shall be removed and after reassembly, these items shall be proven tight. These precautions shall be taken as necessary to prevent any damage to the Vessel whether it is afloat or in dry-dock. All the foregoing shall be for the account of the Contractor including any damage resulting in the course of performance of the Work.

### **1.15 Delivery of Vessel**

- 1.15.1 The Vessel shall be considered tendered for Works when she is off the Contractors' Yard ready to be secured at the wharf.
- 1.15.2 The Owner shall keep the Contractor advised of any changes in the Vessel's expected delivery date being on or around the date stated in Box 11.
- 1.15.3 Before arrival of the Vessel at the Yard, no work in connection with any of the Specification is to begin without the permission of the Owner which also has the right to cancel any of the specified items against respective credit, if such cancellation has been confirmed in writing prior to commencement of the Work. Following the arrival of the Vessel at the Yard, no work exceeding the scope of the Specification is to be commenced without a Variation Order.

### **1.16 Redelivery of Vessel**

- 1.16.1 The Vessel will be redelivered on or prior to the Date of Completion stated in Box 18 and accepted safely afloat by the Owner upon completion of all repairs, renewals, replacements, and system flushing and testing as applicable; after all of the Contractor's equipment, tools, appliances, dirt, debris and all waste and scrap material have been removed and the Vessel is brought to an acceptable state of cleanliness. The Contractor must provide the Owner with 3 days' prior written notice of intended completion of repairs, with a proforma invoice and planned schedule of payments in respect thereof as stated in Box 13.





- 1.16.2 The Contractor shall not be entitled to any lien, charge or other maritime claim over the Vessel or over any material, machinery, equipment, components, appurtenances or outfit added to or placed on board the Vessel or remaining in the Yard in the course of and for the purposes of the Work.
- 1.16.3 The Contractor warrants that upon completion of the Work the Vessel shall be re-delivered to the Owner free and clear of any liens, charges, claims or other encumbrance and in particular, but without limitation, that the Vessel will be absolutely free of all burdens in the nature of governmental imposts, taxes or charges as well as of all liabilities of the Contractor to its subcontractors, employees, suppliers and agents.

### **1.17 Tests, Trials and Acceptance of Work**

- 1.17.1 Upon completion of the Work the Vessel is to sail from the Yard in a safe condition and as soon as possible. The Contractor must discuss with Owner's Representative adequate function tests and inspections under supervision of Vessel's master after completing repairs, during flooding and if applicable, in the post repair period before loading/sailing. The Contractor in co-operation with Owner's Representative will evaluate the need for Contractor's staff to join the Vessel for sea trials or completion of system testing on the first voyage and/or until the first cargo has been lifted. Defects and defaults in the performance of Work are to be recorded in the "work done" report. Any defects coming to the knowledge of the Contractor must be discussed with the Owner's Representative.

### **1.18 Calibration Reports, Drawings, etc.**

- 1.18.1 The Contractor shall maintain complete records of the Work and shall make them available to the Owner at all reasonable times during the repairs and for a period of 1 (one) year following completion of the Work and shall treat and safeguard such records as strictly private and confidential.
- 1.18.2 After completion of the Work and prior to departure of the Vessel from the Yard, the Contractor shall supply "work done reports" and "records of inspection" in duplicate giving all measurements taken and drawings of any modifications performed. These shall be presented to the master, chief engineer through the Owner's Representative for their comments and approval.

### **1.19 Scrap Materials, Parts and Equipment**

- 1.19.1 All scrap, waste and old material will become the property of the Contractor subject to written agreement on a suitable credit to be given to the Owner. Such credits are to be indicated in the Tender if called for in the Specification. However, heavy scrap or old material such as heavy machinery parts, propeller and tail shaft (or repair items covered by the Vessel's insurance) will always remain property of the Owner and but may be acquired by the Contractor subject to written agreement on terms with the Owner.
- 1.19.2 The Yard is to accept the delivery of any Owner's supplied materials and shall ensure that they are kept in a safe and secure place and in good order and condition until the time of installation. The Yard is to transport all such items to the point of installation aboard the Vessel, whether stored aboard the Vessel or delivered to the Yard. Any unused materials, as designated by the Owner's Representative, are to be removed and held for Owners disposition.

### **1.20 Payment**

- 1.20.1 Separate invoices may be required by the Owner's Representative for
- General services



- Owner's repairs
- Insurance damage repairs
- Guarantee claim repairs

- 1.20.2 Throughout the period of the Works the Contractor is to provide cost updates to the Owner's Representative at regular intervals as mutually agreed: increments being not less than a quarter of the period of the Works. These updates are to provide details of cost variations on account of Variation Orders and cancelled work together with costs of work performed in accordance with the Tender Documents. The update is to be presented utilising the cost file forwarded with the Specification. All performed Work costs are to be clearly identified against original quotations and Variation Order job numbers.
- 1.20.3 Thereafter pro forma invoices are to be provided by the Contractor to the Owner's Representative and forwarded to the Owner's specified address. The Owner's Representative will negotiate and settle the pro forma invoice "As agent only for and on behalf of the Owner". In certain circumstances the Owner may elect to settle the pro forma invoice by another appointed party. In such cases this party and his role will have been identified in the stem confirmation letter.
- 1.20.4 Payment shall be made by the Owner in accordance with Box 13 and shall be subject to adjustment, if any, as hereinafter described. The Contractor shall give the Owner full credit without any deduction whatsoever for any Work or Additional Work not carried out and the Contractor will account to the Owner for all price reductions relating to the Work and any Additional Work taking into account the Owner's Representative's comments on the "work done report".

## **1.21 Contractor's Liability Insurance**

- 1.21.1 Without prejudice to its obligations under this Agreement, the Contractor shall provide, effect and maintain at no cost to the Owner, Ship Repairers Liability Insurance and Comprehensive General Liability (Third Party) Insurance, for not less than the amount stated in Box 16, providing full cover for such loss and damage for which the Contractor may be held liable to the Owner under this Agreement. The Contractor will maintain such insurance in place for a period of two years after completion of the Work.
- 1.21.2 The insurance to be provided under Clause 1.21.1 and Box 16 will include cover for, and the Contractor's liability hereunder shall extend to, pollution, loss of hire and consequential damages and will name the Owner as an additional insured with full cover and full waiver of subrogation. The Contractor shall procure confirmation in writing from its insurers prior to signing this Agreement, that the Owner shall have no liability for any premiums. The Contractor shall provide the Manager with written evidence of the foregoing no later than the Confirmed Date of Dry-dock Availability (Box 14). The naming of the Owner on the Contractor's insurance shall not preclude any claim of the Owner against the Contractor.

## **1.22 Liabilities and Indemnities**

- 1.22.1 Unless otherwise agreed in writing by the Parties (whether by way of Variation Order or otherwise), the Work and any Additional Work shall be complete in all respects on or before the Date of Completion (Box 18). In the event of any delay, the price stated in Box 13 shall be reduced by deducting there from Late Delivery Costs as specified in Box 15 (it being understood by the parties that such deduction shall be construed as liquidated damages and not as a penalty, being the parties agreed reasonable estimate of the Owner's loss) and that the Contractor shall give the Owner full credit therefore without any deduction whatsoever. The Contractor shall be liable for Late Delivery Costs per diem or pro rata for part of a day commencing on the Date of Completion (Box 18) for every day or part thereof the Vessel is delayed as aforesaid.



- 1.22.2 The Contractor hereby agrees to defend, indemnify and hold harmless the Owner, its affiliates, its subcontractors and their respective employees, officers and agents (including but not limited to the Owner's Representative) against all actions, proceedings, claims, demands or liabilities whatsoever or howsoever arising which may be brought against them by third parties (including, for the avoidance of doubt, but without limitation, subcontractors, employees, suppliers and agents of the Contractor) or incurred or suffered by them arising directly or indirectly out of or in connection with the performance of the Work and any Additional Work, and against and in respect of all loss, damages, costs and expenses (including legal costs and expenses on a full indemnity basis) which the Owner and each other party aforesaid may suffer or incur (either directly or indirectly) in defending or settling the same.

### **1.23 Guarantee**

- 1.23.1 The Contractor guarantees for a period of 180 days following redelivery and acceptance by the Owner of the Vessel, all machinery, materials and equipment to the extent repaired, installed or replaced by the Contractor as part of the Work and any Additional Work against all defects due to faulty design, defective material, testing and/or poor workmanship by the Contractor, its suppliers, subcontractors, agents or employees (other than arising directly from the work of Owner's subcontractors used in accordance with Clause 1.8.1).

### **1.24 Remedy of Defects**

- 1.24.1 Subject to Clause 1.24.3, the Contractor shall remedy at its expense any defects against which the Vessel is guaranteed by the Contractor under Clause 1.23.1. or, in the Owner's sole option, reimburse the Owner for all costs of repair incurred by the Owner in remedying the same.
- 1.24.2 If after consultation with the Contractor it is in the opinion of the Owner convenient to do so, then such work required under this guarantee shall be carried out at the Yard. However, if in the opinion of the Owner, it is inconvenient to bring the Vessel to the Yard, the Contractor will be liable for the costs, subject where applicable to the provisions of Clause 1.24.3 hereof, of having repairs carried out at another yard, including labour and materials, provided that, in such event, the Contractor may forward or supply replacement parts or materials to the Vessel, unless forwarding or supplying thereof to the Vessel would, in the opinion of the Owner, impair or delay the operation or working schedule of the Vessel.
- 1.24.3 In all cases in which repairs, installations or replacements are effected elsewhere than at the Yard, the Contractor shall remit the actual cost thereof to or as directed by the Owner upon receipt of the Owner's demand therefore, provided that the liability of the Contractor under this Clause shall not exceed the price that the Contractor would charge for making similar repairs or replacements. In the event of the Yard's failure to remit in full such actual cost within fifteen (15) days of the Owner's written and reasonably complete and detailed demand therefore, the Yard shall be liable for interest on all such overdue amounts, at the rate of twelve per cent (12%) per annum until payment is made in full.
- 1.24.4 In the event of any repairs or replacement effected under this guarantee, the terms of this guarantee shall be applicable to such repair or replacement for a period of sixty (60) days from the time the Vessel re-enters service following completion of same, provided that, as long as the Contractor shall have complied with its obligations under this Agreement it shall have no further obligations hereunder after one hundred and eighty (180) days of the redelivery of the Vessel

### **1.25 Force Majeure**

1.25.1 The Contractor shall notify the Owner in writing within 24 hours of the occurrence of an event of Force Majeure. For the purpose of this agreement, the term Force Majeure shall mean -

- any government requisition, control, intervention or requirement or interference arising out of war or preparation for war or the consequences thereof;
- warlike operations, mobilization, riots, civil commotion, blockades, embargoes;
- vandalism, sabotage, malicious damage;
- epidemics or abnormal sickness;
- illegal strikes, fire, explosion or other damage affecting the Vessel or works of the Yard by any mechanical breakdown of machinery or plant (if the Yard shows that the occurrence, as the case may be, of illegal strikes, fire, explosion, damage affecting the Vessel or other work of the Yard or mechanical breakdowns could not have been avoided through reasonable precaution);
- earthquakes, landslides, floods, severe abnormal weather conditions for the area as declared by any authority;
- restrictions as to import or export;
- delay in approval of plans or any other matters where such approval is required to be given by the Owner or by the Classification Society or other bodies whose approval is required;
- or any other events or circumstances beyond the Contractor's reasonable control which cannot be avoided or guarded against by the exercise of due diligence, always provided that such events or circumstances directly affect the Work.

1.25.2 Failure to notify the Owner in accordance with the requirements of Clause 1.25.1 shall preclude the Contractor from claiming any extension of time required for the Work and any Additional Work due to Force Majeure.

## **1.26 Termination**

### **Contractor's Default**

- 1.26.1 The Contractor shall be considered to be in default of its obligations under this Agreement if:
- (a) redelivery of the Vessel is, in the reasonable opinion of the Owner, unlikely to be effected or is not effected by the Date of Completion stated in Box 18; or
  - (b) the Vessel is unable to enter the dry-dock on the specified date in Box 14 due to matters within the reasonable control of the Contractor; or
  - (c) for any reason the Contractor shall be in material breach of its obligations under this Agreement; or
  - (d) the Contractor becomes insolvent, bankrupt, enters into a composition with its creditors or fails generally to pay its debts as they become due; or
  - (e) for any reason, the Contractor shall fail to maintain the insurances referred to in Clause 1.21 hereof.
- 1.26.2 If any of the foregoing events occur and, in each such event, the Owner shall in its sole option, be entitled to terminate this Agreement with immediate effect by notice in writing. Termination of this Agreement shall be without prejudice to all rights accrued due between the Parties prior to the date of termination.
- 1.26.3 Subject to any agreement in writing by the Parties to the contrary, if there is a delay in completion of the Works, for any reason whatsoever, and this continues for a period of more than two (2) days from midnight on the Date of Completion (Box 18), the Owner may at his option treat such delay as a repudiatory breach of contract and remove the Vessel from the Yard.

## **1.27 Assignment**



- 1.27.1 The Contractor shall not be entitled to assign or transfer this Agreement or any part of it or any of its rights, duties or obligations hereunder without the prior written consent of the Owner.

### **1.28 Intellectual Property**

- 1.28.1 The Owner retains all rights to the Specification and underlying drawings / records prepared from the Specification. The Contractor agrees to keep the Specification and working plans confidential at all times and acknowledges that it shall not be entitled to use, sell, manufacture or reproduce all or any part thereof without the Owner's prior written consent.

### **1.29 Third Party Rights**

- 1.29.1 Any person (other than the Parties) who is given any rights or benefits under this Agreement (a "Third Party") shall be entitled to enforce those rights or benefits against the Parties in accordance with the Contracts (Rights of Third Parties) Act 1999.
- 1.29.2 Save as provided in Clause 1.29.1 above the operation of the Contracts (Rights of Third Parties) Act 1999 is hereby excluded.
- 1.29.3 The Parties may amend vary or terminate this Agreement in such a way as may affect any rights or benefits of any Third Party which are directly enforceable against the parties under the Contracts (Rights of Third Parties) Act 1999 without the consent of any such Third Party.
- 1.29.4 Any Third Party entitled pursuant to the Contracts (Rights of Third Parties) Act 1999 to enforce any rights or benefits conferred on it by this Agreement may not veto any amendment, variation or termination of this Agreement which is proposed by the parties and which may affect the rights or benefits of any such Third Party.

### **1.30 Governing Law & Arbitration**

- 1.30.1 This Agreement shall be governed by English law and any dispute arising out of or in connection with this Agreement shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force.
- 1.30.2 The arbitration shall be conducted in accordance with the London Maritime Arbitrators' (LMAA) Terms current at the time when the arbitration is commenced.
- 1.30.3 Save as after mentioned, the reference shall be to three arbitrators, one to be appointed by each party and the third by the two so appointed. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment to the other party requiring the other party to appoint its arbitrator within 14 days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and give notice that it has done so within the 14 days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the 14 days specified, the party referring the dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be as binding as if he had been appointed by agreement.
- 1.30.4 In cases where neither the claim nor any counterclaim exceeds the sum of US\$ 50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.

### **1.31 Notices**



- 1.31.1 Any notice or other communication under or in relation to this Agreement (a "Communication") may be sent by fax, email, registered or recorded mail or by personal delivery.
- 1.31.2 The addresses of the parties for service of a Communication shall be as stated in Box 2 in the case of the Contractor. Notices to the Owner shall be given to the Owner care of the Manager as stated in Box 5.
- 1.31.3 Subject to Clause 31.4, a Communication shall be deemed to have been delivered and shall take effect:
- (i) in the case of a fax, when the sender receives one or more transmission reports showing the whole of the Communication to have been transmitted to the correct fax number; and
  - (ii) if delivered personally or sent by registered or recorded mail at the time of delivery.
- 1.31.4 If under Clause 1.31.3 a Communication would be deemed to have been delivered on a day which is not a business day in the place of receipt or after 18.00 (local time in the place of receipt) it will be deemed to have been delivered, and shall take effect, at 09.00 (local time in the place of receipt) on the next such business day.
- 1.31.5 The Contractor hereby irrevocably appoints **[ADDRESS IN ENGLAND FOR SERVICE OF PROCESS]** to accept service of all proceedings whatsoever on its behalf and agrees that service upon the party so stated at the address given shall be deemed for all purposes to be service upon the Contractor and the Owner hereby irrevocably appoints **[ADDRESS IN ENGLAND FOR SERVICE OF PROCESS]** to accept service of all proceedings whatsoever on its behalf and agrees that service upon the party so stated at the address given shall be deemed for all purposes to be service upon the Owner.