

Thames Shiprepair Service Limited

Standard Conditions of Sale

Effective 1st December 2006 until further notice

1. General

(i) These conditions upon being communicated to the customer shall thereupon be incorporated in the contract. The placing of an order with the contractor whether by oral, telephone, written, faxed, telexed or cabled communication, shall constitute acceptance of these conditions which shall govern all work or services rendered by the contractor.

(ii) The Contractor shall sell and the Customer shall buy the goods and services in accordance with any written quotation by the Contractor or any written order by the Customer which is accepted by the Contractor subject in either case to these conditions.

2. Definitions

In these conditions

(a) 'The Contract' means the agreement between the Customer and the Contractor (however concluded) for work to be carried out by the Contractor on the vessel or structure owned or under the control of the Customer. In the event that the Contract is made on behalf of the Customer by any person or corporation purporting to act as agent for the Customer that person or corporation shall be jointly responsible with the Customer to the Contractor for the performance of the obligations of the Customer under the contract and communication by the Contractor to such person or corporation of these conditions shall constitute communication to the Customer.

(b) 'The Customer' means the owner of the vessel or structure or subject of the work to be carried out in accordance with the Contract incorporating these Conditions or the person or corporation ordering work to be carried out in accordance with the Contract.

(c) 'The Contractor' means Thames Shiprepair Service Limited.

(d) 'Sub-Contractor' includes all persons instructed by the Contractor to do work, render services, afford accommodation or supply goods: the Contractor contracts on behalf of such persons as well as itself and the Customer (where not the owner) contracts on behalf of the owner as well as itself.

(e) 'Vessel' means a vessel or other structure upon which work is carried out for a Customer.

(f) 'Work' shall include, but is not limited to, removals and replacements of ships' parts, repairs, materials and goods supplied or the provision of accommodation, and steel fabrication and erection.

3. Delivery for Repair

(i) The Vessel (unless otherwise expressly agreed) is to be delivered by the Customer to the Contractor and re-delivered by the Contractor at the Contractors premises or at its option at the nearest convenient place to the said premises. 'Re-delivery' for the purposes of these conditions shall include withdrawal of the Contractor's workmen.

(ii) Any date named by the Contractor for the delivery is an estimate only and is not to be the essence of the Contract. The Customer shall nevertheless be bound to accept delivery when available. The Contractor shall not be liable in any way in respect of any late despatch or late delivery howsoever caused nor shall such failure to despatch or deliver be deemed to be a breach of the Contract.

4. Work

The Contract covers and includes, as well as the work specified therein, all specified removals in connection therewith. Removals must, except where otherwise stated, be replaced but removals and renewals (other than renewals of previously sound parts which are accepted by the Contractor to have been broken or damaged by workmen of the Contractor or any Sub-Contractor) shall be deemed to be extras to the work detailed in the Contract.

5. Old Parts

All old material except heavy parts of machinery, propellers and tailshafts shall unless otherwise agreed in writing, upon re-delivery become the Contractors property without compensation to the Customer.

6. Price

The prices of goods and services performed by the Contractor under the Contract shall be the Contractor's quoted price or where no price has been quoted the price listed in the Contractor's published price list current at the date of acceptance of the order.

7. Payment

Payment to be made without any deductions or set off whatsoever. Payment by the Customer for work done shall unless otherwise agreed in writing be made monthly in respect of work carried out to date less previous payments on account and the balance shall be due on completion of the work. No forbearance on the part of the Contractor in demanding interim payments under the Contract shall prejudice or affect the entitlement of the Contractor to require payment of the balance upon completion of the work. Unless otherwise specified, the terms of payment are 100% upon redelivery. In default of payment in accordance with this clause the Customer shall be liable to pay the Contractor interest on amounts unpaid at the rate of 8% over the Base Rate of The Bank of England at the date that the contract was concluded.

8. Other Charges

The Contractor shall be reimbursed by the customer for all disbursements incurred in connection with the Contract which are not ordered and paid for by the Customer included (but not limited to) towage, pilotage, harbour dues and charges and other port disbursements, craneage, carriage and transport by road, rail, air and water plus the Contractors' usual handling charge for such disbursements.

9. Contract Price Adjustment

Unless otherwise specified, the tender price is based in the cost of labour, material, and services ruling at the date thereof, and if by reason of any increase or decrease therein before re-delivery of the vessel the actual cost to the Contractor shall be increased or decreased, the contract price shall be adjusted accordingly.

10. Frustration

If, by reason of any supervening event totally beyond the control of either party, this contract is discharged by frustration or impossibility of performance the Customer shall pay to the Contractor the amount by which the actual cost (including establishment charges) of work done and materials bought before the time of discharge exceeds the aggregate of:-

(a) all sums paid by the Customer to the Contractor hereunder before the time of discharge and

(b) the value to the Contractor (by sale or use for other purposes) of material or equipment obtained for but not incorporated in the work to be carried out on the Vessel under this contract prior to the date of discharge and all sums payable but not paid to the Contractor before the time of discharge shall cease to be so payable provided that if the actual cost (including establishment charges) of work done and materials bought is less than the aggregate of (a) and (b) above the Contractor shall repay the difference to the Customer.

11. Repair Damage

If any work carried out under the contract is destroyed or damaged by a cause for which the Contractor is not liable under the Contract the Customer shall pay to the Contractor as an addition to the Contract price the actual cost (including establishment charges) of making good such destruction or damage.

12. Guarantee

(i) The Contractor guarantees the soundness of work and materials carried out or provided in accordance with the contract for the period of three months from the date of re-delivery of the Vessel to the Customer (the guarantee period) provided that no alterations or additions have been made to the work or materials without use and maintenance of the work during the guarantee period and that any defect in the work appearing during the guarantee period has not resulted from negligence, mismanagement or omission on the part of the Customer or from errors or omissions in information supplied to the Contractor by the Customer prior to or during the work under this Contract.

(ii) The Customer shall immediately notify the Contractor in writing of any defect in work or materials of the Contractor discovered during the guarantee period whereupon the obligations (hereafter referred to as the Contractors Guarantee) shall be as to remedy any agreed defective work and materials at its own premises, free of expense to the customer or, at its option, to pay to the Customer the cost of remedying said defect elsewhere limited to the amount which the Contractor would have charged a third party at arms length if the Contractor had remedied such defect at its own premises, provided that the cost of delivering and re-delivering the Vessel to and from the place of repair shall be borne by the Customer.

(iii) Notwithstanding the generality of the foregoing sub-clauses (i) and (ii) of this clause the liability of the Contractor to the Customer for repairs under the Contractors' Guarantee or for any loss or damage or accident to the vessel arising out of the Contract shall be subject to the overriding limitation in respect of any defect or event (and a series of accidents arising out of the same defect or event shall constitute one defect or event) to the sum of £500,000 or such other sum as shall be specifically agreed in writing ('The maximum amount'). Should the cost of work to be carried out under the Contractors Guarantee exceed the Maximum Amount any excess shall be paid by the Customer to the Contractor upon completion of guarantee repairs.

13. Limitations of Liability

(i) The Contractors Guarantee shall be exhaustive of the Customers remedies against the contractor in respect of any defect or deficiency in the Contractors work under the Contract and save as herein provided the Contractor (to the extent permitted by law) hereby excludes:

a. All warranties, conditions or other terms implied by statute or common law; and

b. all liability to the Customer in respect of any loss or damage for goods or property of the Customer whether arising from breach of contract, breach of statutory provision or implied terms or as the result of negligence of the Contractors or its servants or agents.

(ii) The Contractor shall not be liable in any event for any indirect or consequential losses or damage whatsoever (including loss of goodwill, business or anticipated savings) loss of profit or use for any third party claims in connection with the Contractor howsoever arising suffered by the Customer and even if foreseeable or in contemplation of the Contractor and (without limitation to the generality of the foregoing) for any accident which may occur in consequence of any defect to be remedied by the Contractor pursuant to clause 11 or loss of time or hire or detention of the vessel or wages of crew, port charges, loss of earnings or any other loss damage or expense whatsoever.

(iii) The Contractor shall not be liable for any lack of fitness in docks and premises, plant, cranes or equipment which are not its property or permanently occupied by it or for any lack of fitness in plant, cranes or other equipment not owned by it or for any failure to discover or warn as to such lack of fitness or for any consequences of complying with the directions of the owners or occupiers of such docks or premises or their servants. The Customer shall keep the Contractor fully and effectually harmless and indemnified in respect of any indemnity granted by the Contractor to the owners or occupiers of any such docks, premises, plant, cranes or equipment in connection with the hiring or use thereof for the purposes of work in accordance with the Contract.

(iv) The Customer agrees that it is fair and reasonable for the Contractor to limit its liability under these conditions and accordingly the Customer agrees to accept the Contractors Guarantee in substitution for all conditions or warranties express or implied by statute or common law (including but not limited to any concerning the fitness of any work or materials for a particular purpose) which are hereby expressly excluded. The Contractor shall not be liable for any loss or damage caused by the Customers failure to fulfil his responsibilities under these conditions or from any matter within the control of the Customer.

(v) The parties agree that should any limitation or provision contained in these conditions be held to be invalid under any applicable statute or rule of law and if the Contractor thereby becomes liable for any loss or damage which would otherwise have been excluded, such liability shall be subject to all other limitations and provisions of these Conditions which will remain in full force and effect.

14. Towage and Lighterage

(i) All towage performed by the Contractor or Sub-Contractor is undertaken in accordance with and subject to the United Kingdom Conditions for Towage and Other Services (Revised 1988) or any later edition superseding such conditions.

(ii) The use of barges by the Contractor or Sub-Contractor is undertaken in accordance with and subject to the terms of the London Lighterage Clause.

15. Trials

Any trials or movements of the Vessel shall be at the Customers sole risk in every respect. Neither the Contractor or Sub-Contractor shall be under any liability whatsoever to the Customer for any act or default in or arising out of such trials or movements and the Customer shall keep the Contractor and any Sub-Contractor fully and effectually indemnified in respect of any claims whatsoever brought by third parties against the Contractor or Sub-Contractor howsoever arising out of such trials or movements.

16. Force Majeure

(i) The Contractor shall be under no liability to the Customer in any way whatsoever for destruction, damage, delay or any other matters of any nature whatsoever arising out of war, rebellion, civil commotion, strikes, lock-outs and industrial disputes, fire, explosion, earthquake, acts of God, flood, drought or bad weather, the unavailability or late delivery of supplies, or requisitioning, or other act or order by any government department, council or other duly constituted body. The Contractor shall further be under no liability to the Customer in any way whatsoever for unforeseeable lack of availability of slipways or for any other circumstances or happenings (whether of the foregoing classes or not) beyond the Contractors control.

(ii) If an event of force majeure shall continue for longer than three months the Contractor shall be entitled to terminate the agreement by notice on the Customer.

17. Death and Personal Injury

No provisions of these conditions shall limit or exclude the liability of the Contractor for death or personal injury resulting from negligence of the Contractor.

18. Insurance

The Customer shall keep the Vessel insured throughout the terms of the Contract and during sea trials, and any other goods which are the Customers property deposited or stored on the Contractors premises shall be left there at the Customers risk and the Customer is recommended to effect all insurance necessary for such goods. Any property belonging to the Customer shall at his expense be removed forthwith from the Contractors premises either upon re-delivery of the Vessel or at such time as may be mutually agreed.

19. Prohibition on assignment

The Customer shall have no right to assign the benefit of its obligations under Contract with the Contractor save with the Contractor's written consent.

20. Compliance and Declaration

The Customer shall have complied with 'The Ship and Port Facility (Security) Regulations 2004' and the 'Merchant Shipping and Fishing Vessels (Port Waste Reception Facilities) Regulations 2003 (S1:2003/1809)' as applicable at the time of the vessel entering the Contractors premises. The Customer shall also ensure that a full written declaration concerning any biocidal paint coatings previously applied to and remaining on the vessel is made prior to the vessel entering the Contractors premises.

21. Applicable Law

The Contractor shall be governed by English Law and any dispute arising out of the Contract or these Conditions and in any way connected herewith or with the rights, duties or liabilities of either party thereunder shall be referred to arbitration in London by a single arbitrator appointed by agreement between the parties to the Contract or in default of agreement by the President for the time being of the London Maritime Arbitrators Association. There shall apply to all proceedings under this clause the terms of the London Maritime Arbitrators Association current at the time when the arbitration were commenced.