

STANDARD CONTRACT TERMS AND CONDITIONS FOR THE REPAIR OF SHIPS AND OFFSHORE VESSELS AT NORWEGIAN SHIPYARDS

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Prepared by the Norwegian Shipowners' Association (*Norges Rederiforbund*) and the National Association of Ship- and Offshore Yards (now TBL-Skip)

Section 1

The scope and performance of the work

1. The work only includes such work as has been specified in writing. No order is binding before it has been confirmed in writing. This also applies to change orders and additional work.
2. The customer may require the shipyard to undertake change orders or additional work so long as this does not cause unreasonable disruption to the shipyard's other scheduled work.
3. The work shall satisfy such requirements as are applied by public authorities and/or classification societies to the ship at the time this contract is entered into. If the requirements imposed by public authorities and/or class are amended after the time this contract is entered into, the shipyard shall inform the customer of such amendments as soon as possible and will be obliged – in the absence of agreement to the contrary – to implement the required changes subject to adjustments to the contract price and time of delivery, as set forth in Section 2 (6) and Section 6 (2).
4. The work will be performed in conformity with good practice in the Norwegian ship and/or offshore repair sector. The shipyard undertakes to perform the work professionally using good quality materials. The shipyard is however obliged in so far as is reasonable to take into consideration the customer's wishes in relation to the materials to be used and the performance of the work in so far as they come within the scope of the contractual work. The customer's wishes with regard to the materials to be used and the performance of the work will not cause any alteration to the shipyard's obligations under this contract.
5. In the event of inconsistency between the contract and the associated specifications and drawings, the provisions of the contract will prevail. In the event of inconsistency between the specifications and the drawings, the specification will be decisive.
6. Drawings, illustrations and photographs are intended for illustrative purposes and unless included in the contract by means of express reference are not binding in relation to the detailed performance of the contractual work. Lists of dimensions, weights and volumes should be considered to be approximate unless there is an express agreement or clear presumption to the contrary.
7. Drawings and illustrations, together with information about dimensions, weights and volumes, that the customer makes available to the shipyard will be considered to be guaranteed correct if the shipyard notifies the customer that such information will be used as the basis of the repair work or if it is clear that the customer understands that the shipyard will use this information for such purposes and the customer does not make a reservation without undue delay.

8. If the required materials cannot be obtained at the appropriate time (materials-related delay), both parties are entitled by means of separate agreement to require such changes to be made to the specifications as are necessary. If the materials-related delay is not due to force majeure events and the parties have agreed on a fixed time of delivery and/or a fixed price, these shall apply without any modification, although the customer will be credited with any time and costs saved. If the materials-related delay is due to force majeure events, the time of delivery and the price shall be adjusted as set forth in Section 2 (6) and Section 6 (2) subject to the proviso that the customer shall be entitled to cancel this part of the work in return for indemnifying the shipyard for expenditure incurred directly in connection with the planning and/or performance of this part of the work.

9. In addition to the ship's crew, the customer is entitled to locate technical supervisors at the shipyard during the repair period in order to supervise the performance of the work. During normal working hours these technical supervisors shall be granted access to all places where work on the ship is being performed and where materials and equipment are stored. Outside normal working hours the shipyard shall not refuse access to the technical supervisors without reasonable cause. In agreements with sub-suppliers and sub-contractors the shipyard shall, if the customer so requests, attempt to secure the customer the right to have his technical supervisors supervise the performance of the work to the same extent as at the shipyard.

10. Where operational testing needs to be undertaken during the repair work either at the quayside or in the shipyard (cf. Section 8), the shipyard shall give reasonable notice to the technical supervisors, as well as to representatives of inspection authorities and classification companies.

11. The technical supervision dealt with in this section does not in any way alter the shipyard's contractual obligations.

Section 2

Time of delivery

1. If no fixed time has been agreed for delivery, the work shall be performed during normal working hours without overtime and as expeditiously as possible taking into account such other obligations as the shipyard had undertaken at the time the contract was entered into (see also Section 3). In the absence of agreement to the contrary and assuming that the ship arrives at the shipyard at the scheduled time, the work shall commence as soon as the ship arrives at the shipyard.

2. If a fixed time has been agreed for delivery the shipyard may stipulate a fixed date prior to the ship's arrival within which the parties shall agree on the scope and performance of the work. If the parties fail to reach agreement by this date, the shipyard may on giving two working days' notice in writing to the customer inform him that the lack of agreement on the work's scope and performance gives the shipyard the right to postpone the time of delivery by the same number of days as the number of days by which this two-day deadline is exceeded.

3. Except as otherwise provided, the provisions of the following paragraphs apply whether or not a fixed time has been agreed for delivery.

4. If the shipyard when entering into the contract has stipulated that the customer must make an advance payment prior to the arrival of the ship at the yard and if that payment is not made within the deadline for payment, the shipyard may, after giving a notice in writing to the customer, require the time of delivery to be postponed by the same number of working days as the number of days by which late payment is delaying the work.

5. If the commencement or performance of the work is delayed because the customer has not undertaken the actions that on his side are necessary to enable the shipyard to commence or perform the work, the time of delivery shall be postponed by a corresponding period. If the customer fails to fulfil his obligations under this contract, the shipyard is entitled in the case of the customer's failure to make payment immediately, or in other cases on the expiry of five days' written notice, to suspend work until the customer has fulfilled his contractual obligations. In such circumstances the time of delivery shall be postponed by a corresponding period. The customer must pay all additional expenses that arise as a result of his failure during the performance of the contract to fulfil his contractual obligations provided that he has been warned about the situation.

6. If the parties agree on change orders or additional work while the work is being performed, the time of delivery shall be adjusted by as much additional time as is required for, or as much time as can be saved by, the preparation and performance of these works. If a fixed time of delivery has been agreed, the customer can require the shipyard to offer a new time of delivery in writing with binding effect.

7. The agreed time of delivery applies subject to the usual reservations concerning force majeure. Following entry into the contract, force majeure will be considered to apply if delivery is hindered or delayed because of extraordinary circumstances or events that the shipyard could not reasonably have anticipated at the time the contract was entered into, e.g., by such unpredictable events in or outside Norway as war or war-like conditions, mobilisation, import or export bans, reductions in working hours because of statutory or collectively-negotiated requirements, strike, lock-out, natural disasters, fire or other extraordinary events that are outside the shipyard's control. The same applies if delivery is hindered or delayed because of the late delivery of major parts or subcontractors' material failure to perform in so far as the reason for the delay would constitute force majeure in accordance with the paragraph, if this reason has affected the shipyard or is attributable to circumstances affecting the subcontractor over which the shipyard has had no control, such as insolvency, a voluntary arrangement with creditors or other financial difficulties. This provision does not affect the shipyard's duty to be cautious in its choice of subcontractors in order to be reasonably certain of avoiding delays.

8. If a force majeure event occurs, the shipyard may require the delivery date to be postponed by as many working days as the shipyard can demonstrate that delivery has been delayed due to the circumstances in question. This also applies if the force majeure event occurs after the agreed delivery date has passed. The shipyard will be under an obligation to do its utmost to avoid or limit the delay.

9. If the force majeure event lasts more than days, the customer is entitled, provided a figure is inserted in this provision, to remove the ship from the shipyard and the delay will then be considered to be material, cf. Section 12 (3).

10. If circumstances occur – including change orders or additional work – that in the opinion of the shipyard will cause delivery to be delayed, the shipyard is under an obligation to notify the customer as soon as possible and in any event no later than three working days after it became aware of the situation. So far as possible the shipyard must also provide an estimate of the probable duration of the delay. If written notification is not provided within the aforementioned deadline, the shipyard may not subsequently require any postponement of the time of delivery, unless the delay is attributable to the customer.

11. If persons in the customer's employment are assisting with the performance of the work, the shipyard is not responsible for delay in so far as delay is attributable to circumstances relating to such persons.

Section 3

Docking

1. An agreement on docking applies unless meanwhile the dock has become occupied because of another necessary docking that the shipyard could not reasonably have anticipated at the time the contract was entered into or that is not due to later agreements.

2. The shipyard is however entitled to give disabled ships in distress priority with regard to docking. If a delay is going to occur in docking, the shipyard is under an obligation to notify the customer about the situation as soon as the shipyard becomes aware of it. This provision applies correspondingly to slipping.

Section 4

Workers

1. Apart from the ship's crew and the shipowner's own travelling repair crew, the customer is not entitled to utilise other workers than those employed by the shipyard or those approved by the shipyard to carry out repair work, rust removal, painting etc. Unless it will hinder or otherwise delay the shipyard's work, the customer is however entitled to utilise other workers and specialists to perform repair work and servicing in so far as the shipyard's employees lack the necessary competence to perform the work.

2. The customer may not however require docking or slipping in order for such work to be carried out.

Section 5

Discarded materials

To the extent that the customer has informed the shipyard in advance in writing that he wishes to retain materials discarded during the repair work, the shipyard shall preserve such materials at the customer's expense and risk. Otherwise the customer may demand such materials once they have been removed from the ship only in so far as they are still in the possession of the shipyard.

Section 6

Price

1. If no fixed price has been agreed for the work, the work will be paid for on the basis of time and materials according to the shipyard's usual practice.

2. If a fixed price has been agreed for the work, work that is not included in the specification will be charged in accordance with the shipyard's usual practice for charging on the basis of time and materials, unless otherwise agreed. Before commencing such additional work, the shipyard shall notify the customer in writing that the performance of such work is contingent on additional payment. In the absence of such notification, there will be no alteration to the agreed price. When giving such notification, the shipyard shall provide a price estimate and – if the buyer requires it – a binding quotation in writing. If the agreed changes result in a reduction in the scope of the work, the customer shall be credited with an equivalent proportion of the agreed price.

3. If costs incurred by the shipyard in respect of the procurement of supplies and labour from sub-suppliers and subcontractors is not included in a fixed price agreed with the customer, the costs of such supplies and labour may be charged to the customer together with an additional percentage calculated in accordance either with a separate agreement between the parties or with the shipyard's other terms of delivery to the customer. The additional percentage will be calculated on the basis of the amount paid by the shipyard for external supplies and labour.

Section 7

Payment

1. Unless agreed otherwise, while the work is in progress the shipyard may require the customer to pay an amount every 14th day on account to cover up to 75% of the shipyard's expenditure on wages, materials consumed, additional operating expenses, dock and machinery hire and the profit mark-up on such work as has at any time been completed. In addition the shipyard may require such payment on account in respect of materials purchased to the extent that payments have been made in advance to sub-suppliers and the shipyard provides an adequate bank guarantee for the payment on account. With regard to 75% of the price of the purchased materials, the bank guarantee shall be released by the customer at the shipyard's request no later than 14 days after the materials have been utilised for the repair work.

2. The customer undertakes to make such payments on account within one week of receipt of the relevant invoice unless the shipyard within the same deadline has received an itemised objection to the invoice. The customer's payment of an amount on account shall not be considered to constitute approval of the invoice for the on-account payment.

3. In the absence of written agreement to the contrary, payment of the outstanding amount becomes due on delivery. In no circumstances does payment become due before receipt of the final invoice by the customer.

4. The shipyard is entitled to withhold the ship until full payment has been made in accordance with the agreed terms of payment.

5. If the shipyard is unable to present the final invoice on delivery, the customer may require delivery of the ship against provision of a bank guarantee or other adequate security for such amount as is likely to be due to the shipyard. In such circumstances the shipyard is obliged to send the customer the final invoice within 30 days of the ship's departure from the shipyard, otherwise the shipyard's entitlement to security will lapse.

6. If a dispute arises prior to delivery of the ship concerning the amount of the payment, including a dispute concerning the customer's right of set-off, the customer has the right, in return for paying the whole amount demanded by the shipyard, to demand provision of a bank guarantee or other adequate security for the disputed amount. In such circumstances the shipyard may not refuse to deliver the ship. If the shipyard does not wish to put up security for the disputed portion of the bill, the customer is entitled to have the ship delivered if he pays the non-disputed amount and provides a bank guarantee or other adequate security for the disputed portion of the bill.

7. When one party has put up security, this security will lapse if the other party fails to commence proceedings in accordance with Section 16 within three months of the date the guarantee was provided. The costs of providing the guarantee will be apportioned between the parties according to the outcome of the dispute.

8. If payment does not take place on the due date, the customer shall pay interest from the due date until the actual date of payment in accordance with Section 3 of the Norwegian Interest on Late Payments Act (Act of 17 December 1976).

9. If the shipyard has given the customer notice in writing following the due date for payment and the customer fails to make payment within 30 days, the shipyard may terminate the contract and, in so far as the conditions for doing so are satisfied, claim damages for breach of contract.

Section 8

Tests

Both the customer and the shipyard are entitled to perform such tests as they consider necessary in order to determine whether delivery is in conformity with the contract. The shipyard may allow its own employees or officials to operate the ship's machinery during tests at the quayside or at sea. In the absence of agreement to the contrary, the shipyard may require the ship's crew at no cost to the shipyard to operate the ship's engines etc. during the tests and/or utilise such fuel, oil etc. as is on board during these tests. In good time before and after the test the shipyard's representatives may undertake all investigations, measurements or observations on board as the shipyard considers necessary for the satisfactory completion and control of the test.

Section 9

Drawings, weight measurements and patents

1 The shipyard has proprietary rights to all drawings, casting patterns, weight, volume or cost assessments etc. that it has either prepared or obtained. The customer must at all times be able to utilise these where work is carried out subsequently on the ship or a sister ship. Subject to the payment of reproduction costs, the customer may require the shipyard to supply copies of these materials. The shipyard must not make the customer's drawings, models etc. available to third parties unless it has obtained the customer's consent.

2 The shipyard shall in all circumstances indemnify the customer in respect of claims and expenses of any kind resulting from action taken by a third party against the customer in relation to a patent infringement in connection with the shipyard's work on the ship. If a third party brings a claim against the customer in connection with a patent infringement in connection with the shipyard's work on the ship, the customer shall notify the workshop of the claim and the shipyard shall have the opportunity to take over the refutation and defence of such claim or otherwise be granted to opportunity to defend itself against the intervening claim. In the event of an arrest in connection with such a claim, the shipyard shall if required to do so put up the necessary security to ensure the release of the customer's assets. The aforementioned provisions shall not apply if the claim against the customer or the ship arises out of an infringement of patent rights in relation to parts and/or a design that were supplied to the ship by the customer himself.

Section 10

Liability for damage

The shipyard's legal liability for damage or losses affecting the ship, its accessories and equipment or other items owned or disposed of by the customer is limited to NOK If no amount is inserted, the liability of the shipyard is limited to NOK 25 million. Such liability as arises pursuant to Sections 11 and 12 is additional to the latter amount. The shipyard will be liable for any time lost as a result of such damage to the ship in so far as this is in accordance with Section 12.

Section 11

Liability for defects

1 If it becomes apparent after delivery that the materials used or the work performed did not conform to the contract or that there are other defects in the work and the customer has presented a claim within the applicable deadline, cf. Section 14, the shipyard shall rectify the defect free of charge. If the parties have adopted Addendum 1, clause(s) as part of the contract, the shipyard's liability (duty to rectify) in respect of design defects will be limited as set forth in the relevant clause(s).

2 The approval of drawings, specifications etc. by the customer, class and/or public authorities does not absolve the shipyard of liability under this section. The same applies if the customer has wholly or partially supplied drawings, specifications etc.

3 The customer must put the ship, or if it is adequate the part that shall be rectified, at the shipyard's disposal for the time necessary for the performance of the work.

4 If the defect has caused damage to the ship or to parts of it, the duty to rectify is limited to the repair or replacement of the part(s) of the ship that have been damaged as a direct and immediate result of the defect.

5 The same contractual terms and conditions apply to the rectifying work as to the original work. The customer is entitled to have the rectifying work performed at another shipyard if it would be unreasonable to take the ship to the shipyard [that is party to this contract]. The shipyard's liability to pay compensation for errors and defects will in all cases be limited to the price of carrying out such rectifying work at a Norwegian shipyard.

6 The shipyard's liability for performing rectifying work in accordance with this section, including any liability for unsuccessful attempts to rectify the error or defect, shall in all cases be limited to NOK If no amount is inserted the shipyard's potential liability for time lost by the customer during the rectifying work or attempt at rectification, plus any liability arising in accordance with Section 12, shall be limited to the amount arrived at when 360 days' liquidated damages are calculated in accordance with Section 12(1)(1). In the event that no amount is inserted in this provision, however, the shipyard's liability for other losses eligible for compensation is unlimited.

7 Apart from the circumstances referred to herein, no claim may be validly brought against the shipyard on the grounds of non-contractual delivery.

8 The shipyard undertakes if so required by the customer to assign to the customer the benefit of its possible claims against subcontractors/suppliers for errors or defects in connection with the repairs to the ship. The shipyard will be absolved from its duty to rectify to the extent that the customer receives compensation directly from, or rectifying measures are performed directly by, the shipyard's subcontractors.

Section 12

Liability for delay and termination of contract

1 If a time or day of delivery has been agreed in writing, and unless the parties agree otherwise, in the event of late delivery the shipyard shall pay liquidated damages of 1/12% of the total amount due under the contract and at least NOK for each of the first 60 days and thereafter 1/12% and at least NOK for each subsequent day by which the time of delivery is exceeded. If the delay is attributable to circumstances for which the shipyard is not responsible, cf. Section 2, no liquidated damages are payable. The parties may by special agreement in writing determine that the shipyard shall receive remuneration equivalent to 1/12% of the total amount due under the contract for each day gained because the work is completed before the agreed time of delivery.

2 Liquidated damages are calculated as the higher of the amount that results when calculating 120 days' liquidated damages in accordance with Section 12(1)(1) or NOK The bonus is limited to the higher of 120 days' bonus in accordance with Section 12(1)(3) or NOK

3 In the event of material delay that is of great significance for the customer, and that is not attributable to the customer's circumstances, the customer is entitled to terminate the contract. This also applies before the delivery date if before that date it is clearly inevitable or overwhelmingly likely that such a delay will occur.

4 The customer's right to terminate the contract also applies in circumstances where the shipyard is not responsible for the delay, cf. Section 2. Where the customer terminates the contract as the result of material delay due to force majeure the customer is under an obligation to pay for work performed and to take over parts etc. acquired or ordered by the shipyard for the performance of the work in circumstances where the shipyard cannot reasonably be expected to retain them. Where the customer terminates the contract for reasons for which the shipyard is responsible, the customer will only be obliged to pay for work performed and to take over parts to the extent such an obligation follows from general legal rules.

5 If no time or date of delivery has been agreed in writing, the shipyard will be liable for delay in accordance with general legal rules, although this liability will be limited to the amount that results from the calculation of 120 days' liquidated damages in accordance with Section 12(1)(1).

Section 13

Insurance

The customer shall ensure that the ship while at the shipyard is covered by adequate hull insurance and that the usual liability insurance is in place.

Section 14

Claims

1 Claims in connection with delayed delivery must be presented without undue delay.

2 If the customer has discovered a defect during the repair work, the shipyard will only be liable if a claim is presented without undue delay after discovery of the defect. If the customer ought to have discovered the defect before delivery, he shall compensate the shipyard for extra expenditure incurred because the defect has to be rectified at a place other than the shipyard.

3 Post-delivery claims concerning defects or materials or work that the customer considers not to be in conformity with the contract must in all cases be presented as soon as the error or defect is discovered.

4 The shipyard has no liability whatsoever for the repair work if a claim concerning the error or defect is not presented within months of redelivery. Unless a different figure is inserted a six-month deadline applies for the presentation of claims.

5 Claims concerning an invoice reckoning or an invoice must be presented within 30 days of receipt of such reckoning or invoice.

6 All claims must be presented in writing and itemised.

Section 15

Scope of contract

1 These contractual terms and conditions apply to the shipyard's work to modify, repair and maintain the ship.

2 If the work is performed on an item of equipment other than a ship, the terms and conditions that apply under this contract regarding a ship will apply correspondingly to such other equipment.

Section 16

Arbitration etc.

1 In the event of a dispute arising between the parties in relation to this contract, the dispute shall be resolved finally and with binding effect on both parties by means of arbitration in Norway. The parties shall jointly appoint an arbitration panel with three members. One of these, who must be a lawyer, shall be appointed as the panel's chairman. If 14 days after one of the parties has filed a written request for arbitration the parties have not been able to agree on the composition of the arbitration panel, the senior judge (Lagmann) of the Court of Appeal where the shipyard has its legal venue shall on the request of one of the parties appoint the three arbitrators.

2 All disputes under this contract will be determined under Norwegian law.

ADDENDUM 1

TO

THE STANDARD CONTRACT TERMS AND CONDITIONS FOR THE REPAIR OF SHIPS AND OFFSHORE VESSELS AT NORWEGIAN SHIPYARDS

If the parties agree that the shipyard's liability for design defects shall be subject to special regulation (cf. Section 11(1) of the contract), then the clause(s) appearing below that the parties have resolved to adopt as part of the contract shall be countersigned by both the customer and the shipyard in the margin next to the relevant clause(s). The shipyard's liability (duty to rectify) for design defects will then be limited in accordance with the relevant clause(s) within the scope of the standard limits of the shipyard's liability for defects under clause Section 11 of the contract that shall continue to apply also to liability for design defects:

The parties resolve to adopt: CLAUSE A

If the shipyard shall repair or modify the ship or parts of it in accordance with a design supplied by the customer or engineer engaged by the customer, the shipyard has no liability for defects attributable to errors in such a design provided:

- a) that the shipyard has undertaken such professional checks of the design as are reasonable in view of the shipyard's technical competence,
- and b) that the shipyard has ensured that the classification company or public authorities have undertaken the usual checks and approved the designs,
- and also c) that the shipyard has given notice in writing to the customer concerning any risk relating to the design that has come to its attention. If the risk is of such a type that the shipyard should have been aware of it and should have notified the customer of its existence but failed to do so, the shipyard will be liable for the design defect.

The parties resolve to adopt: CLAUSE B

If the defect is attributable to a design that has not previously been realised and tested on a vessel that is underway (new design), and the shipyard prior to entering into the contract has alerted the customer in writing to the situation, the shipyard's aggregate liability for design defects on the ship will be limited to an obligation to undertake rectifying work, for which the aggregate cost price shall not exceed% of the price of the repair work, where the cost of the rectifying work is calculated in accordance with such prices as usually apply at Norwegian shipyards for equivalent repair work.

The parties resolve to adopt: CLAUSE C

If the defect is attributable to a design that has not previously been implemented and tested on a vessel that is underway (new design), and the shipyard prior to entering into the contract has alerted the customer in writing to the situation, the shipyard will not be liable for defects or the consequences of defects that will be eligible for compensation under the customer's hull insurance for the ship, so long as such insurance is not on less favourable terms than those that follow from the Norwegian Maritime Insurance Plan (1964), including the franchise provisions contained within that plan.