

## **TERMS OF SALE AND DELIVERY FOR ESBJERG SHIPYARD A/S**

*Applicable from 1 December 2021*

### 1. Application

In respect of all ESBJERG SHIPYARD A/S's, Central Business Register no. (CVR no.) 12 85 42 42 ("Seller"), offers, sale, supplies, services, etc., which are offered and delivered to the customer ("Buyer"), these terms of sale and delivery apply (the "Terms"), unless otherwise agreed upon prior thereto in writing with the Seller and the Terms are an integral part of all contracts concluded with the Seller (see, however, the text immediately below and clause 16 regarding repairs, etc., on vessels).

The Terms apply irrespective of the Buyer's additional and/or conflicting terms stated in orders or other communications from the Buyer. Any provisions derogating from or supplementing the Terms are valid only to the extent that such provisions have been expressly accepted in writing by the Seller.

Where reconstruction works, new installations, repair works and/or any related supplies and services on vessels are part of the Seller's delivery, "Danish Maritime's Standard conditions for repair and reconstruction works on vessels originally prepared in June 1961 as amended most recently in September 2019" (in the below referred to as the "Standard conditions for repair and reconstruction works on vessels") will apply in addition to the Terms.

The Standard conditions for repair and reconstruction works on vessels rank prior to the Terms and apply irrespective of the Buyer's additional and/or contradicting conditions indicated in orders or other communication from the Buyer.

Provisions derogating from or adding to the Standard conditions for repair and reconstruction works on vessels are only valid to the extent such conditions have been expressly accepted in writing by the Seller.

In the event of doubts as to the construction of the Terms, the Danish version of the Terms takes precedence over any translations thereof into other languages.

For the purpose of the Terms, the Seller and the Buyer are collectively referred to as the "Parties" and individually a "Party".

### 2. Prices

Unless otherwise specifically agreed, all prices are by the Seller stated in Danish kroner (DKK) and exclusive of VAT, freight as well as other direct and indirect taxes.

In the event of increases taking place in the period until delivery in, for example (not an exhaustive list), prices of raw materials, subcontracting work, labour costs based on collective agreements, payroll taxes of any kind, taxes on goods, tariff rates, import/export duties, the DKK exchange rate or other factors beyond the Seller's control, the Seller is entitled to increase the price payable by the Buyer accordingly in relation to the delivery agreed upon.

### 3. Orders and offers

The Buyer places purchase orders with the Seller. All purchase orders placed by the Buyer must, as a minimum, specify product type and quantity, place of delivery as well as the date of delivery requested. If the Seller makes offers, the Seller's offers must be accepted in writing vis-à-vis the Seller within 60 days as from the date after the date of the offer and, in the event of any failure to accept the offer, it will automatically lapse.

The Seller is entitled to make contracts conditional upon the Buyer presenting positive bank information, bank guarantees or similar security for payment.

In all circumstances, any final contract is not binding on the Seller until the Seller has issued an order confirmation and/or a written approval of the contract. Any product information, price lists, places and date of delivery, etc., are binding only to the extent that an express reference has been made thereto in the order confirmation and/or approval.

If, upon conclusion of the contract, the Buyer wishes to change the specifications of the contract, this may take place only with the Seller's approval. In such event, an addendum to the contract will be made from which any changes to the original contract will appear, including changes to prices, dates of delivery (if any), etc.

#### 4. Order cancellation

The Buyer's cancellation of an order placed is accepted only upon prior written agreement with the Seller and in all events against the Buyer's payment of any costs and losses incurred as calculated by the Seller.

#### 5. Delivery, passing of risk

Unless otherwise agreed in writing, delivery is ex works at the address stated in the order confirmation to the effect that the Buyer bears the risk of any accidental damage to the delivered Products, subsequently taking place. This applies irrespective of whether, according to special agreement, the Seller has undertaken to pay any expenses incidental to the further transport of the goods. If no address has been stated in the order confirmation, the delivery address is the Seller's business address.

Any changes to the purchase order are not binding until confirmed in writing by the Seller. The Buyer acknowledges that any changes to the purchase order may result in delay of delivery. The Seller is not liable for any delay owing to the Buyer changing the purchase order or any other circumstances on the part of the Buyer.

Delivery up to four weeks after the agreed date of delivery must be deemed as delivery in due time. The Seller must, however, notify the Buyer of any changes to the expected time of delivery as soon as the circumstances giving rise to a changed date of delivery become known to the Seller.

If a delivery clause has been agreed upon, such clause must be construed in accordance with Incoterms 2020.

#### 6. Returned goods

Return of unused standard goods in good condition is accepted only subject to prior agreement thereon. In addition, return of customized goods is not accepted without prior agreement with the Seller.

#### 7. Title/copyright

The Products sold remain the property of the Seller until payment has been made in full. The Buyer must ensure that proper insurance has been taken out in respect of the Products delivered, including insurance against fire, theft and damage by water.

At the Seller's request, the Buyer must assist in taking all necessary precautions to protect the Seller's title to the Product.

Such retention of title does not affect the passing of risk according to clause 5 above.

#### 8. Payment

The terms of payment are net cash upon delivery, cf. clause 5, unless otherwise agreed in writing or stated on the Seller's invoice.

Irrespective of the method of payment, payment must not be deemed to have taken place until the Seller's account has been irrevocably credited by the amount due.

If delivery is delayed owing to circumstances for which the Buyer is responsible, the Buyer is obliged to make any such payment to the Seller as if delivery had taken place in due time, unless otherwise agreed upon in writing with the Seller.

In the event of late payment and if the Buyer does not provide the agreed security in due time, the Seller is entitled, having notified the Buyer thereof in writing, to suspend its performance of the contract until payment is made or until the Buyer provides the security agreed upon.

If, after three months, the Buyer has not paid the amount due, the Seller is entitled to terminate the contract for breach by giving written notification to the Buyer and, subsequently, the Seller is entitled to claim compensation for the loss suffered by the Seller in addition to default interest and collection costs pursuant to this clause. The said compensation cannot exceed the agreed purchase price.

The Buyer is not entitled to set off any counterclaims against the Seller which have not been acknowledged in writing by the Seller, nor is the Buyer entitled to withhold any part of the purchase price on account of any counterclaims.

If payment is not made in due time, default interest will be charged at 2% for each current month, and the Seller is entitled to compensation for any collection costs.

If the Buyer does not fulfil its payment obligations in respect of one or more deliveries, or if the Buyer is otherwise in breach of other commitments with the Seller, the Seller is entitled to withhold any additional delivery in respect of the order in question as well as all other orders until the Buyer has effected payment. The Seller is also entitled to terminate the contract with the Buyer for breach and cancel and stop any purchase order and, subsequently, the Seller's full balance due will fall due for immediate payment.

The Seller is at all times entitled to set off debts of any kind to the Buyer against the Buyer's debts of any kind to the Seller, irrespective of whether the Buyer's debts have fallen due for payment.

#### 9. Time of delivery, delay

If, instead of designating a specific date of delivery, the Parties have indicated a period within which delivery must take place, such period will be deemed to have started as soon as the contract has been concluded and all the agreed prior obligations resting with the Buyer have been fulfilled, such as official formalities, payments to be made upon conclusion of the contract and the provision of security.

If the Seller is able to predict that he will not be able to make delivery in due time he must notify the Buyer thereof in writing immediately and at the same time state the cause and to the extent possible the time at which the delivery is expected to take place.

If the Seller fails to give such notification, the Buyer is entitled to compensation for the additional costs incurred by the Buyer and which could have been avoided if the Buyer had received such notification.

If delay of delivery is owing to any of the circumstances mentioned in clause 14 below or the Buyer's actions or omissions, including non-performance of the contract, or owing to any other circumstance attributable to the Buyer, the Seller is entitled to prolong the time of delivery by up to 10 weeks. This applies irrespective of whether the reason for the delay occurs before or after the agreed time of delivery. If delivery still cannot take place after the 10-week period, the Seller is entitled to prolong the time of delivery to the extent reasonable considering such circumstances.

Anticipated breach does not entitle the Buyer to terminate the Parties' contract.

If the Seller does not effect delivery within four weeks after having notified the Buyer thereof in writing, cf. above, and this is not owing to any circumstance for which the Buyer is responsible, without any force majeure situation existing, cf. clause 14 below, the Buyer may by written notification to the Seller terminate the contract as far as that part of the delivery is concerned which is affected by the delay and which, as a consequence of the Seller's failure to effect delivery, cannot be put into use as contemplated by the Parties.

If the Buyer terminates the contract for breach, the Buyer is entitled to compensation for the loss suffered by the Buyer due to the Seller's delay, provided, however, that the Seller is liable for direct losses only. Consequently, the Seller is in no circumstances liable in damages for operating loss, loss of time, loss of profits or any other indirect loss – this list not being deemed exhaustive. The Seller's overall liability in damages payable as a consequence of the Seller's delay pursuant to the aforesaid may, however, in no event exceed 15% of that part of the agreed purchase price which covers that part of the delivery in respect of which the contract is terminated.

For agreements covered by the Standard conditions for repair and reconstruction works on vessels, the Seller's liability for delay is limited to payment of a penalty fixed taking into consideration the duration of the delay and the size of the contract sum, which may, however, in no case exceed 5% of the contract sum for the delayed part of the delivery.

Termination of the contract for breach including limited compensation is the only remedy to be relied upon by the Buyer as a consequence of the Seller's delay. No other claim may be made against the Seller due to such delay. Furthermore, the Buyer is consequently not entitled to terminate previous or subsequent purchase orders in the event of part deliveries or delay of individual deliveries.

If the Buyer expects not to be able to accept delivery at the time of delivery, the Buyer must immediately notify the Seller thereof in writing and also state the reason therefor and, wherever possible, the time when the Buyer expects to be able to accept delivery.

If the Buyer fails to accept delivery at the time of delivery or if delivery is delayed due to matters pertaining to the Buyer, the Buyer must nevertheless pay that part of the purchase price falling due for payment upon delivery as if delivery had taken place at the agreed time of delivery. The Seller undertakes to store the delivery at the Buyer's expense and risk. At the request of the Buyer, the Seller must also take out insurance in respect of the delivery at the Buyer's expense.

Unless the Buyer's non-acceptance of delivery is owing to such circumstances as mentioned in clause 14 below, the Seller may demand in writing that the Buyer accepts delivery within one last reasonable time limit.

If – for reasons for which the Seller is not responsible – the Buyer fails to accept delivery within the said time limit, the Seller is entitled to terminate the contract in whole or in part by written notification. In such case, the Seller is entitled to compensation for the loss suffered by the Seller as a consequence of the Buyer's breach, including but not limited to consequential and indirect losses.

#### 10. Defects and notice of defects

The Buyer is subject to a duty to examine the goods upon delivery. Any notices of defects in deliveries must be given immediately and in writing. The Buyer cannot make claims on account of defects which the Buyer has or should have detected upon examination of the Products in accordance with the aforesaid if the Buyer has not given notice of such defects in writing. The Seller may at all times rely upon the Buyer's delayed notice of defects irrespective of whether the Seller has commenced negotiations with the Buyer in respect of the defects in question.

In the event of the Buyer's justified notice of defects in due time, the Seller is, at its discretion, obliged to remedy such defects by either (i) effecting replacement delivery, (ii) remedying the defect, (iii) giving a proportionate reduction in the purchase price, or (iv) a combination of the above. Accordingly, the Buyer has been fully and finally satisfied in respect of any claim as a consequence of the defect. If the Seller has not in accordance with the aforesaid remedied the defects in question within a reasonable time and within six months at the latest after the Seller's receipt of the Buyer's notice of defects, the Buyer may set a final deadline for remedy which cannot be less than one week. If the Seller has not remedied the defects within the final deadline, the Buyer is entitled to terminate the contract in respect of the part of the delivery in question and claim repayment of the payment/purchase price paid. The Buyer has no remedies for breach other than the aforesaid in the event of defective delivery, and the Buyer is not entitled to claim compensation for any loss other than the payment paid for the delivery in question. Furthermore, the Buyer is not entitled to cancel previous or subsequent purchase orders as a consequence of the defective delivery.

The Seller is in no event liable for, including but not limited to, operating loss, loss of profit and other direct or indirect losses – this list not being deemed exhaustive – as a consequence of defects.

Defects must be remedied by the nearest distributor according to the Seller's instructions. Any costs incurred by the Buyer in that connection are of no concern to the Seller and must be borne by the Buyer alone.

The Seller's liability includes only defects established within 12 months after delivery.

#### 11. Product liability

The Buyer must indemnify the Seller to the extent that the Seller is held liable vis-à-vis a third party for such damage and such loss for which the Seller, according to the second and third paragraphs of this clause, is not liable vis-à-vis the Buyer.

The Seller is not liable for any damage caused by the delivery:

- to real estate, vessels or movable property, occurring while the delivery is in the Buyer's possession
- to products manufactured by the Buyer or of which the Buyer's products are a part, or for damage to real estate, vessels or movable property caused by the Buyer's products as a consequence of the delivery.

In no event is the Seller liable for, including but not limited to, operating loss, loss of profits and other direct or indirect losses – the list not being deemed exhaustive – as a consequence of damage caused by the delivery.

The said limitations of the Seller's liability do not apply if it is established that such damage/loss is owing to errors or omissions attributable to the Seller having acted grossly negligently.

If the Seller is liable in damages for damage caused by a defective delivery, the amount of damages cannot exceed the amount on the invoice/the Seller's fee, however, the maximum amount being DKK 5,000,000.

The Seller is not liable for the Buyer's injury or for injuries to the Buyer's employees or third parties, unless the Buyer establishes that the injuries have occurred as a consequence of the Seller's actions or omissions attributable to the Seller acting grossly negligently.

If a third party makes a claim for damages against any of the Parties in accordance with this clause, such Party must immediately notify the other Party of such claim. Such a notification does not release the Buyer from the duty to take any action necessary to avoid or limit the damage.

The Seller and the Buyer are under a mutual obligation to accept that legal proceedings are instituted against them before the court or arbitration tribunal which hears claims for damages brought against one of them on the basis of damage or loss allegedly caused by defects in the Seller's delivery.

Unless otherwise agreed, the liability between the Buyer and the Seller must, however, at all times be settled by arbitration according to clause 18 below.

The Buyer cannot claim damages from any persons acting on behalf of the Seller, whether members of management, salaried employees, workers or others, just as the Buyer undertakes to indemnify such persons and hold them harmless if such claims for damages are made against such persons by third parties. The Buyer is obliged to indemnify the Seller to the extent that the Seller is held liable for defective Products delivered to third parties for which the Seller is not liable according to the aforesaid.

#### 12. Product information and professional liability of advisers

Drawings, specifications, etc., supplied by the Seller before or after conclusion of the contract remain the property of the Seller and cannot be transferred to any third party without written agreement, or otherwise be misused. Any and all information on weight, dimensions, capacity, price, technical and other data stated in catalogues, prospectus, circulars, advertisements, illustrations and price lists is approximate and for guidance only, and the Seller cannot be held liable for any errors in or misinterpretations of such material. Such information is binding only to the extent that the contract makes express references to such information. Reservations are in all events made to make changes, etc., to technical specifications, etc.

#### 13. Liability for damage to property prior to delivery

The Seller is liable for damage to the Buyer's property prior to delivery of the delivery only if it may be proved that such damage is caused by the Seller's negligence or the negligence of others for whom the Seller is responsible. The Seller's liability may in no event exceed DKK 1,000,000 for direct damage to the Buyer's property. The Seller is, however, not obliged to pay damages for damage to the Buyer's property and/or any movable property which is covered by an insurance taken out by the Buyer or which would be covered by a standard buildings and/or fire insurance.

The Seller is in no circumstances liable for operating loss, loss of earnings, loss of time, loss of profits or any other indirect loss caused by such damage – this list not being deemed exhaustive.

#### 14. Force majeure

Either Party is entitled to suspend its performance of its obligations under the contract to the extent that such performance is prevented or made unreasonably onerous as a consequence of force majeure, including but not limited to: industrial disputes and any other circumstances beyond the control of the Parties, such as fire, war, extensive military mobilisation, insurrection, requisitioning, confiscation, embargo, power restrictions, currency and export restrictions, epidemics, pandemics, natural disasters, extreme natural phenomena, acts of terrorism and defects or delays in deliveries from sub-suppliers owing to any of the circumstances mentioned in this clause. The above list must not be deemed to be exhaustive.

The Party relying on force majeure must without any undue delay notify the other Party in writing of the occurrence of the force majeure event and its expected end. If a Party fails to give such notification, the other Party is entitled to compensation for the additional costs incurred by that Party and which could have been avoided if the Party had received such notification.

If any force majeure event prevents the Buyer from fulfilling its obligations, the Buyer must reimburse the costs incurred by the Seller by securing and protecting the Product.

Irrespective of what is otherwise laid down in these Terms, each Party is entitled to terminate the contract by written notice to the other Party if the performance of the contract is suspended for more than six months according to this clause 14.

#### 15. Intellectual property rights

Any intellectual property right or other rights, including patents, utility models, designs, trademarks, copyright, know-how, etc., developed by the Seller in connection with the performance of the Parties' contract will at all times remain the exclusive property of the Seller.

No intellectual property rights will be assigned in connection with the delivery of the delivery. The Seller consequently retains all its intellectual property rights and other rights, including patents, utility models, designs, trademarks, copyright, know-how, etc., relating to the delivery, and all documentation prepared by the Seller which relates to the delivery will at all times remain the exclusive property of the Seller, and the Buyer must at all times respect such rights, irrespective of whether such rights have been registered. It is noted for good measure that the Seller and/or the Seller's software suppliers enjoy(s) full copyright in software provided that such software is part of the Products delivered. Similarly, the Buyer will also retain its intellectual property rights and other rights potentially made available to the Seller by the Buyer in connection with delivery, and the Buyer will also retain the rights in designs and specifications, etc., in respect of the delivery potentially made available to the Seller by the Buyer.

#### 16. The Buyer's use of and liability for shipmaster, crew and sub-contractors

For agreements where the Standard conditions for repair and reconstruction work on vessels apply in addition to the Terms, the following will apply to the Buyer's access to and liability for having work performed by the shipmaster, the crew or sub-contractors.

Only subject to prior agreement with the Seller, whose consent must not be unreasonably withheld, will the Buyer, the shipmaster, the crew or any sub-contractors employed or hired by the Buyer, have permission to perform the Buyer's own works on the vessel and only subject to the Buyer guaranteeing that these parties comply with the rules applicable from time to time stipulated by public authorities and by the Seller for occupational safety and environment as well as insurance requirements.

Irrespective of whether the Seller's consent has been obtained, the Buyer is liable in all respects for the actions and omissions of these parties and must indemnify the Seller against any loss incurred by the Seller as a consequence of such works, including but not limited to loss (direct or indirect) or damage caused to the property of the Seller or third parties or injury to persons or damage to the environment.

Such works may not affect or delay the work for which reason the Buyer is also liable for and must indemnify the Seller against losses caused as a consequence of delay caused by such works.

#### 17. Assignment of rights and obligations

The Seller is entitled to assign any and all rights and obligations under any contracts concluded with the Buyer, including accepted orders, without the Buyer's consent.

The Buyer is not entitled to assign any rights or obligations to third parties without the Seller's prior written consent.

The Seller is also entitled - but not obliged - to immediately terminate the Parties' contract by written notification to the Buyer if the Buyer, provided that the Buyer is a legal entity, is subject to a change of control. Change of control means one of the following: (i) sale or other transfer of the Buyer's assets constituting more than 50% or more of the book value (calculated on the basis of one single transfer or several consecutive transfers), (ii) merger or other similar reorganisation, (iii) transfer of 50% or more of the voting rights in the Buyer or any transfer which otherwise implies a transfer of the controlling influence in the Buyer (based on one single transfer or several consecutive transfers), and (iv) any other transfer or several consecutive transfers which to a significant degree have the same outcome as described in (i)-(iii) above.

#### 18. Governing law/jurisdiction

These Terms, the Parties' contract and any dispute or disagreement arising out of or in this connection are subject to Danish law, excluding the application of Danish conflict of laws rules and CISG.

Any dispute between the Parties must be sought settled amicably by loyal negotiations, including negotiations between each Party's management board.

Any dispute between the Parties which cannot be settled by the Parties' negotiations must, at the discretion of the Seller, be finally settled by either

(i) arbitration before the Danish Institute of Arbitration in accordance with the Rules of Procedure of the Institute applicable at the time of commencing the arbitration proceedings or (ii) before the ordinary, Danish courts, the Court of Esbjerg being the court of first instance.

As far as claims for damages are concerned in respect of alleged product liability, reference is made to clause 11 above – Product liability.

19. Changes in terms of sale and delivery

In ongoing contractual relationships, the Seller is entitled to change the Seller's terms of sale and delivery applicable from time to time at three months' prior written notice and, subsequently, the new version will apply.