

# General terms and conditions of sale, delivery and performance of services

## 1. General

These General Terms & Conditions (the “Terms”) apply to sale and delivery of all goods (the “Products”) and performance of all services (the “Services”) from **BALKAN SHIPYARD, SHIPREPAIR AND SHIPSUPPLY S.L** (the “Company”) to a customer (the “Customer”).

The Terms shall be deemed to be expressly agreed between the Company and the Customer and shall together with the Company’s order confirmation, or accepted fixed price quotation (if no order confirmation has been issued), constitute the entire agreement between the parties regarding the Products and/or Services (the “Contract”). No other terms or conditions shall be of any effect unless otherwise specifically agreed to by the Company in a separate written agreement duly signed by the representative of the Company.

Customer will be deemed to have assented to all Terms if an order is placed by Customer with Company or if the Company’s fixed price quotation is accepted by Customer or any part of Products delivered or Services performed is accepted by the Customer. Any additional or different terms or conditions contained in Customer's order or response hereto shall be deemed objected to by Company and shall be of no effect unless otherwise expressly stated by the Company in writing. No general terms and conditions of a Customer shall at any time form a part of the content of any contract between the Customer and the Company, even if they are not further expressly rejected by the Company.

Should the Contract be entered into by any agent/trader/broker/owner/manager/operator/charterer or other person acting as an agent for an end customer ("Principal Customer"), and acting for and on behalf of the Principal Customer, whether such action is disclosed or undisclosed then such agent shall be jointly and severally liable with the Principal Customer towards Company as primary obligor for the proper performance of all obligations of the Principal Customer under the Contract. An order placed by an agent acting for and on behalf of Principal Customer with Company, resp. acceptance by the agent of the Company's fixed price quotation shall be deemed to constitute unconditional acceptance of this clause and of the Terms by the agent and it shall be considered "Customer" for the purposes of the Terms and the Contract.

In case the Products/Services shall be delivered to a vessel (including off shore units) and the Contract has been entered into by an agent/trader/broker/manager/operator/charterer or any other person who is not the registered owner of the vessel, and such person is acting on its own behalf, then the owner and the vessel shall be jointly and severally liable for all payment obligations arising out of and in connection with the Contract. The signature of the master of the vessel or other crew member on the delivery note shall be deemed to constitute unconditional acceptance of this clause and of the Terms by the owner of the vessel.

## **2. Delivery. Passing of risk**

Unless a specific other INCOTERM and destination is agreed in writing between Company and Customer deliveries are ex works Company's premises in Varna.

Notwithstanding the respective INCOTERM used in the particular order confirmation or quotation, and superseding any other contrary statement/agreement in the order confirmation or quotation all deliveries shall be effected at the risk of the Customer even if the carriage has to be performed by the Company. The risk shall pass to the Customer as soon as the shipment is ready for pick-up at Company's premises, or has been handed over to the person carrying out the transport of the Products. Transport documents/delivery protocols certifying submission of Products from Company to the carrier are conclusive evidence of delivery irrespective of whether the

person signing such documents has the authority from Customer to do so.

If the dispatch is delayed for reasons falling within the Customer's responsibility, the risk of accidental deterioration, loss and destruction is transferred to the Company upon announcement that the Products are ready for dispatch. Without prejudice to any other rights or remedies that the Company may have under the applicable law all storage costs after passing of risk shall be borne by the Customer.

Targeted delivery dates mentioned in any quotation or order confirmation are approximations only and do not represent any binding obligation of Company towards Customer. Company shall use its reasonable efforts to provide the Products for Customer by the agreed upon date. However, time shall not be of the essence, and except in cases of Company's willful misconduct or gross negligence, Company shall not be liable to Customer for delays in delivery.

The Customer shall examine the Products immediately at the time of delivery. The Customer should notify the Company immediately in writing upon discovering any visual defects and/or shortcomings in the Products specifying the nature and extent of the defect or shortcomings in reasonable detail. Any observation in relation to the non-conformities and or/shortcomings should be noted by the Customer in the Products' accompanying transport documents and/or delivery protocols. In relation to latent defects of Products existing at the time of delivery the Customer should notify the Company in writing immediately upon discovery but in any event not later than fifteen (15) days following delivery. In any event the Customer must specify the nature and extent of the defect or shortcomings in reasonable detail and must provide Company with the opportunity to verify the complaint; damaged Products and their packaging in particular must be made available to Company for inspection.

If the Company is not notified immediately as provided hereinabove after a lack of conformity/shortcomings is or should have been discovered the delivered Products are deemed approved and the Customer loses its rights to any remedy. Any claim against the Company in relation to delivery of defective Products shall be time barred if not filed with the competent court of arbitration within one (1)

month after delivery.

In the event that there is a defect or shortcomings in Products for which Company is responsible and Customer have complained promptly, Company shall choose to either remedy the defect (e.g. by repair or reprocessing) or, after the return of the defective Product to Company, to deliver new, conforming Product (replacement). No further damages could be claimed by the Customer unless the Company has acted intentionally or with gross negligence.

In any event the Company shall not be held responsible for defects caused by negligence or mistreatment of the Products on Customer's part, normal wear and tear, or failure to observe Company's maintenance, servicing or other specific instructions.

### **3. Prices and Payment**

The prices for the Products stated in the order confirmation or fixed price quotation shall solely apply. Unless otherwise agreed upon in writing Services provided shall be invoiced separately. All prices for the Products and Services are quoted as net prices and do not include VAT and other taxes (including withholding tax if applicable), duties and/or charges unless explicitly otherwise agreed upon in writing. Said taxes, duties and/or charges shall be for the account of the Customer.

The Customer shall bear all additional transportation costs, customs clearance and other associated costs and fees, packing costs and other costs that may incur for the Company including but not limited for obtaining export licenses.

Payment shall be made in full without any set-off, deductions, counterclaims etc. Payment shall be made in the invoiced currency, net of all bank charges etc. to the Company's bank account as stated in the invoice via bank transfer (wire transfer). Payment shall be made within fifteen (15) days from the issuance of the invoice. Payment shall be considered to have been made on the day the payable sum is received by the Company. For late payment interest will be charged at a rate of 0.1% per day over the outstanding amount. The right of the

Company to claim higher actual damage remain unaffected. In case of late payment and without further demand the Company shall be entitled to receive from the Customer, and the Customer accepts to reimburse the Company, all collection costs and expenses on a full indemnity basis but with the minimum of Euro 100 for each occasion.

If, after conclusion of the Contract, any incidents which give rise to doubts about Customer's creditworthiness shall occur (including but not limited to non-payment in due course of invoices issued by the Company for previous deliveries or non-compliance with Customer's financial obligation from other agreements concluded between the Company and the Customer) and which endanger Customer's payments to Company, Company may choose to defer further shipments or Services and demand prepayments or a security deposit prior to resuming Company shipment of Products or performance of Services. If the Customer does not comply with Company's demand for prepayment or for depositing a security within a reasonable period of time which shall be set by Company, Company shall be entitled to rescind the Contract and claim damages for non-performance by Customer. In case of late payment of some of the amounts due to the Company under the Contract and/or under previous Contracts all amounts (even such that would otherwise have been payable at a later date) owed by the Customer to the Company shall accelerate and become immediately due and payable, without any notice being required. Company may always at its sole discretion set-off any amount and/or charge due by Customer with any amount payable by Customer to Company.

## **4. Retention of Title**

Notwithstanding delivery and passing of risk, and superseding the applicable INCOTERM, the ownership of the Products shall be retained by the Company and shall only be transferred to Customer when Customer has fully complied with all of its obligations contained in or arising from Contract. Where the Company has not received payment on time for the Products delivered, it retains its right to take repossession of the Products without a court order wherever they are located, without prejudice to Company's right to compensation from Customer in connection with Customer's default. The Customer

accepts the Company's rights to enter its premises, vessels etc. in order to take repossession.

## **5. Limitation of liability**

The Company shall not be liable for any obvious misprints in the order confirmation or quotation. Company shall have no liability to Customer in the event of the Products infringing or being alleged to infringe intellectual property rights of any third party. In case of breach of contractual obligations, defective deliveries or tortuous acts Company shall only be obliged to compensate damages - subject to any other statutory conditions for liability - if it acted intentionally or with gross negligence. To the maximum extent permitted by the applicable law any Product shall be provided "as is" without warranty of any kind, express or implied, including but not limited to the warranties of merchantability, fitness for a particular purpose and non-infringement. The Company's liability shall in no circumstance exceed the cost of the defective, non-conforming, damaged or undelivered Product and/or Service not performed which give rise to such liability as determined by net price invoices to Customer in respect of the particular Product or Service and the Customer shall not be entitled to claim damages. The Company shall not be liable for indirect or consequential loss or damage suffered by the Customer and/or any third party such as, but without restriction, production losses, operating losses, loss of profit, of goodwill or reputation, business loss or other costs.

## **6. Returns**

All sales are final and no refund or credit will be offered for returned Product(s) irrespective of whether the Product(s) are the subject of a complaint or not, unless Company has agreed in writing prior to such return and the returns arrive promptly and in good condition in Company's opinion. The Products should be returned in their original packing.

## **7. Force Majeure**

Company shall not be responsible for delays, failures or omissions under the Contract due to any cause beyond Company's reasonable control, including, but not limited to labor disputes, war, mobilization, political disturbances, governmental intervention of various kinds, including any delay in issuance or denial of any required licenses, in particular export licenses, riots, fires, earthquakes, floods, storms, lightning, epidemics, power cuts, interference with transport, operational breakdowns, shortages or failures or delays of energy, materials, supplies or equipment, transportation embargoes or delays, acts of God, breakdown in machinery or equipment or by deficient or delayed performance on the part of Company's suppliers, except if such event is due to Company's own misconduct.

If a Force Majeure event has lasted for more than two (2) months both parties shall be entitled to terminate the Contract in writing with immediate effect. The party so terminating the Contract, shall not be liable to the other party for any damages suffered by such party as a result of the termination.

## **8. Privacy**

Unless otherwise expressly stipulated in writing, no information provided to Company in connection with orders shall be regarded as confidential.

Company may save and process any data relating to Customer, to the extent necessary for the purpose of the execution and implementation of the Contract and as long as Company is required to keep such data in accordance with applicable laws.

Company shall have the right to submit personal data relating to Customer to credit agencies, to the extent necessary for a credit check and to associated companies.

## **9. Applicable law**

All Company's Contracts with Customers, including these Terms shall be construed under and shall be governed by Bulgarian law. International purchase laws do not apply. In particular, the UN Convention on the International Sale of Goods (CISG) does not apply. Disputes arising out of or in connection with a Contract that cannot be solved amicably between the parties shall be brought before the Court of Arbitration at the Bulgarian Chamber of Commerce and Industry. Notwithstanding the foregoing sentence, Company, at its discretion and to the extent permitted by law, may opt to bring any such dispute before or file any claim at the competent courts of the country of Customer's residence under the laws applicable to that country.

## **10. Miscellaneous**

None of the rights or obligations of Customer under the Contract may be assigned or transferred in whole or in part without the prior written consent of Company.

The failure on the part of Company to exercise or enforce any rights conferred by the Contract shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

Should any of the clauses of these Terms be wholly or partially invalid, the validity of the remaining clauses or parts thereof shall not be affected.