TERMS AND CONDITIONS – PORT SERVICE BV EN PAINT SERVICE BV

1. General

These general terms and conditions shall apply subject to any amendments expressly agreed in writing by both parties.

2. Conclusion of the agreement

2.1. Ships and vessels (repair, maintenance and conversion)
The contract is concluded when the client, who may be represented by the captain or his appointed representative, presents the ship or vessel for repair and/or has signed the order form.
Prior to placing the order, a quotation will be provided setting out the indicative prices applicable at that time, which are valid for 3 months from the date of the quotation. If the work takes place more than 3 months after the quotation is issued, price changes may apply. The client may request an update to the quoted price at any time.
2.2. Sale of spare parts, paint and materials
The contract is concluded when the client has signed the order form or confirmed the order, possibly following receipt of a written quotation.
Quotations from the shipyard remain valid for 4 weeks from the date of the offer.
2.3. The start date for the works will be agreed between the contractor and the client.

3. Drawings and descriptions

3.1. The weights, dimensions, capacities and other details are provided for guidance only. These details are binding only to the extent that the contract expressly requires them to be.
3.2. The drawings provided by the client must not be used by the shipyard for the benefit of third parties. For its part, the client must not pass on the shipyard drawings to third parties.
3.3. Plans, drawings and calculations remain the property of the shipyard at all times. Should the client wish to receive them, the standard rates will apply.

4. Demolition materials

As is customary, and unless otherwise agreed in writing, the demolition materials remain the property of the shipyard.

5. Surveillance

5.1. Unless otherwise specified in writing, the client shall remain responsible for the insurance and security of the vessel whilst it is at and on the shipyard.
5.2. The shipyard shall never take over responsibility for the security of the vessel, and once the work has been completed, the client must take delivery of the vessel immediately and remove it from the shipyard.
5.3. If the client is in default, the shipyard may have the ship or vessel removed at the client's expense and risk. All costs arising therefrom shall be borne by the client.

6. Safety measures

Before the ship or vessel arrives at the shipyard, the client must ensure that it is completely free of gas and fire hazards and ready for the works. The client must provide proof of this by means of a certificate issued by an accredited organisation. Any work necessary to restore or maintain a gas-free condition, given the scope of the works or for safety reasons, shall be borne by the client.

7. Inspection

The client is authorised, both during and after completion of the work or upon delivery, to have the quality of the materials and components used inspected and verified by its duly authorised representatives. These inspections and verifications shall be carried out during normal working hours, after the date and time have been agreed in advance with the site management. The costs arising from these inspections or from the involvement of an inspection or certification body or classification society shall always be borne by the client.

8. Delivery times

8.1. For ships and vessels using the dry docks or quay, delivery times shall be determined by mutual agreement. If the client fails to take delivery of the ship or vessel at the time it is made available by the shipyard, the client may nevertheless not defer the due date normally set for the payment due in respect of the delivery. In this case, the shipyard is entitled to compensation for the unavailability of the shipyard.
8.2. For the sale of parts, paint and materials, delivery times are specified in the quotation or agreed by mutual consent.
8.3. Unless otherwise agreed, the delivery times stated are for guidance only. Any delay shall under no circumstances give rise to termination of the contract or to any claim for damages. The timeframes are always calculated in normal working days.

9. Warranty

9.1. The works are deemed to have been accepted and approved at the time the ship leaves the shipyard.
9.2. If the works are not accepted, any proven faults or defects may be rectified by the contractor under warranty, provided that they do not result from misuse or uses other than those originally intended.
9.3. The warranty is expressly limited to the repair, alteration or, where necessary, replacement of parts or components which would impede the proper functioning of the vessel as a result of a defect in the design, construction or assembly, or a duly established defect in the materials, and excludes all other compensation and damages for loss of use, whether due to accident or for any other reason whatsoever, on the understanding that the repair shall be carried out by the shipyard as soon as possible.
9.4. The warranty, as set out in the preceding article, shall in any event be limited to the sum insured under the insurance policy taken out by the shipyard. Furthermore, the shipyard's liability shall be limited to the cost of the repair carried out in-house. All consequential damage is expressly excluded from the warranty.
9.5. In order to be able to invoke the rights arising from this article, the client must notify the shipyard of the defects immediately and in writing. The client must cooperate fully to enable the shipyard to identify and rectify the defects. The client may not carry out or arrange for any repairs to be carried out without the shipyard's written consent.
9.6. Any defective parts replaced in accordance with this article shall become the property of the shipyard.
9.7. The warranty obligation covers only defects that arse under normal conditions of use and when the product is used correctly. It does not extend to defects whose cause arose after delivery and, in particular, not to defects resulting from misuse by the client, repairs carried out by the client, normal wear and tear and/or a lack of maintenance. Nor does the warranty cover defects that come to light in materials supplied by the client or that arise from a design imposed by the client.
9.8. The shipyard will only commence repairs covered by the warranty once all amounts due for the entire scope of works have been paid.
9.9. Following acceptance, the shipyard's liability shall never extend beyond the obligations set out in Article 9. This also applies to latent defects. The shipyard shall not be liable for compensation in respect of personal injury, loss of profit, or damage to property other than that covered by the contract. Only proven wilful misconduct or fraud on the part of the shipyard shall constitute an exception to the latter cases.
9.10. In any event, the warranty period expires three months after the vessel has left the shipyard.

10. Prices

10.1. Prices are calculated on the basis of the daily market prices of raw materials, wages and social security contributions.
10.2. All current and future taxes, of whatever nature, shall be borne by the client.
10.3. For any overtime and/or night work carried out in consultation with the client, the standard rates shall be increased in accordance with the statutory provisions, decrees or legal provisions at that time.
10.4. For work carried out in particularly difficult conditions, a surcharge of 10 to 50 per cent on the standard rates shall be applied, subject to agreement with the client. This surcharge applies to work carried out in confined or restricted spaces or compartments (including engine rooms, cofferdams, ballast tanks, peaks, tunnels, chain lockers, cargo tanks and voids), and in dirty or hard-to-reach areas (e.g. engine foundations, engine room bilges and double bottoms).

11. Terms of payment

11.1. All payments are made in euros and at the shipyard, they are calculated on a net basis and are discount free.
11.2. All invoices are payable immediately, unless otherwise stated on the invoice in question.
11.3. Late payments

11.3.1. Business customers

Interest at a rate of 1.5 per cent per month shall be payable on all invoices by operation of law and without the need for a reminder, from their due date. In addition, a fixed sum in compensation shall be payable for each invoice not paid on time. This compensation shall be calculated as follows:

- 15% on overdue payments of less than € 2500
- 10% on overdue payments between € 2500 and € 12500
- 5% on overdue payments between € 12500 and € 62000
- 2,5% on overdue payments exceeding € 62000

When determining the applicable rates, only the total amount still due per invoice is taken into account.

11.3.2. Private customers

If the invoice is not paid on time, the shipyard will send an initial reminder free of charge. If payment has still not been made 21 calendar days after this reminder, a fixed compensation charge of 10 per cent of the outstanding invoice amounts will be applied, subject to a minimum of €20 per invoice. Such compensation shall be limited to the maximum amounts set out in Article XIX.4 of the Economic Law Code, which, at the time of the current version of these terms and conditions, are as follows:

- € 20 for an outstanding amount ≤ € 150
- € 30 + 10% for an outstanding amount > € 150 but ≤ € 500
- € 65 + 5% for an outstanding amount > € 500 up to a maximum of € 2000

Furthermore, from the 22nd calendar day following the reminder, standard default interest shall be charged at the rate specified in Article 5 of the Act of 2 August 2002 on Combating Late Payment in Commercial Transactions.
11.4. The fact that interest is stipulated does not affect the enforceability of the payments on their due dates.

12. Advances and financial guarantees

12.1. The shipyard is entitled to request a partial or full advance payment. The shipyard is entitled to suspend performance of the contract until the advance payment has been made, without this giving rise to any form of compensation for the client.
12.2. Without prejudice to the provisions of Article 8, in the event of non-payment of advance payments by the stipulated due dates, the works shall be suspended until the date of receipt of payment, and the delivery period shall be extended by the same number of days as the payment was overdue. The costs incurred as a result of the shipyard being held up due to this delay shall be charged to the client.
12.3. The shipyard reserves the right, should it transpire after the conclusion of the contract but before full payment of the price that the client's creditworthiness is at risk, or should it transpire that their creditworthiness is deteriorating, to demand the guarantees it deems necessary for the proper fulfilment of the obligations, even after delivery of the goods. No notice of default is required for this. The client's creditworthiness shall be deemed to be at risk in, amongst other things, the following cases: an application for a deferral of payment, a protest, an application for an out-of-court or judicial composition, attachment of all or part of the client's goods at the request of a creditor, delays in social security contributions, etc.
12.4. If invoices are not paid by their due date, the shipyard shall, without any reminder being required, have a right of retention over the ship, vessel or goods. Should the shipyard be prevented from operating as a result, the costs incurred shall also be borne by the client, and the ship, vessel or goods shall only be released upon receipt of the amounts owed by the client, comprising the principal sum, costs, interest and damages. The client agrees that the shipyard may also exercise this right of retention in respect of unpaid invoices relating to previous work carried out by the shipyard.

13. Liberating circumstances

13.1. The following shall be deemed to be exculpatory circumstances, provided they arise after the conclusion of the contract and prevent its performance: industrial disputes and all manner of circumstances such as fire, mobilisation, confiscation, embargo, prohibition on foreign exchange transfers, insurrection, shortage of transport, general scarcity of raw materials, restrictions on energy consumption, unworkable weather conditions, machinery breakdown, etc. This also applies if these circumstances arise at suppliers or subcontractors, beyond the control of the parties.
13.2. The party invoking the circumstances referred to above must immediately notify the other party in writing of their commencement and of their expiry.
13.3. The occurrence of any such circumstance shall release both the shipyard and the client from all liability.

14. Limitation of damages

14.1. Any compensation for which the shipyard may be liable to the client may not exceed the price agreed at the time the contract was concluded.
14.2. The party claiming that the other party has breached the contract is obliged to take all necessary measures to minimise the loss suffered, provided that such measures do not entail any unreasonable burden or cost for that party. If it fails to do so, the party that has breached the contract may rely on this failure to obtain a reduction in the damages payable.

15. Final provisions

15.1. The work is carried out to a high standard in accordance with the requirements of good workmanship.
15.2. The dry docks and other infrastructure may only be used to support work carried out by Port Service and Paint Service and their subcontractors on behalf of the client or for their own business.
15.3. Under no circumstances are the client or their subcontractors permitted to use the dry docks or other infrastructure whilst carrying out works on their own account.
15.4. Under no circumstances is the customer or their subcontractor permitted to carry out preparatory, preservation or painting work at their own expense in the dock or on the finishing quay.
15.5. The prices quoted do not include the cost of any docking that may be required, unless expressly stated otherwise.

16. Applicable law

The contract is governed by Belgian law.

17. Competent courts

In the event of a dispute, the courts of Ghent shall have exclusive jurisdiction.