

1. General Conditions

- 1.1 These General Terms and Conditions (" Terms and Conditions") apply to the performance of ship repairs, work on equipment or parts of ships, supply of spare parts or other items including supply of equipment and/or installation and erection of a plant on board of ships and for any other kind of services performed by SAACKE . They form an integral part of all quotations and contracts of SAACKE ("SAACKE") for supplies/erection and installation and services and shall apply to any current or future business relationship. Agreements deviating from these General Terms and Conditions, including but not limited to contradictory terms and conditions of customer ("Customer"), and side agreements shall only become an integral part of the contract upon SAACKE consenting expressly and in writing to its inclusion.
- 1.2 The price list for work and other special terms will be enclosed and form an integral part of the »Terms and Conditions«.

2. Offer and Conclusion of Contract

- 2.1 Offers and quotations of SAACKE are not binding and are - in case of a sale contract also with respect to the contract - subject to SAACKE having been supplied itself. They shall only include such services that are explicitly specified therein.
- 2.2 Contracts are only deemed to have been concluded once SAACKE has accepted in writing the work or purchase orders placed with it, has confirmed in writing letters of acceptance sent to it, or has delivered the supplies or performed the services ordered by Customer. This shall apply mutatis mutandis to all amendments to or alterations of contracts.
- 2.3 In cases of doubt regarding the scope of the contractual obligations, the content of the written order confirmation by SAACKE and of the documents listed therein shall be decisive. Additional expenses due to errors in drawings and other documents provided by Customer shall be borne by Customer.
- 2.4 All data provided by SAACKE to the Customer and SAACKE's documents forming the basis of the contract (such as drawings, details of measurements and weights or technical descriptions) contain approximate descriptions only as customary in shipbuilding respectively Marine business. SAACKE reserves the right to implement minor changes (such as alterations of design, form or colour).
- 2.5 SAACKE reserves its proprietary rights, copyrights and other industrial property rights in the documents referred to under 2.4 above. Unless agreed otherwise in writing by SAACKE, above documents may not be used for any other purpose but the fulfilment of the respective contracts entered into with SAACKE; in particular they shall not be reproduced or disclosed to third parties. Upon request of SAACKE, they shall be returned by Customer to SAACKE without delay.
- 2.6 If SAACKE uses plans or other documents and information provided by Customer to perform its services, Customer shall be obligated to indemnify and hold SAACKE harmless against any claims from third parties based on violations of proprietary rights, copyrights and industrial property rights resulting from the utilization of such plans, documents or information provided by Customer.
- 2.7 The scope of repairs or services and their expediency shall be determined exclusively by Customer. SAACKE does not verify the substantive correctness of statements provided by a classification society or its agents. SAACKE is not obligated to examine the ship or the object of its performance for the purpose of identifying latent defects.
- 2.8 SAACKE shall be entitled to have third parties execute all or part of the work assigned to it.

3. Prices

- 3.1 All prices are net in Euros (EUR), ex SAACKE, plus value-added tax where and to the extent applicable.
- 3.2 In the event of cost increases (for wages, energy, taxes, materials, etc.) occurring between the conclusion of contract and the time of performance, SAACKE shall be entitled at its fair discretion to demand a price adjusted accordingly that shall not exceed its prices generally in force at the time of performance, provided that more than four (4) months have elapsed between the conclusion of contract and its performance.
- 3.3 Initial filling and refills of lubricating and hydraulic oil as well as other materials and consumables shall be charged separately by SAACKE. This shall apply accordingly to costs for certificates attesting the gas-free condition, for any necessary degasifying of tanks, bilges, etc. carried out by SAACKE.

4. Payments

- 4.1 Payment to SAACKE shall become due immediately upon receipt of invoice without deduction.
- 4.2 SAACKE shall be entitled to interest at 5 %p.a. from the date payment is due and at 8 percentage points above the then applicable base rate from the date of default. SAACKE shall have the right to claim further damages on the grounds of default.
- 4.3 The ship or the object of SAACKE's performance or services shall only be returned by SAACKE to Customer upon full satisfaction of claims for remuneration then due. If the return of the ship or of the object of SAACKE's performance is delayed on the grounds of default of payment by Customer, all demurrage and other costs shall be at Customer's expense.

5. Assignment, Set-off, Right of Retention

- 5.1 Customer shall not have the right to assign any claims or rights it may be entitled to against SAACKE to third parties without SAACKE's prior written consent.
- 5.2 The Customer may only set-off such claims against SAACKE's claims as are uncontested, non-appealable or ready for judgment (proven).
- 5.3 Customer may assert a right of retention only to the extent its claim is based on the same contractual relationship.

SERVICES**6. Working hours - Time Sheets**

- 6.1 A normal working week comprises 5 working days and 2 weekend days. A normal working day comprises 8 working hours. Working in excess of the 8 working hours will be considered as overtime.
- 6.2 All working hours on the weekend days and SAACKE personnel's national holidays will be considered as overtime.
- 6.3 The Customer or his authorized representative is requested to follow the progress of work closely.

- 6.4 Time sheets, showing the time SAACKE personnel has carried out work for the Customer, shall be filled in daily and shall be counter signed by the Customer. If the representative of the Customer does not countersign the time sheets or if such representative does not approve of the time sheets that have to be filled in by SAACKE personnel, the representative of the Customer or the Customer himself must immediately inform SAACKE branch responsible for the job by telex or by fax or any other suitable text form of the reason for the refusal to approve the time sheets. If a time sheet has been countersigned in accordance with this article or if the Customer has not given due notice to SAACKE in accordance with this article regarding unapproved time sheets, then any and all objections to invoices based upon time debited to the Customer will be null and void.
- 6.5 The effective working time is defined as the time from the commencement of work by SAACKE personnel until it leaves the job, less the time spent on meal breaks.
- 6.6 In case personnel is not staying on board a ship, the working time starts at the time SAACKE personnel leaves the living quarters and ends at its return. The transport time between the living quarters and the work site will be invoiced as travelling time.
- 6.7 While working outside the German mainland or staying onboard a ship minimum 12 hours working day will be invoiced.

7. Waiting Time

- 7.1 Waiting time caused by lack of work or reduced number of working hours due to circumstances beyond the control of SAACKE personnel will be invoiced at the rate valid for normal working hours. However, SAACKE personnel is prepared to undertake other kinds of jobs than originally intended in order to avoid waiting time.
- 7.2 In cases where SAACKE personnel has to wait for a vessel, waiting time will be charged daily between 8 a.m. to 8 p.m.
- 7.3 Max. 12 hours of waiting time will be charged per day each man.

8. Travelling & Transport Expenses

- 8.1 Travelling and transport expenses will be invoiced at cost plus 15 % overhead charges.
- 8.2 Travelling time will be invoiced at normal working hours rate with max. 12 hours a day.

9. Hotel costs and allowances

- 9.1 Hotel costs and allowances will be invoiced at cost plus 15% overhead charges.
- 9.2 Accommodation is to be of a reasonable standard.
- 9.3 Other cost necessary for the assistance, such as telephone calls, telefaxes, telexes, telegrams, etc. will be invoiced at cost plus 15 % overhead charges.

10. Conditions when staying on board of a ship

- 10.1 Accommodation is to be of officer's standard, with toilet and shower with hot and cold water. Minimum three (3) meals have to be served daily.
- 10.2 Access to laundry is to be made available.

- 10.3 If possible, a separate mess (duty mess) with access to a refrigerator should be made available.
- 10.4 Other cost necessary for the assistance, such as telephone calls, telefaxes, telexes, telegram, etc. will be invoiced at cost plus 15 % overhead charges.

11. Invoicing

- 11.1 The invoices for the assistance will be forwarded as soon as possible after completion of SAACKE assistance and shall be paid by the Customer upon receipt of invoice.
- 11.2 For work done on any vessel, unless explicitly agreed to by SAACKE, nothing herein shall be construed as a waiver of SAACKE lien rights.

12. Permissions/License

It is the sole responsibility of the Customer to advise and where necessary to obtain permission, permit licenses or certificates from the appropriate authorities or classification societies in respect of work to be carried out by SAACKE.

13. Equipment

- 13.1 SAACKE will, if requested to do so, supply tools and equipment according to separate agreement.
- 13.2 Rental of tools supplied will be charged from the day the tools leave SAACKE company until they are received back in the SAACKE company.
- 13.3 The tools belonging to SAACKE service personnel should be packed after use in the tool box(es) under the supervision of the Customer's representative. Any shortages should be noted and the tool box(es) then locked.
- 13.4 The Customer shall arrange transport of the tool box(es) to the point of origin at the earliest opportunity by sea, road or rail at the Customer's expense. Insurance against loss or damage shall be arranged by the Customer.
- 13.5 Within 30 days from termination of the work the Customer shall notify SAACKE from where the tool box(es) have sent and by which means. If SAACKE has not received such a message within 30 days, an invoice covering the tools will be issued. Should the tools later be received undamaged and complete without shortages, a corresponding credit note will be issued. Damaged or missing tools will be charged to the Customer. The tools must be received at the latest 90 days after termination of the work. If not received within this time, the tools will be considered as lost and will be charged to the Customer.
- 13.6 Upon request SAACKE will supply industrial gases at the Customer's expenses. If the Customer does not specifically request SAACKE to supply such gases, the Customer will be expected to supply it.
- 13.7 Provide no other arrangements have been made, the following supplies and services are not included in SAACKE assistance, but shall be at the disposal of SAACKE personnel:
- Assistance for transport of material to and from work site.
 - Availability of necessary scaffolding.
 - Over head cranes, blocks, fall wires and shackles.
 - All special tools for the engine shall be available.
 - General assistance for cleaning, etc.
 - Supplies of electricity, compressed air for working and for personnel protection equipment, water and fuel as well as necessary lighting.

14. Acceptance and Trial Runs

- 14.1 Customer must accept the ship or the object of performance immediately upon SAACKE's request. Acceptance shall be deemed to have occurred at the latest upon Customer's using the ship or the object of performance.

SALE OF SPARE PARTS AND EQUIPMENT/ ERECTION OF PLANTS

15. Place of Performance and Passing of Risk

- 15.1 The place of SAACKE's contractual performance shall be SAACKE's premises unless another place of performance has been agreed upon.

16. Reservation of Title

- 16.1 SAACKE reserves title to goods delivered and/or installed by it ("Conditional Goods") until full satisfaction of all claims to which SAACKE is entitled from Customer under the respective contracts and all claims arising in connection with the business relationship with Customer, regardless of the legal basis thereof, that have arisen or existed at the time of conclusion of contract, or will arise in the future.
- 16.2 Customer shall be entitled to resell, process, mix or combine and subsequently sell Conditional Goods within the scope of extended reservation of title as long as this is done in the ordinary course of business. Customer may not pledge nor transfer ownership by way of security of Conditional Goods to third parties. Customer must notify SAACKE promptly in writing about any attachment or seizure of property, or any other disposal by third parties.
- 16.3 Any processing or refashioning of Conditional Goods shall be done by Customer exclusively on SAACKE's behalf. In cases where Customer combines or mixes Conditional Goods with other goods not being SAACKE's property, SAACKE shall acquire co-ownership in the new product in the proportion of the total value of this product to the invoiced value of the Conditional Goods. The new products resulting from such processing shall also be deemed to be Conditional Goods.
- 16.4 Customer shall assign to SAACKE in advance and as a security all claims and accessory rights it has in connection with the resale of Conditional Goods as well as any claims it may have against its insurers. If the Conditional Goods are sold by Customer with other goods not belonging to SAACKE, regardless of whether without or after processing, above claims shall be deemed to have been assigned to SAACKE in the amount of the outstanding invoice value of the Conditional Goods. Above assignment shall not constitute a deferral of SAACKE's claim for payment against Customer.
- 16.5 Customer shall retain its right to collect claims assigned to SAACKE despite such assignment. SAACKE's authority to collect the claims itself is not affected hereby. SAACKE will, however, not collect them as long as Customer is not in default of payment, no petition has been filed for opening insolvency proceedings on Customer's assets or such proceedings have not been rejected due to insufficiency of assets, or no suspension of payments has occurred. If any of such events has occurred, Customer shall promptly notify SAACKE in writing about the claims assigned and the debtors of such claims, shall provide SAACKE with the necessary information and documents for collection of the claims, and shall inform the various debtors of the assignment of the claims to SAACKE in writing.
- 16.6 Customer shall maintain the Conditional Goods in proper condition and shall – to the extent the Conditional Goods are not built-in – store them separately and mark the Conditional Goods as goods owned by SAACKE.

- 16.7 Upon Customer's request, SAACKE shall re-assign to Customer SAACKE's title to the Conditional Goods and the claims assigned to SAACKE to such extent as the value of such collateral exceeds the value of all claims SAACKE has against Customer by more than 20 percent.
- 17. Defects**
- 17.1 Customer must notify SAACKE of any defect in writing immediately upon its discovery. Subject to paragraph 19 hereof, SAACKE shall not be liable for the aggravation of defects occurring due to late notice of defects.
- 17.2 Customer must first provide SAACKE the opportunity to rectify the defect within reasonable time, which, at the choice of SAACKE, may be through elimination of the defect or production of new work.
- 17.3. Ships must be made available to SAACKE for the purpose of rectification of defects. If this is economically inefficient, Customer shall be entitled to have the work done by another contractor ("Third-Party contractor) upon mutual agreement with SAACKE. In this case, SAACKE shall reimburse Customer all expenses proven necessary for such work.
- 17.4 Customer's claims for reimbursement of expenses incurred for the facilitation of rectification including but not limited to the cost of making the ship or the object of performance available at the place of performance specified in paragraph 12.2 hereof, shall be excluded.
- 17.5 In cases of notified defects, SAACKE shall only be obligated to rectify the defect after Customer having paid a portion of the contract price that is deemed reasonable considering the notified defect.
- 17.6 If rectification finally fails, or if such rectification cannot be reasonably expected to be acceptable to SAACKE or the Customer, or if rectification is associated with disproportionate costs and is, for this reason, refused by SAACKE, Customer may, subject to statutory requirements, rescind the contract or reasonably reduce the remuneration without prejudice to claims for damages that Customer may otherwise have.
- 17.7 SAACKE's obligation for payment of damages shall be governed by paragraph 19 hereof.
- 17.8 Replaced parts shall pass into SAACKE's ownership if it so desires.
- 17.9 Subject to paragraph 19 hereof, any claims and rights of Customer in connection with defects shall be null and void if the supplies or services performed are altered, treated, processed, or handled or repaired improperly by the Customer or third parties not authorized by SAACKE.
- 17.10 Unless agreed otherwise between SAACKE and the Customer, all claims of Customer against SAACKE regarding defects shall become time-barred after one year commencing upon passing of risk. This period of limitation, however, shall not apply if and to the extent the defect was maliciously concealed and/or any of the liability cases specified under paragraph 19 hereof apply.

CONCLUDING PROVISIONS

18. Force Majeure and delays

- 18.1 In case SAACKE is hindered by an event of force majeure from carrying out the agreed work within the agreed time, SAACKE shall be allowed the extra time that may be necessary from the time when the event of force majeure ends. SAACKE shall not be liable for any loss, damage, or delay caused by an event of force majeure.

- 18.2 A matter of force majeure shall include, but not be limited to, acts of God, strikes, lock-outs, general disturbance, major traffic disturbance in international transport, bad weather conditions, pandemic and other circumstances beyond the control of the parties.
- 18.3 If SAACKE is delayed in the work by reasons that are caused solely or partly by the Customer or any of his representatives, employees, officers, or gents, SAACKE shall be allowed the extra time that is necessary, and shall also be allowed compensation for the extra costs that may have been inflicted on SAACKE by such delay.

19. Export Regulations

- 19.1 In case the Customer intends to (re-)export merchandise of 2products purchased from SAACKE he is obliged to obtain all required permissions and to comply with all relevant (re-) export regulations, especially the provisions of the German Foreign Trade and Payments Act and of the Foreign Trade and Payments ordinance and/or of the applicable export regulation law as well as the Dual-Use Regulation and any applicable foreign regulations as e.g. the US Ex- and Import Provisions. The (re-) export of merchandise either in its original condition or as part of another product which is violating the regulations mentioned above is explicitly forbidden.
- 19.2 SAACKE does not guarantee or warrant the compliance of SAACKE's products sold or delivered inside Germany with any export regulations and are neither liable for material deficiencies nor any deficiency in title or in law established therefrom.
- 19.3 The Customer is obliged to obtain advice and informations independently on applicable regulations and provisions. Irrespectively whether or not the Customer advises SAACKE on the final destination of the products he has to obtain all necessary permissions of the competent (Export control) authorities on its own before he decides to export the goods. SAACKE not obliged to give advice, informations or co-operation in this respect.
- 19.4 In case the Customer is in possession of a special permission to export SAACKE's products and/or services even as part of a new product he has to advise SAACKE immediately on any change of circumstances which may or has influence on the permission. The Customer is obligated to inform SAACKE immediately if the use, (re)sale , Import or Export of SAACKE's products becomes subject to export control regulations or any relief or simplifications have been refused, suspended or withdrawn.
- 19.5 The Customer is going to advise SAACKE immediately if he has been included into the Denied Parties List of the American Bureau of Industry and Security (BIS) or any similar list. If the activities of the Customer are also of military relevance the Customer is obliged to entertain a valid Export/Import Compliance program in the meaning of the ITAR regulations (International Traffic in Arms Regulations) and to register with the United States Office of Defense Trade Controls unless the Customer has been exempted according to part 122.1. of the ITAR.
- 19.6 The Customer is obliged to indemnify SAACKE, its managing directors, employees, vicarious agents from all claims and liabilities which have been caused to SAACKE by violating the obligations hereunder by himself, his legal representatives, employees, vicarious agents, suppliers or sub-contractors.
- 19.7 In case the goods or products are (re) sold to any third party the Customer is obliged to pass on the preceding obligations completely. The Customer is liable to full extent for any non-compliance with applicable law by any third party. The Customer has to advise SAACKE immediately in case he becomes aware of any infringement or violation of regulations in connection with the export of SAACKE products or any end products of which SAACKE products are a part or have been further developed into.

20. Liability

- 20.1 SAACKE agreements for furnishing repairs, sale and delivery of equipment, tools, supply of parts and services as well as erection of a plant are entered into solely on the basis of the limited liabilities set forth herein. Different or more extensive liabilities including, but not limited to, the right to cancel the contract will only be accepted if an agreement in writing stating the nature and extent thereof is entered into before commencement of SAACKE work, and if the price is adjusted to include the costs of appropriate additional insurance or additional exposure.
- 20.2 SAACKE shall not be liable with respect to any one vessel or any one contract, directly or indirectly, in contract, tort or otherwise, to Customer, owners, charters, prime contractor (if SAACKE is a subcontractor), underwriters or other party in interest, for any damage to the vessel or facility or any appurtenances of either unless such damage is caused solely by wilful misconduct of SAACKE personnel. In no event shall SAACKE's aggregate liability arising out of any contract exceed the sum of US \$ 1 million or the equivalent in local currency. Customer agrees to indemnify SAACKE with respect to all liabilities in excess of this amount.
- 20.3 In no event shall SAACKE be liable for any consequential damage, including, but not limited to, faulty or negligent design or manufacture, delay, loss of revenue, detention, demurrage, tug expense, pilotage, crew wages, salvage or loss of use.
- 20.4 SAACKE shall be discharged from all liability for defective workmanship or material and for all loss or damage once the work /Spare parts or any other equipment or plant delivered or erected has been accepted by the representative of the classification society or by the Customer. In no event shall SAACKE be liable unless the defective workmanship or material is discovered prior to a claim made in writing to SAACKE within thirty (30) days after SAACKE work has ceased for whatever reason, or has been completed, or the vessel has been redelivered, whichever first occurs.
- 20.5 SAACKE shall use its best efforts to pass on to Customer all manufacturers' warranties for machinery and equipment purchased by SAACKE for the work. In no event shall SAACKE warranties/liabilities for machinery and equipment purchased by longer and more comprehensive than manufacturers' warranties.
- 20.6 The Customer shall pay compensation and indemnify SAACKE in case of property damage or injury or death of personnel employed by SAACKE or any third party, when and to the extent that such injury or death is caused by negligence, direct or indirect, on the Customer's part. Such negligence may be constituted by lack of necessary instructions concerning the work to be carried out SAACKE personnel.
- 20.7 Where the Customer establishes or is covered by a Builder's Risk insurance, ship repairer's legal liability insurance or other general liability insurance, it is agreed that SAACKE and its work shall be covered by such an insurance, and that subrogation against SAACKE shall be waived.
- 20.8 Where SAACKE only commissions the equipment and has not carried out the installation/repair, SAACKE shall incur no liability in respect of damage caused by failure in connection with such installation/repair, but shall only be liable for consequences directly related to improper starting procedure.
- 20.9 SAACKE shall carry no responsibility for removal, disposal of, or the consequences of the presence of dangerous, poisonous or otherwise polluting materials.

21. Liability for damage caused by the plant or products supplied or created (PRODUCT LIABILITY)

- 21.1 SAACKE shall be liable for personal injury only if it is proved that such injury was caused by gross negligence or wilful misconduct on the part of SAACKE or others for whom SAACKE is responsible. SAACKE shall not be liable for damage to property occurring whilst the plant is in the possession of the Customer. Nor shall SAACKE be liable for damage to products manufactured by the Customer, or for damage to the products or services of which the Customer's products form a part.
- 21.2 SAACKE shall under no circumstances be liable for loss of production, loss of profit or any other consequential damage and indirect loss. To the extent that SAACKE might incur product liability towards any third party, the Customer shall indemnify SAACKE as far as SAACKE liability has been limited by the foregoing clause 21.1. The above limitations in SAACKE liability shall not apply where SAACKE has been guilty of gross or wilful misconduct.
- 21.3 If a claim for damage as described in this clause is lodged by a third party against one of the parties, the latter party shall forthwith inform the party thereof in writing. SAACKE and the Customer shall be mutually obliged to let themselves be summoned to the court, or arbitral tribunal examining claims for damages lodged against one of them, on the basis of damage allegedly caused by the plant.

22. Exclusion of other warranties

- 22.1 Other than the liabilities and warranties explicitly agreed to herein by SAACKE, there are no other warranties given by SAACKE, either expressed or implied. Specifically excluded are all warranties of merchantability, fitness for a particular purpose, and workmanlike service.

23. Venue and applicable law

- 23.1 Swiss law shall apply exclusive of the law on the conflict of laws. The parties shall endeavour to amicably settle any dispute arising out of or in connection with these Terms and Conditions or any order of or agreement with the Customer, including any question regarding their existence, validity or termination and including their performance and any arrangements relating thereto (except as expressly otherwise agreed for such arrangements). In their attempt to settle any dispute amicably the parties shall contemplate, but not be obliged, to seek settlement by mediation under rules to be agreed upon. An attempt to arrive at a settlement shall be deemed to have failed as soon as one of the parties so notifies the other. If an attempt at settlement has failed, the dispute shall be exclusively and finally settled under the Rules of Arbitration of the International Chamber of Commerce in Paris ("Rules") by three arbitrators appointed in accordance with the Rules. The seat of the arbitration shall be Zurich, Switzerland. The procedural law of this place shall apply where the Rules are silent. The language to be used in the arbitration proceedings shall be English. SAACKE shall have the right to bring a claim before a court at the Customer's principal place of business or before any other court being competent according to any national or international law or before the Courts of Bremen in SAACKE's discretion.