

## GENERAL TERMS AND CONDITIONS

### Repair and Service with supply of materials

#### 1.- DEFINITIONS

"Client": the Party that stipulates the Contract with the Company to perform the Works.

"Company": NAUTOR SWAN GLOBAL SERVICE ITALY S.r.l., fiscal code and VAT number \_\_\_\_\_, with registered office in \_\_\_\_\_.

"Contract": any agreement between the Company and the Client for the performance of any Works.

"Contract Price": the price (subject to any applicable variation) for the Work set out in the Contract or the price resulting from the application of the Tariff on the basis of the Work foreseen by the Contract.

"Force Majeure": any unforeseen and uncontrollable event, including, but not limited to, acts of war, natural disasters, earthquake, fire, explosion, flood, hurricanes, strikes, lockouts or other industrial disturbances or riots, war (declared or undeclared), compliance with any acts or omissions of any local or national or international governmental authority, inability or delay in obtaining the necessary supplies, labour, power, machinery, fuel, or raw materials, equipment breakdown or any other cause or causes of any kind, of a similar or dissimilar nature, that are reasonably beyond the control of the Party.

"Party": the Company or the Client.

"Parties": the Company and the Client.

"Tariff": the rates agreed in the Contract or those published on the website of the Company as "Time and Materials", "Boatyard Rates" in force from time to time, which are hereby incorporated, including rates for marina services like dock space, travel lift, on hard space, yard equipment, external services, machinery, storage, cranes, maintenance and cleaning, supplies.

"Terms": these general terms and conditions or the more recent version published on the website of the Company and in force from time to time, which is hereby incorporated.

"Variation Work(s)": any modification of the Works proposed by the Company and accepted in writing by the Client.

"Work(s)": provision of materials or services, with supply of relevant required materials, to which the Contract refers, including those referred to in Clause 6.

"Work Order": Client's proposal for the Work, as reported in the order form, new order, change of order, or Company's quotation or estimate.

"Vessel": any yacht, boat or other floating craft of any nature (or part thereof) entrusted to the Company for the Work to be performed.

"Yard": Company's facilities and work area, including the premises and workshops, ashore and afloat.

#### 2.- APPLICATION OF THE TERMS AND ACCEPTANCE OF THE ORDERS

2.1 The Client hereby irrevocably accepts that the Terms are incorporated in any Contract. In case of conflict, the provisions of the Contract shall prevail over the Terms, which shall prevail on any other terms and conditions, including any Client's general and specific terms and conditions.

2.2 2.2. The Client warrants that any individual acting on behalf of the Client, whether a manager, captain, crew, employee, counsel etc. acts as attorney in fact in the name and on behalf of the Client and has full powers to bind him.

#### 3.- LIABILITIES OF NSGS ITALY AND GENERAL LIMITATION

3.1 Up to the maximum extent allowed by any applicable law, under no circumstances shall the Company be liable for any consequential or indirect damage or loss, nor any damages or injuries incurred or suffered by the Client or other party, such as incidental damages, economic damages, damages to property, damages for loss of use, loss of time, loss of profit, loss of income, inconvenience, cost of substitute Vessel and/or equipment, crew damages or accommodation or expenses, cost for towing and/or fault finding and for any and all other indirect damages of whatever kind.

3.2 Without prejudice to any other provisions of this Contract (and in particular with those of Clause 4), the Company's total liability arising out or in connection with the Contract or with the performance of the Works shall in no case exceed the limit of, for any one event and in the aggregate for the entire insurance period, the lesser between € 5,000,000 (Euro five million) and the Contract Price. This limitation shall apply regardless of the number of claims, vessels, parties or victims involved in the same event.

#### 4.- INSURANCE

4.1 The Client shall stipulate and maintain valid a hull and machinery insurance and third party liability insurance (such as Protection & Indemnity insurance) in respect of any risks (including fire and explosion) involving the Vessel – with waiver of subrogation towards the Company and such waiver shall extend to the Company's subcontractors, employees and any entity involved in the performance of the Works – providing full coverage for injury, loss or damage, valid both in the water and when the Vessel is ashore, and shall, at the request of the Company, provide the Company with copies of the relevant insurance policies.

4.2 The Company's civil liability towards the Client:

a) is covered by an insurance policy stipulated with a qualified national insurance company;  
b) shall be limited in respect of any event to the risks and limits covered by insurance policies terms (which are attached to the Contract and incorporated herewith) and in no case the limits shall exceed, for any one event and in the aggregate for the entire insurance period, the lesser between € 5,000,000 (Euro five million) and the Contract Price.

4.3 Any risks and amount not covered by the above-mentioned policies stipulated by the Company, shall rest on the Client. In particular, the Company shall not be liable for any damage to the Vessel or to any property entrusted to it insofar as such damage falls within the exclusions of the Company's insurance policy, which exclusions shall be deemed known and accepted by the Client. The Client acknowledges the exclusions of the Company's insurance policy (in particular material damage to the Vessel is covered only in cases of fire or explosion while in custody).

4.4 Should the Client wish to extend the above mentioned coverages, the Client shall inform the Company in writing and the Client shall pay any consequent extra premium; the extension is subject to – and will therefore be valid and in force upon – the Company and the Company's insurance accep-

tances, the payment of the relevant extra premium and the issuing of the relevant extension certificate by the Company's insurance.

#### 5.- QUOTATIONS, ESTIMATES AND CONTRACT

5.1 The quotations, estimates and orders containing the description of the Works shall be valid for thirty (30) days from the date on which they are issued.

5.2 The Contract shall be concluded between the Parties when the Work Order proposed by any Party is accepted in writing by the other Party. In any case, the signed approval of the Estimate shall be considered legally binding and shall have the same legal effect as a duly executed Contract.

#### 6.- WORK AND VARIATION WORKS

6.1 The Parties agree that:

a) any works necessary for the correct performance of the Works;

b) any variations to the Works requested (also verbally) by the Client after the stipulation of the Contract; shall be:

i) performed by the Company;

ii) deemed as included in the Works covered by the Contract since its stipulation, without any further written approval;

iii) paid in addition to the original Contract Price as per Clause 7.

6.2 Variation Works shall be proposed by the Company and agreed in writing between the Parties by signing a supplementary Work Order (including any consequent amendments of the Contract, such as delivery terms and Contract Price) upon the signature of which they shall be deemed as Works. Should the proposed Variation Works not be accepted by the Client within five (5) as of the receipt of the Company's proposal, the Company will be entitled to suspend the performance of its obligations; should the suspension exceed thirty (30) days, the Company will be entitled to terminate the Contract, without prejudice to any amount due as Contract Price for the Works performed and the Parties will have nothing further to claim from each other. Any time lost due to the suspension will be considered as an admissible delay and shall not be calculated in the delivery time.

6.3 Additional costs and expenses due to the afore mentioned Works shall be invoiced and settled by the Client on or before the completion of the Works.

#### 7.- CONTRACT PRICE

7.1 By virtue of the Works rendered by NSGS Italy in accordance with the Contract, the Client shall pay the Company the agreed Contract Price.

7.2 The Contract Price covers all the Works.

7.3 Where a fixed price has not been quoted for any Work, the Contract Price shall be calculated by making reference to the rate indicated in the Contract, or in defect in the Tariff, and on the basis of the quantity of Work performed, with reference to the time of the performance, and to the other applicable provisions of this Clause.

7.4 Where a specific quotation for any Work has not been agreed upon by the Parties, the Contract

Price shall be calculated by making reference to the rate indicated in the Tariff and on the basis of the quantity of Work performed, with reference to the time of the performance, and to the other applicable provisions of this Clause.

7.5 The Contract Price does not include transport costs, taxes (e.g. VAT – 22%), environmental and waste management fee (2%), project management fee (4,5% of the Contract Price). These expenses, taxes and fees shall be borne by the Client.

7.6. Any Works for which a Tariff is not applicable shall be paid by the Client on the basis of the documented costs, to which a mark up of twenty percent (20%) shall apply, and shall be included in the Contract Price. Without prejudice to any different agreement in the Contract, services and materials provided by subcontractors will be calculated on "time and materials" basis and will be charged with a 20% handling fee as per rates sheet.

7.7. The invoices shall be issued on a monthly basis.

7.8. The Contract Price is always subject to potential increase in the prices of the relevant Works as a consequence of potential increase in the Tariff or in the subcontractor's tariffs; in case of any such increase the Company will inform the Client of any consequent increase in the Contract Price and of the reasons of the increase, and will suspend the Works affected by the increase until the Client's approval. The Client will in any case remain responsible for the part of the Contract Price already performed and for the part of the Contract Price which are not affected by the proposed increase. Should the suspension of the Works affected by the increase exceed thirty (30) days or should the Works affected by the increase impede the performance of the unaffected Works, the Company will be entitled to terminate the Contract, without prejudice to any amount due as Contract Price for the Works performed and the Parties will have nothing further to claim from each other. Any time lost due to the suspension will be considered as an admissible delay and shall not be calculated in the delivery time.

## **8.- PLACE OF PERFORMANCE OF THE WORKS, PAYMENT AND COMPANY'S RIGHTS IN CASE OF CLIENT'S BREACH OF PAYMENT OBLIGATIONS**

8.1. The Works shall be performed at the Yard, unless otherwise specified in the Contract.

8.2. In case of Force Majeure, the provisions of Clause 18 shall apply.

8.3. The Works shall be performed during the Company's business hours, unless otherwise stipulated. Works carried out of business hours upon Client's request will be considered extra labour time and charged as per relevant Tariff.

8.4. All payments shall be made by direct wire transfer to the Company's bank account in the form of immediately available funds and shall be marked with the reference invoice number.

8.5. Bank wire transference costs or commissions will be paid by the Client.

8.6. Credit card payment will be charged with an additional 2%. Only Visa and Mastercard are accepted as Credit Card payment methods.

8.7. Unless differently agreed, the Client shall pay fifty percent (50%) of the Contract Price in advance and the remaining fifty percent (50%) upon completion of the Works.

8.8. Payment shall be settled by the Client in accordance with the payment terms specified in the Contract or, in defect of specific agreement, within fifteen (15) days from the reception of the relevant invoice including the statement of accounts. Any dispute regarding the statement of accounts or any

invoices shall be notified by the Client in writing to the Company within five (5) days from the reception of the relevant document preferably by email, addressed to the project manager designated by the Company to the Vessel. After that period, the statement of the account and the invoice shall be considered as final, compliant and accepted by the Client without the Client being entitled to bring any claim in that respect from said moment on.

The disagreement of the Client with some items listed in the statement of accounts or invoice/s does not exempt the Client from paying the remaining items. The Client shall not be entitled to set-off, withhold or delay any payment for any reason whatsoever.

Should the Client fail to timely pay any other sum due under the Contract, the Client shall pay default interests as foreseen by the applicable Law.

8.9. The total payment of the performed Works shall be made prior the launching of the Vessel and/or before the delivery of the Vessel, whichever may first occur; ownership of the materials and equipment supplied remains with the Company until full payment of the Contract Price.

8.10. The Company has the right of detention on the Vessel at the Client's cost and risk until the outstanding payment has been settled in full.

8.11. The Company reserves the right to set off any amount due to the Client with any outstanding amount due by the Client. Moreover the Company shall have a lien on the Vessel and therefore the Company shall be entitled to refuse the delivery of the Vessel and retain her in case the Client fails to fulfill the agreed payment obligations. The existence of the lien shall be governed by the flag State law and/or by the applicable law and/or by the law of the place where the Works are performed, while the enforcement of the lien shall be governed in accordance with the place where the Vessel lies.

8.12. Should this Clause conflict with any applicable mandatory law, the provisions of such law shall prevail.

## **9.- BILLING**

9.1. NSGS Italy shall issue invoices that are auditable and compliant with the applicable mandatory local legislation of both the Client and the Company. Invoices must also adhere to generally accepted accounting principles and the specific requirements of the Client. Each invoice shall include at least the following information:

- Client's name, address and contact information of the reference person, if needed;
- Date and invoice number;
- Work Order or Contract reference;
- Client's address;
- Detail of the Works provided and total price thereof with the corresponding breakdown;
- VAT.

9.2. Invoices shall be issued in accordance with the provisions set out in the Terms and shall be transmitted to the billing address or electronically via e-mail or certified email to the Client designated representative.

## **10.- ACCEPTANCE AND INSPECTION OF THE WORKS**

10.1. As the Works near completion, the Company shall deliver to the Client the list of Works performed, the relevant invoices, and the final statements of account.

10.2. Acceptance of the Works shall take place at the Yard.

10.3. Within five (5) days as of the completion of the Works, the Company shall send the notice of completion of the Works in writing to the Client and

the Client shall sign the acceptance certificate within five (5) days of the receipt of the notice, or – in any case – prior to the departure of the Vessel from the Yard, whichever occurs first. Should the acceptance certificate not be signed within the aforementioned period, the Works will be deemed tacitly accepted by the Client and the Works performed shall be considered as fully compliant and accepted by the Client with no further claim admissible.

10.4. Any complaints must be submitted by the Client to the Company in writing within the time limit set out in clause 10.3 above by email or by registered letter with acknowledgment of receipt or by hand delivery, and it must be addressed to the project manager appointed by the Company for the Vessel.

10.5. In case of signature of acceptance certificate, any complaints or remarks must be clearly stated by the Client in writing on the acceptance certificate. Failure to indicate such complaints on the acceptance certificate will involve waiving any claims in respect of the complaints or remarks.

## **11.- YACHT MOVEMENT AND USE OF THE YARD AND CUSTODY**

11.1. The Client shall be solely responsible for the custody and safekeeping of the Vessel, including in the event of adverse weather conditions, unless otherwise agreed upon in writing.

11.2. The Company shall have the right to order to the Client any movement of the Vessel and any tests or trials it deems necessary for the correct performance and verification of the Works, or for reason of safety, security or efficient management of the Company business and Yard.

11.3. The Client shall be responsible for manoeuvring the Vessel, including for her entry into and exit from the harbour, during sea trials or before and after hauling operations. In the event that such manoeuvres are entrusted to the Company's personnel, the Company shall not be held liable for any damages occurring during said operations. Should the Vessel, at the Company's discretion, be placed on haul-out blocks for the execution of the Works, such blocks shall be positioned by the Shipyard in accordance with the docking plan/lifting plan that the Client undertakes to provide prior to the Vessel's entry into the Yard. In the absence of a provided docking plan, the Company shall not be held liable for any responsibility.

11.4. All costs related to the movements, trials and/or tests, including the costs of fuel and any consumables, shall be borne by the Client, as per ruling yard rates.

11.5. The Client shall adopt all necessary technical and organizational measures to prevent environmental pollution and ensure that no nuisance, disturbance, or damage is caused to the Company or other Clients within the Yard.

11.6. The Client or Vessel's Captain shall ensure the adoption of all necessary technical and organizational measures to avoid damage or injury to the Vessel and her crew, to the Company and its employees and to any third parties.

11.7. The Company reserves the right to postpone hauling and launching operations in the event of adverse weather conditions or for maintenance of equipment or infrastructure. The Company shall bear no liability for such postponements.

11.8. The Company shall not be responsible for any Client's items, furnishings, or personal property whether on board or outside the Vessel.

## **12.- DELAY**

12.1. Any dates or timelines indicated by the Company for the performance of the Works, and/or for

the delivery of the Vessel shall be deemed as merely indicative and not essential, unless otherwise agreed upon in writing by the Parties, and the Company shall not be responsible for any delay.

12.2. If The Company and the Client have agreed in writing a specific deadline for the performance of the Works or for the delivery of the Vessel, the Client shall be entitled, as sole remedy, to claim for the compensation for those direct damages which are reasonably and directly attributable to The Company's delay in completing the Works, without prejudice to the Company's right to payment of the Contract Price.

12.3. The Company shall have the right to suspend the Works and postpone the relevant delivery in case of any failure by the Client to fulfil his obligations under these Terms; in such a case, NSGS Italy, once the Client has remedied the default, shall inform in writing the Client about the new delivery date. The Company shall in no case be liable for delays caused by third parties, suppliers, authorities, weather conditions or any circumstances beyond its reasonable control.

12.4. Any delay in delivery due (in full or part) to a suspension allowed to the Company by the Contract, shall automatically extend the delivery term of an equal period and it shall not determine any liability on the Company's side.

### 13.- WARRANTIES

13.1. The Works shall be performed in accordance with best local practice and to the reasonable satisfaction of the Client.

13.2. The Company guarantees that the Works are rendered in accordance with the provisions of the Contract, the agreed specifications, the quality and quantity requirements; however the Company does not guarantee that the Works shall be suitable for the Client's particular purpose (whether specified or implied by the Client) .

13.3. The Company undertakes, as its sole and exclusively obligation, to rectify any complaint or remark notified in writing by the Client to Company in the acceptance certificate which may be found in regard to the materials, equipment and workmanship.

13.4. The Company undertakes, as its sole and exclusively obligation, to rectify any defects for which a complaint or remark was not included in the acceptance certificate in accordance with Clause 10, which defects were not detectable at the time of the acceptance and which are due to the Company's exclusive liability. The warranty period for those defects arising from improper workmanship shall be twelve (12) months from the date of the acceptance of the Works. For new equipment installation, the warranty period shall be determined in accordance with all applicable laws and regulations.

13.5. The warranty shall not cover normal wear and tear, overloading, accidents, mismanagement or negligence in the use and maintenance, or any repairs performed by any parties other than the Company and/or those expressly authorized by the Company, including but not limited to its employees, agents, sub-contractors or suppliers. The warranty shall also not extend to antifouling performance and wear. Normal wear and tear shall be interpreted to include the deterioration reasonably expected to occur due to age and usage.

Equipment and components not manufactured by the Company shall be covered solely by the warranty provided by the respective manufacturer of such equipment and components.

The warranty shall not apply in the following cases:

a) The Vessel or any of her equipment and/or components were used not in accordance with the

good seamanship;

b) The defective item was serviced and/or repaired by any party other than the Company or other company belonging to Nautor Swan Global Service group;

c) The damage was caused by equipment and/or components installed or maintenance performed by the Client or by any third party not appointed or approved by the Company;

d) The Vessel or her equipment and/or component were used for purposes other than those for which she/ her equipment and/or component were intended or designed;

e) The Vessel or her equipment and/or component were used in ways different from those described in supplied manuals;

f) The defect was caused by exceptional events such as, but not limited to, accidents, collisions, lightning strikes, intentional damage, negligence by the Client or third parties, groundings and other external force, including force majeure;

g) The defect was caused by improper storage or improper transport conditions;

h) The defect arose from electrolysis or were caused by the choice of location or external sources, including nearby yachts, mooring facilities, etc;

i) The defect concerns aesthetic consistency, including but not limited to discoloration, marks due to moorings or equipment, or changes due to lack of maintenance, especially on painted or gelcoat surfaces.

13.6. Warranty works shall be carried out at a Nautor Swan Global Service yard or at another yard belonging to the Nautor Swan Global Service group.

If the warranty works are performed at a yard that is not operated by Nautor Swan Global Service, all costs related to the execution of the works shall be borne by the Client, including, without limitation, travel expenses, accommodation, meals, local transportation, and any other costs incurred by the Company and its personnel to reach the Vessel and return, as well as any costs necessary to secure a suitable and compliant working area.

All works shall be carried out in accordance with applicable laws and safety requirements.

13.7. The Client shall be solely responsible for arranging the transportation of the Vessel to the Company's Yard or any other Nautor Swan Global Service yard, or another yard as reasonably decided and appointed by the Company, and the costs for said transportation shall be exclusively borne by the Client. The Company shall not be liable for any such costs including, but not limited to harbour fees, dockage, haul and launching costs, hard-standing or afloat costs, supply charges, crew expenses, shipping and courier fees for parts, customs duties and/or local taxes incurred with any warranty repairs.

13.8. The Client shall, immediately after discovering any defect, take all appropriate steps to mitigate further loss or damage and shall notify in writing to the Company any defects within fifteen (15) days from the relevant discovery. The Company shall be granted a reasonable opportunity to inspect the alleged defect and, should it recognize its liability for said defect, it shall repair or re-perform them, either wholly or partially.

13.9. Any remedial work undertaken directly by the Client without prior written notification to the Company and without granting the Company a reasonable opportunity to inspect the defect shall result in the forfeiture of all warranty rights provided herein.

13.10. The Company shall have no liability under these warranty provisions if the Client fails to pay all those amounts invoiced by the Company.

### 14.- BREACH

14.1. In case of the Company failure to comply with any of the provisions of the Terms, the Client shall notify the Company in writing of the alleged breach. The Company shall then be granted a period of no less than fifteen (15) days starting from the date of receipt of such notice to remedy the breach incurred. Should the Company fail to remedy within the above time limit, the Client will be entitled to terminate the Contract, in which case, the Client shall pay the Contract Price for the Works already performed and the related costs already sustained by the Company.

14.2. In the event that the Client fails to timely make any payment under the Work Order, and such delay exceeds fourteen (14) days, the Company shall have the right to terminate the relevant Work Order with immediate effect provided that:

a) the Company has given the Client written notice of the delay and informed the Client of its intention to terminate the Contract if payment is not made; and

b) the Client has failed to pay all amounts due, including any applicable default interest, within fourteen (14) days from receipt of such notice.

14.3. The Company shall also be entitled to terminate the Contract with immediate effect by written notice to the Client, without prejudice to any other rights available to the Company, if the Client fails to fulfil whichever of its contractual obligations and fails to remedy such breach within fourteen (14) days after following receipt of written notice thereof sent by the Company.

14.4. For the sake of clarity, in the event of termination of the Contract by the Company, the Company shall at all times be entitled to payment of the Contract Price due for the Works rendered up to the date of termination of the Contract and, in any case, full compensation for all damages suffered, costs and losses incurred and caused by the Client's breach.

### 15.- WORKS PERFORMED BY THIRD PARTIES AND CREW

15.1. The Company shall be entitled, as its sole discretion, to subcontract any portion of the Works it may deem appropriate. Notwithstanding such subcontracting, the Company shall remain the sole party responsible vis-à-vis the Client for the performance of such works as if they had been performed directly by the Company.

15.2. Unless otherwise agreed upon in writing, the Client shall not be permitted to engage any subcontractors to carry out works on board during the period of the Works or the period when the Vessel is in the Yard.

15.3. The Company acknowledges that the Client may entrust the Vessel crew with certain tasks during the performance of the Works or the permanence at the Yard. In such case:

a) The crew members, as per the list submitted, approved and signed by the Company, shall be duly insured by the Client (with waiver of subrogation towards the Company and such waiver shall extend to the Company's subcontractors, employees and any entity involved in the performance of the Works) and shall operate in full compliance with the requirements provided by all applicable labour, health, safety regulations, including the use of personal protection equipment;

b) The Company shall be duly informed in advance about the works entrusted to the crew, which works shall be carried out in a manner that does not interfere with or delay the Company's ongoing Works;

c) Under no circumstances shall the crew perform activities requiring hauling out, use of scaffolding,

