



# Standard Terms & Conditions for the Performance of Services and Repairs of German Lashing Robert Böck GmbH

To be used with businesses

## I. Scope of application

These terms & conditions shall apply to all services to be provided by us, including, but not limited to, the performance of repairs, remodeling, maintenance and installation work on containers, chassis, trailers, vehicles in combined traffic, ships or related equipment, hereinafter referred to as "Ship" even if only part of a Ship is concerned, and shall apply also to all ongoing and future business relations. Any deviating agreements, in particular any conflicting terms & conditions of the customer or side agreements shall not become an integral part hereof unless we have given our express consent thereto.

## II. Formation of agreement

1. All our quotations and cost estimates shall be non-binding. They include only the performance of services expressly specified therein. Orders are binding on us only if and when we have confirmed them in writing or executed them.
2. The determination with regard to scope and usefulness of a repair is solely the customer's responsibility. We may rely on the statements of a classification society for the performance of our work.
3. If we provide or see to the provision of tugboats and/or warping tug crews, we do so on behalf of the customer. We owe only the provision of this service, not its performance.
4. The customer is obligated to specify particular characteristics or any special condition, prior contamination (e.g. asbestos) or the like of the Ship, for example the effect of changes in shafting on the calculation of the torsional vibration or the behavior of the Ship during swells. The customer must provide us free of charge in writing with all information and specifications required for our performance, constructions and calculations, including, but not limited to, the loads, purpose of use, location of use of structures, steel structure drawings of the existing ship structures and equipment (decks, transverse and longitudinal bulkheads, tank deck/double bottom/tank levels, transverse and longitudinal hatch coamings, hatch cover dimensions, General Arrangement Plan, main body plans, material thickness plan, material properties (mechanical strength properties of existing steel elements) etc.) to be considered for the structures. The customer shall determine or assess the compatibility of the structures built by us with the respective location of their use in structural respect and according to local requirements, and, if necessary, the Ship must be adapted by the customer at its own expense. Any alteration of the structures built by us is not permissible without our written consent. Our liability shall be excluded – subject to Section VIII. No. 4 hereof – for any loss or damage arising directly or indirectly from the failure by the customer to provide such instructions or other obligations to be fulfilled by the customer.
5. The customer must deliver the Ship at the agreed place and date in such condition as to allow us to immediately start working on it. If the Ship is not delivered on the agreed date, we shall be entitled to termination with immediate effect of the specific contract entered into with the customer after having unsuccessfully set a reasonable period to deliver the Ship with the threat of termination. The last sentence of No. 7 below shall apply accordingly in this case.
6. Any equipment of the Ship that we are not working on shall be secured against accidents by the customer. Prior to working in the holds, the hatch covers and hatch beams must be removed by the customer and safely placed in an accident-proof manner. Third parties may not be employed at/on the Ship without our approval while work is being performed.
7. If we become aware after having entered into the contract of which these terms & conditions are an integral part that insolvency proceedings have been instituted in court regarding the customer's assets, or if the customer has suspended payments, we shall be entitled to request the provision of security for our remuneration up the full amount thereof, or to terminate the contract for cause with immediate effect and charge the customer our expenses after expiration of a reasonable period to provide such security. In the event of termination for cause with immediate effect, we shall be entitled to acquire at current market terms any material and/or semi-finished goods including, if applicable, special equipment. In addition to this, we shall be compensated for the services performed until such termination at the agreed-upon prices plus the profit we lost due to the termination of the contract, notwithstanding any further claims and rights we have.

## III. Pricing

1. All prices are ex works and are exclusive of packaging, freight, postage, shipping costs, insurance of value, and assembly. This shall apply *mutatis mutandis* for agreed-upon partial deliveries. The value-added tax and any customs or import/export duties will – if they are incurred – be calculated and shown separately on our invoice.
2. The prices quoted and invoiced are calculated in such a manner as to provide that any salvaged material shall pass into our ownership without remuneration.
3. If cost increases occur (for example for wages, energy, taxes, materials, etc.) between the signing and the performance of a contract of which these terms & conditions are an integral part, we shall be entitled in our reasonably exercised discretion to



charge an adjusted price to reflect these increases not exceeding our generally applicable prices at the time of performance of the contract if the period between the signing and the performance of the contract exceeds four months.

4. The first charge and any refill of lubricating and hydraulic oil and any other process and auxiliary materials shall be charged separately by us. This shall apply accordingly to costs of certificates stating that the Ship is free of gas, any required degasification of tanks, bilges or similar things that we have provided or carried out in performance of each individual contract assigned to us.

5. Charges for tugboats, pilots, and warping tug crews as well as port and lock dues are not included in our prices and neither are any charges for the docking of Ships. These charges and dues shall be invoiced separately where applicable.

#### **IV. Terms of payment**

1. The remuneration is due and payable without any deduction upon acceptance/taking receipt of the object of the contract by the customer and issuance of the corresponding invoice. For maintenance, manufacturing, repair and assembly work we shall be entitled to charge partial payments in accordance with the progress of our work.

2. Checks and bills of exchange shall be accepted only on account of performance (i.e. the check or bill of exchange shall not operate as a discharge until honored) with the acceptance of bills of exchange also being subject to a prior agreement. Fees shall be at the customer's expense.

3. We shall be entitled to interest of 5% p.a. starting upon maturity of our entitlement to remuneration, and of 8% percentage points above the base rate as applicable from time to time, once the customer is in default. We shall be entitled to assert further claims and rights in connection with the default in payment by the customer.

4. The customer may set off with legal effect only against uncontested claims, claims that have been established as final and binding and no longer subject to ordinary legal remedies, or claims that are ripe for judgment (i.e. that have been proven).

5. The customer shall have a right of retention only if and to the extent its counter-claim is based on the same contractual relationship.

6. If the customer is in default of payment of the remuneration, we may postpone any action required for the fulfillment of our obligations until payment of the outstanding remuneration (including default interest, if applicable).

#### **V. Shipment**

1. The shipment of the object of the contract shall be for the account and at the risk of the customer even if the object of the contract is carried by our own means of transportation. In the event where free delivery has been agreed upon, this delivery shall also be at the risk of the recipient.

2. We are not obligated to carry transport insurance and clear the shipment through customs. The customer must ensure that upon shipment all relevant export and import rules and regulations applicable at the destination specified by the customer are being complied with.

3. In the event of transport damage, the customer must – prior to taking receipt of the object of the contract – have the operator/driver of the train, postal delivery services or truck confirm the damage. Transport damage must be reported to us immediately upon its discovery.

#### **VI. Delivery period, deliveries**

1. Delivery periods and delivery dates shall be binding on us only if they have been expressly agreed upon in writing. If no delivery periods or delivery dates have been agreed in writing, the periods and dates estimated by us shall apply. Otherwise reasonable delivery periods/dates taking the nature and extent of the performance, additional difficulties, etc. into account shall apply.

2. Timely delivery and/or performance of work shall be subject to the complete and timely fulfillment of the customer's duties and obligations to cooperate, including, but not limited to, the timely delivery of the records to be provided by it, the timely provision of the Ship in a condition allowing to work on it, and the clarification of all commercial matters (including the agreement on prices) and technical questions. Any agreed delivery periods and delivery dates shall be extended by the duration of the delay in receiving due payments by us even in cases where we have not expressly asserted a right of retention and/or right to withhold performance.

3. Subsequent changes of and/or supplements to the contract entered into with us shall cause an adjustment of the delivery periods/dates in accordance with the additional time required for the work involved due to the changes/supplements.

4. Force majeure and any other circumstances outside our control – regardless of whether they occur with us or our supplier – shall release us from our obligation to deliver items and perform work for the duration of the effects thereof, and, if they result in the impossibility of our performance, from all of our delivery/performance obligations. This shall also apply to measures taken in compliance with the International Ship and Port Facility Security (ISPS) Code.

5. In the event that we are in default regarding the completion of our performance, the customer, if it can prove that it suffered a loss or damage, and notwithstanding its right to rescind the individual contract with us if the legal requirements are met, shall



upon continuing the contract be entitled to claim default damages in the amount of 0.5% of the contract price per full week of default, but no more than 5% of the contract price, with any further rights to and claims for damages being excluded. This limitation shall not apply if the default is due to culpable negligence (willful misconduct or gross negligence) or at least negligent violation of any other obligations by us that are essential to the contract.

#### **VII. Defects**

- 1.** The customer must examine the items delivered and services performed by us immediately upon receipt thereof to determine whether they are complete and free from defects, and notify us of defects, if any. The customer must notify us of any defects in writing no later than immediately upon their discovery. Subject to Section VIII. No. 4 of these terms & conditions, we shall not be liable for the enhancing of a defect due to late notification thereof.
- 2.** We must first be given the opportunity to rectify our performance within a reasonable period, at our option by remedying the defect or producing a new deliverable.
- 3.** Ships must be made available to us for the purpose of rectification of our performance at the place of performance according to Section XIII. No. 1 of these terms & conditions. If this is unreasonable from an economic point of view the customer shall be entitled after coordination with us to have the work performed by another supplier. In this case, we shall reimburse the customer the proven necessary expenses incurred for such work.
- 4.** Claims of the customer for the reimbursement of expenses to render the rectification of performance possible, in particular the costs of making the Ship or the object of performance available at the place of performance provided in Section XIII. 1 of these terms & conditions shall be excluded unless we are liable pursuant to Section VIII. No. 4 of these terms & conditions.
- 5.** In the event of a notice of defects we shall be obligated to rectify our performance only after the customer has paid a portion of the remuneration that is deemed adequate upon taking the defect into consideration.
- 6.** If the rectification of the performance ultimately fails, or if it is deemed unconscionable to both us and the customer, or if the costs connected thereto are unreasonably high, and such rectification is therefore rejected by us, the customer shall have the right – subject to the legal requirements being met and notwithstanding any claims for damages – to rescind the contract or to reduce the remuneration by a reasonable amount.
- 7.** Our obligation to pay damages shall be governed by Section VIII of these terms & conditions.
- 8.** Parts that have been replaced shall become our property if we so wish.
- 9.** Subject to Section VIII No. 4 hereof, the customer's rights and claims due to defects shall be void if the items delivered or services performed have been altered, treated or processed, handled improperly, or repaired by the customer or any third parties not authorized by us.
- 10.** Unless agreed otherwise with the customer, claims of the customer for defects shall be time-barred one year counting from the statutory commencement of the expiry of the limitation period. This shall not apply if and to the extent the defect was fraudulently concealed and/or any of the cases where we are liable pursuant to Section VIII NO. 4 of these terms & conditions have occurred.

#### **VIII. Liability**

- 1.** Subject to Section VIII No. 4 hereof, any tugging and warping of a Ship shall be done exclusively at the responsibility and risk of the customer even if we provide, procure, or charge for, equipment and/or personnel. The tugboat crews, pilots, or warping tug crews are neither persons employed by us in the performance of our obligations nor our vicarious agents.
- 2.** The customer is responsible for guarding the Ship, its cargo and the things provided by the customer, including, but not limited to, all security watch services, and for the compliance with all relevant laws, rules and regulations (such as regulations for the prevention of accidents) by itself and by the persons employed by it in the performance of its obligations and its vicarious agents. All other loss prevention measures (such as draining pipes and taking measures to protect against frost) as well as the mooring are the responsibility of the customer. When potentially dangerous work is performed on board a Ship, the customer must ensure by its own supervision measures that the customary requirements regarding care and diligence are being complied with. The customer must advise us in writing of any threat of danger.
- 3.** Subject to Section VIII No. 4 of these terms & conditions, we shall not be liable for any loss or damage resulting from a faulty docking plan, faulty drawings and other records of the customer, lack of stability or lack of seaworthiness of the Ship. The customer must expressly notify us of any circumstances that could affect the stability or the seaworthiness of the Ship and cause damage to the Ship or its equipment or any other objects of performance despite proper performance of the work by us.
- 4.** Any claims other than those provided for in these terms & conditions or the contracts entered into with the customer shall be excluded unless they arise from the provisions of the Product Liability Act, from willful or gross negligent violations by our corporate bodies or our executives, injury to health and physical injury of the customer or its employees due to a violation of a duty for which we are responsible, a warranty for the existence of a quality, or our violation of essential contractual obligations.



Obligations that are essential to the contract are those the fulfillment of which allows us to properly perform our primary contractual obligations in the first place and the observance of which the customer regularly trusts and is entitled to expect. Regardless of the cases of liability stated above and unless essential contractual obligations have been violated, we shall not be liable for any loss or damage suffered by the customer resulting from a gross negligent violation of duty, including, but not limited to, the violation of the duty of care and supervision by non-managerial persons employed by us in the performance of our obligations.

5. In the event of the violation of an essential contractual obligation, the customer's claim for damages against us shall be limited to the foreseeable damage typical of this type of contract, to the extent that there is neither willful misconduct or gross negligence, nor are we liable for injury to health and physical injury of the customer or its employees or due to a warranty for the existence of a quality. A loss or damage that must be typically expected when the essential contractual obligation has been violated is deemed typical of this type of contract/foreseeable.

6. In order to protect itself against the consequences of the exclusions and limitations of liability above, the customer should cover any resulting risks by taking out the necessary insurance policies. The customer must include our corporate bodies, executives and persons employed by us in the performance of our obligations in the insurance coverage by way of co-insurance. The customer must provide in particular that for the duration of the maintenance, remodeling, or repair work done by us on a Ship there is a hull policy and P&I insurance coverage in place and the corresponding insurance policy is extended by the coverage of construction risks (including trial run).

#### **IX. Reservation of title**

13.1 We reserve the title to the objects delivered by us and/or installed by us ("Conditional Goods") until full satisfaction of all claims we are entitled to from the customer under the individual contracts and the business relationship with the customer, now or in the future, regardless of the underlying cause in law, which claims have arisen or existed at the time of conclusion of contract.

13.2 The 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. The customer may not pledge or transfer ownership of Conditional Goods to third parties by way of security. The customer must notify us without delay in writing about any attachment or seizure of property, or any other disposal by third parties.

13.3 Any processing or refashioning of Conditional Goods shall be done by the customer exclusively on our behalf. In cases where the customer combines or mixes Conditional Goods with other goods not being our property, we 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.

13.4 The customer shall assign to us 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, and we accept such assignment upon entering into the individual contract of which these terms & conditions are an integral part. If the Conditional Goods are sold by the customer with other goods not belonging to us, regardless of whether without or after processing, above claims shall be deemed to have been assigned to us in the amount of the outstanding invoice value of the Conditional Goods. Above assignment shall not constitute a deferral of our claim for payment against the customer.

13.5 The customer shall retain its right to collect claims assigned to us despite such assignment. Our authority to collect the claims ourselves shall not be affected hereby. We will, however, not collect them as long as the customer is not in default of payment, no petition has been filed for opening insolvency proceedings regarding the customer's assets or such proceedings have not been rejected due to insufficiency of assets, or a suspension of payments has not occurred. If any of such events has occurred, the customer shall promptly notify us in writing about the claims assigned and the debtors of such claims, shall provide us with the information and documents required for collection of the claims, and shall inform the various debtors of the assignment of the claims to us in writing. All payments received by the customer from such collections must be kept strictly separated from its other assets and paid to us without delay. The mixing of collected payments with the other assets of the customer is inadmissible.

13.6 The customer shall maintain the Conditional Goods in proper condition and shall – to the extent the Conditional Goods are not built-in – separately store them and mark the Conditional Goods as goods owned by us.

13.7 Upon the customer's request, we shall re-assign to the customer our title to the Conditional Goods and the claims assigned to us to such extent as the value of the security provided in such manner exceeds the value of all claims we have against the customer by more than 20 percent.

#### **X. Extended contractor's lien**

For our claims from maintenance, manufacturing, repair, and assembly work under each contract of which these terms & conditions are an integral part we shall be entitled to a contractual contractor's lien and right of retention in addition to the statutory contractor's lien or right of retention, respectively, on and to the object of the contract of which we have gained possession under the contract.

#### **XI. Use of planning documents**

1. In cases where we perform work using technical drafts or other documents and specifications provided by the customer, the customer shall be obligated to indemnify and hold us harmless against claims of any kind from third parties based on infringements of proprietary rights, copyrights and industrial property rights as a result of the contractual use of such technical drafts.

2. We reserve all proprietary rights, copyrights and industrial property rights in any and all drawings, statements regarding measurements and weights and technical descriptions. Unless agreed otherwise by us, above documents may not be used for any other purpose but the fulfillment of each of the contracts entered into with us; in particular they shall not be reproduced or disclosed to third parties. Above documents shall be returned to us without delay upon request.

### **XIII. Place of performance, jurisdiction and applicable law**

1. The place of performance for the mutual performance under each contract of which these terms & conditions are an integral part is our registered office and principal place of business.

2. The local / regional court [*Amtsgericht / Landgericht*] at our registered office and principal place of business shall have exclusive jurisdiction and venue for any litigation – including proceedings on claims arising from a deed, in which solely documentary evidence is submitted, and proceedings on claims arising from a bill of exchange or a check – that may directly or indirectly arise out of the contractual relationship between us and the customer. We shall, however, at our sole discretion, also be entitled to assert claims against the customer before courts having jurisdiction over the residence, place of business, assets or the Ship of the customer being the subject matter of the work performed. Any mandatory statutory jurisdiction/venue shall remain unaffected.

3. The laws of the Federal Republic of Germany shall apply exclusively as they are applicable to domestic persons, to the exclusion of the United Nations Convention on the Contracts for the International Sale of Goods.

### **VIV. Miscellaneous**

1. If there are translations of these terms & conditions, the German version shall have priority in case of doubts with regard to the interpretation of such terms.

2. Should any of the provisions contained in a contract of which these terms & conditions form an integral part, be or become invalid, the remaining provisions of that contract shall remain unaffected thereby. In the place of that invalid provision, we shall agree on a provision with the customer that matches fully – or if this is not legally possible – to the closest possible extent the economic purpose of the invalid one in a legally effective manner.