

# AVR 10/10

## GENERAL CONDITIONS

Applicable to repair and maintenance of ships at Shipyards and Workshops being members of  
Föreningen Sveriges Varv (Adopted by the Association in 2010)

### § 1 Introductory observations

1. These conditions are applicable to repair, maintenance and/or conversion as well as to other work which the YARD performs or causes to be performed on the SHIP ("the WORK"), unless otherwise agreed in writing between the CUSTOMER and the YARD.
2. "SHIP" means a ship or a vessel or any other comparable object such as a part of a ship, a lighter, a floating dock, a pontoon crane, and appurtenances to such objects, as well as any other object of work entrusted to the YARD. "The CUSTOMER" means the Owner or Master of the SHIP, or representative of the Owner or of the Master, as well as anybody else ordering the WORK to the SHIP.

### § 2 Scope and performance of the work

1. The WORK includes only such items which has been specified in writing ("the Contract"). An order is not binding upon the YARD until the order has been confirmed in writing by the YARD. The same applies to modifications and extra work. In the event of any conflict between the contract and any specification or plan the contract shall prevail.

These conditions shall in applicable parts be valid, also if only verbal agreements of nature and extent of the work have been made.

2. The WORK shall be carried out in accordance with the rules of public authority and/or classification society which have been published and are in force at the time of quotation being given by the YARD. In case of subsequent changes of such requirements, the provisions of § 2.12 and § 7.2 - 3 shall apply correspondingly.

The decisions of the authority and/or the classification society shall be final and binding on both contracting parties as to the SHIP's compliance or non-compliance with the rules and regulations, observance of which is to be controlled by the said authority and/or society.

3. Before delivering the SHIP to the YARD the CUSTOMER shall do all such things with the SHIP and provide all such permits and certificates as may be required by law or by public authorities or under the "General Rules and Safety Regulations", adopted by the Association for ships under repair, maintenance or conversion in shipyards. The CUSTOMER shall bear all expenses connected therewith. The YARD is not obliged to commence the work until the CUSTOMER has fulfilled his obligations in this respect.

4. The SHIP shall be timely delivered to and removed from the YARD by the CUSTOMER on his own risk and expense.

If the SHIP arrives to the YARD outside normal working hours, it shall not be considered delivered until the YARD on nextcoming work day has had reasonable respite to take care of the SHIP and check its moorings etc., unless the YARD has assumed responsibility in writing for the SHIP already from its arrival to the YARD or in fact took care of the SHIP upon its arrival.

5. The WORK shall be performed in accordance with the ordinary practice of the YARD. The YARD shall, however, pay due attention to the CUSTOMER's reasonable remarks regarding materials and workmanship, if such remarks fall within the scope of the work and price agreed. Drawings, illustrations and photographs are used for illustrating purposes merely and shall not be binding in detail for the performance of the WORK. Particulars of dimension, weight and volume are, in the same way, to be considered as approximate.

6. The YARD undertakes to perform the WORK in a skilled manner and to use good quality materials.

7. Should any of the specified materials or equipment not be available at the time required for incorporation in the SHIP, the parties shall agree on the use of other suitable material or equipment in substitution thereof. Failing such agreement the YARD shall have the right to choose such material or equipment.

8. The YARD's cost for preparing tender, proposals, drawings and reports requested by the CUSTOMER but not leading to an order of about the same scope as such tender, proposals, drawings or reports, shall be charged to the CUSTOMER at the YARD's cost price.

9. The YARD has the right to use subcontractors for the performance of the WORK.

10. The dimensions and characteristics of the WORK may be slightly modified by the YARD. The YARD also reserves the right to make changes to the specifications and/or the plans found necessary to suit the YARD's local conditions and facilities, the availability of materials and equipment, the introduction of improved production methods or otherwise. The approval of the CUSTOMER shall be sought, such approval shall not be unreasonably withheld.

11. The CUSTOMER may request the YARD in writing to make minor modifications to the specifications and plans and the YARD will agree

to carry out such modifications provided that such modifications or an accumulation of such modifications will not in the YARD's judgement adversely affect the YARD's planning or programme in relation to the

YARD's other commitments and provided that the YARD and the CUSTOMER fully agree immediately and in writing upon the adjustment of price, adjustment of the time of delivery and any other adjustment of the CONTRACT.

12. In the event that subsequent to the time of the order being confirmed by the YARD any modifications, deletions or additions are made to the laws, rules, regulations and enactments applicable to the WORK or their interpretation or the applicability thereof and such modifications, deletions or additions are compulsory for the SHIP, the YARD will affect them subject to immediate agreement in writing with the CUSTOMER on the adjustment of price, adjustment of time of delivery and any other adjustment of the CONTRACT.

13. Without the prior written permission of the YARD the CUSTOMER shall not be entitled to have anybody but the YARD to perform any work on the SHIP except for normal maintenance work carried out by the SHIP's crew, provided such work does not interfere with the work being carried out by the YARD.

### § 3. Time of delivery.

1. The WORK shall be performed within regular working hours without overtime and as quickly as possible with due regard being paid to other commitments resting on the YARD at the time when the ORDER was accepted (see also § 4).

2. If a fixed time of delivery has been agreed upon, such time of delivery shall not begin to run until the parties have agreed upon the scope and performance of the WORK and when such advance payment has been made, or such security has been lodged, as may have been agreed. In no case whatsoever shall the time of delivery begin to run until the CUSTOMER has fulfilled the obligations incumbent on him prior to the commencement of the YARD's work.

3. Should the CUSTOMER during the progress of the WORK fail to fulfil his obligations under the CONTRACT, the YARD is entitled to suspend the WORK until the obligation is fulfilled. In such case the time of delivery shall be extended accordingly.

4. If during the progress of the WORK the parties agree on any modification or additional work, the time of delivery shall - failing agreement as per § 2.11 and 2.12 - be extended by such time as is, at the discretion of the YARD, necessary for the preparation and performance of such work.

5. The time of delivery is valid subject to force majeure. The following events are considered as force majeure if, after the receipt of the ORDER, the delivery is prevented or delayed due to any circumstance not caused by the YARD such as Acts of God, engagement in war or other hostilities or preparations therefor, civil war, incurrections, riots or attempts hereto, requirements of civil or military authorities, blockades, embargoes, vandalism, sabotage, epidemics, strikes, lockouts or other labour disturbances, officially agreed reduction of working hours, delayed delivery from subcontractors of parts, material, supplies or services, provided the order of same is placed with subcontractor in due time and the delay of the subcontractor is caused by circumstances of the same kind as stated in this § 3.5, earthquakes, landslides, floods, ice obstructions, weather conditions not included in normal planning and/or delaying sea trials, prolonged failure of electric current, damage by fires, lightning, explosions, collisions, strandings or other accidents to the SHIP, shortage of materials and equipment or inability to obtain delivery thereof, provided that such materials and equipment have been ordered by the YARD in time, delays by land, sea or air carriers, defects in materials and equipment such as casting, forging or machining rejects which would not have been detected by the YARD using reasonable care, delays caused by the classification society or other bodies whose documents are required, any cause of delay whatsoever whether or not of a kind previously specified or of a different kind, reasonably to be considered beyond the control of the YARD, as well as the effect of the foregoing on the YARD's other commitments.

6. In the event of force majeure the YARD shall have the right of extension of the time of delivery by so many working days as the delivery has been delayed due to force majeure. The YARD shall however make reasonable efforts to minimize the consequences thereof.

7. The right of extension of the time of delivery applies even if the force majeure circumstances should occur after the expiry of the agreed time of delivery.

8. If a fixed time of delivery has been agreed, the above provisions concerning extension of the time of delivery shall apply accordingly.

9. The YARD shall inform the CUSTOMER as soon as possible of any circumstance which in the YARD's opinion might cause a delay in delivery. The approximate duration of the delay shall also be indicated, if possible.

10. The YARD shall be free of liability for any delay directly or indirectly caused by any act or omission on the part of the CUSTOMER or his servants and for any delay in delivery of materials, equipment or services ordered by the CUSTOMER from other suppliers than the YARD.

11. The SHIP shall be considered as delivered by the YARD to the CUSTOMER when the SHIP leaves the YARD or when the YARD has completed the WORK and withdrawn its workmen from the SHIP, if for any reason whatsoever the SHIP remains at the YARD after such time.

#### **§ 4. Lifting on slipway, docking**

Any agreement on lifting on slipway or docking is subject to the provision that the slipway or dock may be reserved for another ship to which the YARD due to an emergency or to otherwise urgent reasons has deemed it necessary to give priority. In such case the YARD shall have the right to postpone the agreed time for lifting or docking and to extend the time of delivery correspondingly.

#### **§ 5. Protection, safety and order**

1. The "General Rules and Safety Regulations" adopted by the Association at the time of Contract shall apply as well as any laws, rules or regulations issued by any governmental or municipal authority.
2. The CUSTOMER is obliged to comply with environmental and safety laws, rules and regulations.
3. Costs, if any, resulting from or connected with the handling and/or collection, disposal, storage, transport or similar, of materials, waste, residues, etc. within the scope of laws, rules and regulations referred to in this paragraph, shall be borne by the CUSTOMER and are not included in the price for the WORK.

#### **§ 6. Surplus material**

1. Old materials substituted by new, and new surplus materials shall become the property of the YARD without compensation, unless otherwise agreed upon when signing the CONTRACT.
2. Upon delivery of the SHIP to the CUSTOMER, the CUSTOMER shall at its expense remove all materials and equipment belonging to him from the YARD. If such materials and equipment have not been removed within 30 days from the SHIP's leaving the YARD, the CUSTOMER shall be deemed to have waived his rights to such property which shall, instead, become the property of the YARD. In case removal is not done, the YARD shall in writing remind the CUSTOMER thereof within 20 days after the VESSEL left the YARD.

#### **§ 7. Price**

1. If a fixed price for the WORK has been agreed, such price refers only to WORK which was included in the CONTRACT at the time when the price was agreed.
2. If a fixed price for the WORK has not been agreed, the price shall be determined as for work performed on time-and-material basis according to the YARD's standard debiting rules applicable at the time when the WORK is performed.
3. The price for modifications and for additional and extra work shall be determined as for work performed on time-and-material basis according to the aforementioned debiting rules.
4. The CUSTOMER shall reimburse the YARD for any additional cost which the YARD may incur owing to any delay caused by the CUSTOMER or by the CUSTOMER's employees and suppliers.
5. If the costs for the YARD are changed after the time of signing the Contract due to measures by Swedish or foreign authority, such as changes of taxes, custom duties or as a result of changes in current exchange rates, the contacted price shall be adjusted to such an extent as it is affected by the change in cost.
6. Price stated in offer or CONTRACT does not include VAT or other governmental duties referable to the invoiced amount. Such duties shall be paid by the CUSTOMER to the YARD if and when applicable.

#### **§ 8. Payment**

1. During the progress of the WORK the YARD shall be entitled to receive payment on account covering all costs for the work performed including any agreed extra work. Payment shall be made in cash upon receipt of an invoice of account. Any balance shall be paid in cash on delivery.
2. The YARD shall be entitled to retain the SHIP as well as materials and equipment belonging to the SHIP or to the CUSTOMER until full payment has been made for all invoices on account and/or for the final invoice. Should the amount of payment be disputed, the CUSTOMER shall, on paying the full amount demanded by the YARD, have the right to call for a bank guarantee or other equivalent security being provided for the amount in dispute. The cost for such bank guarantee or security shall be borne by the CUSTOMER. In

such case the YARD is not allowed to retain the SHIP. If the YARD does not want to provide a guarantee or other security for the amount in dispute, then the CUSTOMER is entitled to call for delivery of the SHIP against (a) payment of the amount not in dispute and (b) a bank guarantee or other equivalent security for the amount in dispute. If the CUSTOMER has provided such security, the CUSTOMER shall, for

the purpose of settling the dispute, refer the dispute to arbitration not later than three months after the date when the security was provided and failing such referral to arbitration the YARD shall have the right to get paid for the amount in dispute by enforcement of the set security.

3. Should the YARD have to exercise its right of retention, the YARD shall have the right, but no obligation, to take such measures which in judgement of the YARD are required for the maintenance of the SHIP. The CUSTOMER shall reimburse the YARD for the costs of such maintenance and for all other costs in connection with the exercise of the YARD's right of retention and with the recovery of its claim.
4. Counter-claims of the CUSTOMER, if any, not accepted by the YARD, shall not entitle the CUSTOMER to withhold any part of the payment demanded by the YARD.
5. If payment is not made when due, the CUSTOMER shall pay interest on the overdue amount at a rate corresponding to the delay interest according to the Swedish Act on interest on late payments.
6. Payment shall be made in Swedish kronor (SEK).

#### **§ 9. Tests and trials.**

1. The YARD shall have the right to perform any tests and trials which it considers necessary for the purpose of determining whether the delivery complies with the CONTRACT. The CUSTOMER shall be given the opportunity to participate in such tests and trials and to supervise the work. The YARD shall notify the CUSTOMER of such tests and trials. The YARD may cause their own workmen or employees to operate the machinery of the SHIP during quay and sea trials. At the request of the YARD the SHIP's crew shall, without any cost to the YARD, operate the SHIP and its machinery during trials. During trials the YARD shall also have the right to use, free of cost, any fuel, oils, etc being on board the SHIP. Before and after the trials the representatives of the YARD shall be entitled to make all investigations, measurements and observation on board which the YARD may consider necessary for satisfactory performance and control of the trials, and they shall have full access to existing relevant information.
2. During tests and trials the CUSTOMER shall bear the sole risk and responsibility for the SHIP and the navigation of the SHIP, its machinery, equipment and any damage caused by or to the SHIP.

#### **§ 10. Drawings and particulars of weight**

1. At the request of the YARD, and without any charges to the YARD the CUSTOMER shall make available to the YARD all drawings and descriptions of the SHIP which the YARD may require as a basis for preparing calculations, drawings, specifications and the like for the performance of the WORK.
2. The YARD shall retain the copyright to drawings, casting patterns, calculations, particulars of weight and volume etc. which have been prepared or supplied by the YARD. The CUSTOMER may not use these contrary to the interests of the YARD and may not entrust them to any third party or let such party use them without the written consent of the YARD. This shall apply also to drawings etc. included in the delivery. Reciprocally, the YARD may not make drawings, patterns etc. belonging to the CUSTOMER available to any third party without the consent of the CUSTOMER. Drawings, models, etc separately ordered from the YARD and paid by the CUSTOMER shall be the property of the CUSTOMER.
3. If the WORK is to be performed according to drawings, models or other instructions of whatever kind provided by the CUSTOMER, the CUSTOMER shall warrant towards the YARD that no patent, trademark, copyright or any other right of third parties will be infringed thereby, and the CUSTOMER shall indemnify and hold the YARD harmless from and against any claims of third parties arising therefrom.
4. The YARD shall not later than at the beginning of the guarantee period free of charge provide the CUSTOMER informations and drawings sufficiently clear to allow the CUSTOMER to arrange starting up, operation and maintenance (including running repairs, dismounting and remounting). Such documents to be in Swedish unless otherwise agreed upon.

#### **§ 11. Guarantee**

1. The YARD shall at its own yard, replace any defective material supplied and repair any deficiency in the WORK performed by the YARD in accordance with the terms and conditions of this paragraph provided the CUSTOMER has fulfilled all his obligations to the YARD.
2. The guarantee shall apply only to the WORK performed and materials supplied by the YARD and/or by its subcontractors and suppliers (hereinafter referred to in this paragraph as "the YARD").
3. Notice of complaint in respect of defects in materials supplied by the YARD or in the workmanship of the YARD shall be given by the CUSTOMER immediately upon discovery of such defects and if possible prior to the delivery date.

4. Upon delivery the YARD shall be discharged from all liability for any defects except for those defects in materials and workmanship existing at the time of such delivery and which the CUSTOMER could not reasonably have discovered before or at the time of delivery, provided that notice in respect of such latent defects is given in writing to the YARD within three months from the date of delivery in case of repairs and conversions, or within one year from the date of delivery in case of new installations.

5. The liability of the YARD and of its subcontractors and suppliers shall be limited to the above mentioned obligations as to extent and duration. The YARD and/or its subcontractors and suppliers shall have no liability whatsoever for any consequential loss or damage or for any other indirect loss, damage or expense in any way deriving from or connected with the above defects or for defects due to normal wear and tear or overloading or due to normal corrosion of the material or due to accidents, fire, improper loading or stowage of the ship, mismanagement or other negligence in the use and maintenance of the SHIP. However, in the event that the defect has caused consequential damage to other part of the WORK, the guarantee shall only cover direct physical damage to such components or units of which the defective item formed part.
6. In cases when the YARD is liable for defects as provided in this paragraph the CUSTOMER shall be entitled to have the repair work or the replacement effected at any other yard or workshop if it should mean considerable inconvenience for the CUSTOMER to bring the SHIP to the YARD. The YARD's liability shall in such cases be limited to the payment of the actual costs of the repair work and the replacement but shall in no circumstances exceed the costs of the repair work and the replacement had it been performed by the YARD itself.
7. In any case the SHIP shall be taken at the CUSTOMER's cost and responsibility to the place elected, ready in all respects for the guarantee work to be commenced.
8. When repair work and replacements under this paragraph have been carried out no further liability shall rest with the YARD for the defects and the deficiencies.
9. The YARD's total liability for the fulfilment of the guarantee obligations as set out above - including unsuccessful attempts to remedy or replace any defects - shall be limited as stipulated in § 12.

#### **§ 12. Liability**

1. The YARD's liability (which expression shall be deemed to include any possible liability towards the CUSTOMER of the YARD's employees, servants, agents or subcontractors when participating in the WORK) for loss, damage, defects, deficiencies and delay shall be limited as provided in this § 12.
2. With respect to personal injury and to loss or damage to property, belongings to a third party, the YARD shall be liable to pay damages according to valid Swedish law.
3. With respect to loss of or damage to the SHIP or other property belonging to the CUSTOMER, whether on board the SHIP or ashore within the area of the YARD, or to cargo, the YARD shall be liable only if the loss or damage was caused by manifest negligence which cannot be considered minor, on the part of an employee of the YARD or of its subcontractors, acting in his official capacity.
4. The YARD shall not be liable for loss or damage caused by force majeure as defined in § 3.5, or caused by burglary, theft or by any other circumstance which the YARD could not have prevented or controlled by normal means or methods.
5. The YARD shall, free of charge to the CUSTOMER, replace any defective materials used and repair any deficiency in the WORK, provided that the CUSTOMER shall have given notice in due time as described in § 11.
6. Delay in delivery shall entail no other consequence to the YARD than, if such period or date of delivery as has been agreed in writing has been extended by more than one week, the YARD shall pay to the CUSTOMER, as liquidated damages, 0,25 % of the total price of the WORK for each full week by which the delay exceeds one week. The total amount of liquidated damages shall, however, not exceed

the actual economic damages sustained by the CUSTOMER, and shall in all circumstances be limited to a maximum of 5 % of the PRICE for the WORK. Provided always that, if the delay is due to

circumstances for which the YARD is free of liability under any other clause of these General Conditions, no damages shall be payable.

7. In no case shall the YARD be liable for indirect damage or for loss of time or other consequential damages, except as stipulated in clause 12.6 above.
8. The price called for by the YARD under § 7 is based on the express condition that the amount of damages which the YARD may be liable to pay to the CUSTOMER, due to loss or damage for which the YARD is liable, shall in no case whatsoever exceed a maximum amount of ten million (10 000 000,-) Swedish kronor including liquidated damages, if any, for late delivery as set out in clause 12.6.

#### **§ 13. Insurance**

1. The YARD undertakes to have a valid shiprepairers' liability insurance cover for loss and/or damage for which the YARD may be held liable according to the CONTRACT. The YARD has no duty to arrange any other insurance cover such as but not limited to hull insurance for the SHIP.
2. The CUSTOMER shall affect and maintain Hull and Machinery Insurance and Protection and Indemnity Insurance on terms normally used in the international insurance market for such ships as the SHIP providing full cover for loss of and damage to the SHIP and third party liability of its owners and crew. At the request of the YARD the CUSTOMER shall make available copies of his insurance policies to the YARD.

#### **§ 14. Notice of complaint**

1. Notice of complaint of delay in delivery shall be given by the CUSTOMER as soon as the CUSTOMER has become aware of the delay, but not later than on the delivery of the SHIP to the CUSTOMER.
2. Notice of complaint in respect of work covered by the guarantee of the YARD shall be made as stipulated in § 11.
3. Notice of complaint in respect of any other matter relating to deficiency of the WORK shall be given as soon as the CUSTOMER discovered such defect. If such notice has not been given prior to the delivery of the SHIP to the CUSTOMER, the YARD shall be discharged from all liability for such defects, however notice of complaint shall be given to the YARD by the CUSTOMER of defects in materials and workmanship existing at the delivery which the CUSTOMER reasonably could not or should not have discovered before delivery, be allowed during a period of three months from the date of delivery.
4. Complaints relating to an invoice shall be notified within 30 days from the date of the invoice. If the CUSTOMER has given notice of such complaint the CUSTOMER shall be obliged to cooperate in reaching a settlement of the invoice within one month from the date of notification. In default of such cooperation, the YARD shall be entitled to file a petition for judgement of payment with a Swedish court and to take steps to enforce such judgement against the CUSTOMER, irrespective of the stipulation about arbitration in § 15.
5. All complaints must be made in writing and must be fully specified. The YARD shall in no case be liable for any delay, defect or deficiency discovered or notified after the expiry of the time allowed for complaints.

#### **§ 15. Disputes**

Disputes arising out of any agreement, to which these General Conditions are applicable, shall be settled by arbitration at the place where the YARD is situated, in accordance with the applicable Swedish law on arbitration (1999:116 or possible future replacements).

Notwithstanding the above the YARD may always institute legal proceedings in any court of competent jurisdiction in respect of claims for payment under § 8 and § 14.4 above.

#### **§ 16. Applicable law**

The validity, the interpretation and the implementation of these Conditions and of agreements to which these General Conditions are applicable shall be determined in accordance with Swedish law.