

Melita Power Diesel Limited - Standard Terms and Conditions

General

1. These Conditions and the appendices shall be incorporated in the Contract howsoever constituted. The placing of an order with Melita Power Diesel Ltd. ("The Contractor") whether by oral, telephone, written-mail communication shall constitute acceptance of these conditions which shall govern all work done or services rendered by the Contractor, and shall override and exclude any other terms stipulated or referred to by the Customer. All orders hereafter placed by the Customer shall be deemed to be the subject to these Conditions. No variation to these Conditions shall be binding unless agreed in writing between the Contractor and the Customer.

Definitions

2. "Agreement" shall mean this Repair Agreement inclusive of the Standard Terms and Conditions .

"Additional works "shall mean all work, if any, in addition to, or modification, of the Specification Works which are described on a Work Variation Form.

"Completion" shall mean the completion of all works.

"Conditions" shall mean the Standard Terms and Conditions listed below governing the Offer of Works and Services or the Contract executed between the Owner and the Contractor.

"Contract Period" shall mean the period, commencing on the first working day after the Delivery (as defined herein), and agreed between the parties as stated in Box 16 for the performance of the specification Works as stated in Box 03, and/or pursuant to any Work Variant on Form as provided above, and/or any Disruptions as provided herein.

"Contract Price" shall mean the agreed price for the Specification Works as stated in Box 15 net of any Reductions and including any adjustments in value pursuant to Additional Works .

"Delivery" shall mean delivery of the vessel to the Contractors at the Contractors' Yard or elsewhere as may be agreed between the parties.

"Owners" shall mean the Owners of the vessel or their authorized representative as stated in Box 02.

"Price "shall mean the remuneration to be paid to the Contractor for the services and works foreseen in the Contract.

"Redelivery" shall mean the redelivery of the vessel to the Owners at the Contractor's Yard or elsewhere as may be agreed between the parties.

"Reductions" shall mean all deletions, if any, to the specification works, which are to be recorded on the Work Variation Form.

"Specification Works" / "Works" / "Scope of Works" shall mean the work to be carried out under this contract as stated in Box 3 and described in the specification attached here to as Annex A as may be amended by any Additional Works, and/or Reductions.

Melita Power Diesel Limited - Standard Terms and Conditions

"Sub-Contractors" shall mean all persons engaged by the Contractors to do work, supply materials or equipment, or provide any service in connection with the works.

"Vessel" means the vessel described in Box 00.

Representation

3. Prior to the commencement of the repair Works, the appointment or designation of a representative by the Owner for the signing of the contract, or any modification or additions to it and eventual approval of invoices shall be communicated in writing to the Contractor, and shall be that person stated in Box 02. Should the Owner fail to do so, the person indicated as Owner in Box 02 shall have full authority to represent the Owner in all such matters. The Contractor shall be represented by any person or persons entitled to sign on its behalf.

Agreement

- 4.1 With reference to the Vessel, the Contractor shall supply the Owner, pursuant to the Conditions listed hereunder, the Specification Works and during the time set out herein.
- 4.2 Any and all Works not specifically mentioned under Box 03 shall be considered as Additional Works as defined herein. The Contractor shall indicate the required time to undertake such Additional Works and the Contractor shall be entitled to extend the date of redelivery of the Vessel. The costs of these Additional Works shall be exclusively borne by the Owner.
- 4.3 Should it be deemed necessary or required, the assistance of specialized technicians or manufacturers, or experienced consultants shall be sought by the Contractor upon written approval by the Owner, and such costs shall be exclusively borne by the Owner.
- 4.4 All spare parts requested, for which customs paperwork is required, shall be exclusively borne by the Client, in terms of costs.

Price

5. The total price shall be determined and agreed between the parties prior to the commencement of the Works. All prices shall be in Euro, exclusive of VAT. If VAT shall be due, it shall be exclusively borne by the Owner.

Hours of Work

6. Unless specifically agreed in writing by the parties, all of the Works shall be carried out and completed within the normal working hours of the Contractor, that is from Monday to Saturday, 08:00 to 17:00 (except for any discretionary changes of working hours -either ordinary or overtime - that the Contractor may set out), exclusive of public holidays. Hours worked overtime shall be set out from 17:00 to 08:00 with a consequent price increase of 50%. On Saturdays, the increase in price shall be of 50% and on Sundays the increase in price shall be of 100%.

Delivery and Redelivery

- 7.1 The vessel, unless otherwise agreed, is to be delivered to and redelivered by the Contractor at the yard where the Works are to be or have been carried out.
- 7.2 The date of vessel delivery is to be agreed to at least 20 days prior to arrival, and reconfirmed again at a later stage, closer to delivery date, by agreement between both parties. If the vessel is subsequently delayed the contractor is entitled to reassess the contract price and duration.

Melita Power Diesel Limited - Standard Terms and Conditions

Payment

- 8.1 Payment by the Owner for work done shall be made without deduction, counterclaim or set-off. The Contractor shall be entitled, unless otherwise agreed, to claim interim payments based on interim invoices monthly in respect of work done and services rendered to date, such interim invoices to be payable within 7 days of presentation. Unless otherwise agreed in writing, the payment terms shall be strictly as stated in Box 06.
- 8.2 No forbearance on the part of the Contractor in demanding interim payments under the Contract shall prejudice or affect the entitlement of the Contractor to require payment of the balance of 80% of the Contract Value upon the earlier of Completion or Redelivery.
- 8.3 Without prejudice to the Contractor's other remedies, in default of payment of invoices on the due date the Owner will be charged interest at the rate of 8% or such other higher rate permitted by law for each day of default, or such other rate as stated in Box 19, and in default, payment in full together with accrued interest, and to recover from the Owner costs of undocking and docking, towage, berthing, watchmen, and (without limitation) any other costs arising from such suspension of work.
- 8.4 The Contractor shall be entitled to exercise a lien on the Vessel for any sums due to the Contractor on or before Redelivery. The Contractor shall be obliged to redeliver the vessel unless the final Contract Value and payment terms have been agreed and complied with fully by the Owner.
- 8.5 All sums due from the Owner under the Contract shall be paid in full and without any deduction, counterclaim or set-off. Any claim by the Owner under or in connection with the Contract or any other matter shall be pursued by separate action and shall not affect the right of the Contractor to payment under this Contract.

Disbursements

9. Any charges for tugs, pilotage, transport, harbour dues, craneage, and similar cash disbursements not included in the Contract Price shall be invoiced separately by the Contractor plus an allowance at 10% or such other rates as may be specified in the Contract or otherwise agreed in writing.

Insurance

10. The owner shall keep the vessel fully insured and shall ensure that all insurance policies for Hull and Machinery, Protection and Indemnity and other marine risks are in force throughout the Contract Period. The Contractor will maintain in force throughout the Contract Period, Ship Repairers Liability Insurance in a sufficient sum to cover the responsibilities of the Contractor in accordance with the Contract, but not exceeding the Overall limit of five million Euro (€5,000 000) for any individual claim. The owner may obtain a copy of the Contractor's current insurance policy upon request.

Guarantee and Liability

- 11.1 The Contractor accepts liability for and will repair or reinstate or pay the cost of repair or reinstatement of any direct or consequential physical damage to the Vessel before Redelivery caused only by the negligence of the Contractor or those for whom the Contractor is responsible. The liability for any individual claim is limited to the contract value of the specific work item in question.

Melita Power Diesel Limited - Standard Terms and Conditions

- 11.2 Provided that no alterations or additions have been made to the Contract Work without the consent of the Contractor, and that the Owner has observed the Contractor's instructions in relation to the use and maintenance of the Contract Work has not resulted from negligence or mismanagement by the Owner, or errors or omissions in information supplied to the Contractor by or on behalf of the Owner prior to or during the Contract Work, the Contractor will either (i) carry out repair or replacement at the yard where the work is being carried out, or (ii) pay to the Owner the cost of repair or replacement, limited to the lesser of the amount which the Contractor would have charged a third party if such work were carried out at the Contractor's Yard and the cost incurred by the Owner in carrying out such work elsewhere, of any defective Contract Work notified to the Contractor in writing within 3 months of Redelivery or, if later, of withdrawal of the Contractor's workmen upon Completion.
- 11.3 Except as provided in Conditions 11.1 and 11.2, the Contractor shall not be under any liability to the Owner in either contract, tort or custom, and from after Redelivery or, if later, on Completion all liability of the Contractor in respect of the Contract Works shall cease.
- 11.4 (a) In no circumstances shall the Contractor be liable for loss of use or profit from Vessel or any direct or indirect economic or pecuniary loss whatsoever, howsoever resulting, including as a result of loss or damage or death or personnel injury caused by the negligence of the Contractor, its agents or its subcontractors.
- (b) In no circumstances shall the liability of the Contractor and the liability of those for whom the Contractor is responsible exceed the Overall limit.
- 11.5 (a) The Contractor contracts on behalf of all employees and Sub-Contractors of Contractor as well as itself and the Owner contracts on behalf of all interests in the Vessel as well as the customer to the intent that this Condition shall bind such interests and accrue to the benefit of the Contractor and its employees and Sub-Contractors.
- (b) It is expressly understood and agreed that the provisions of this Condition shall apply to and survive the termination of the Contract in any circumstances.
- (c) Nothing herein contained shall affect any right which the Contractor or any Sub-Contractor may have to limit its liability under any statutory enactment for the time being in force.
- 11.6 (a) The Contractor shall not be liable for any loss or damage caused by the Owner's failure to fulfill his responsibilities under these Conditions or for any matter within control of the Owner, and the Owner will indemnify the Contractor as a result of any failure by the Owner to make timely decisions or perform any of the terms and conditions of the Contract. The attending Owner's Representative shall be assumed to be fully authorized to agree and sign for additional work, and to negotiate, agree and sign the final invoice as full and final at the completion of the contract work, unless the Contractor is otherwise notified in writing by the Owner.

(b) In the event that the Contract Work is delayed or interrupted by failure of the Customer or any sub-contractor employed by the Owner to supply parts, equipment, material, or services essential to the progress of the Contract Work, the Contractor shall be entitled to suspend work on the Contract and/or recover from the Owner costs of undocking and docking, towage, berthing, watchmen and (without limitation) any other costs or losses arising from such delay, interruption or suspension.

11.7 It shall be the responsibility of the Master of the Vessel to ensure stability and prevent any leaks that may provoke damage on-board as a result of flooding of the dock by the floating of the Vessel. The Master of the Vessel shall ensure that during the maneuvers of entrance and exit of the Vessel from the dock, the fins shall be closed, the propellers and bow thrusters shall be stopped in order to allow diving operations. During these operations, the Master of the Vessel shall be responsible for the mooring operations on the vessel. To ensure that the engine, propellers, fins, bow thrusters, etc., are stopped for the entire duration of the stay of the Vessel. Whilst on the keel blocks, no liquids will be moved inside the tanks unless prior agreed with the Contractor.

11.8 The contractor shall not be held liable for any decisions taken by the Owner or by the employees or sub-contractors of the Owner.

11.9 The Contractor shall not be held liable for any indirect damage including loss of freight, loss of Vessel, forfeit of contracts, or cost of crew. Any damage resulting from transportation, displacement or lifting of spare parts of the Vessel shall not be covered under warranty by the Contractor, unless expressly requested in writing by the Owner and accepted by the Contractor.

11.10 Materials and/ or property of the Owner may be deposited with the Contractor, however, the Contractor shall not be held liable for theft, damage or deterioration of such materials and/ or property. Nor shall the Contractor be held liable by the Owner for theft on board the Vessel or any equipment stored within the areas of the yard, without prejudice to the Owner's right to request a special insurance policy to be issued against such theft, the cost for which shall be exclusively borne by the Owner.

Indemnification

12 Each party ("the Indemnifying Party") agrees and undertakes with the other ("the Indemnified Party") to keep the Indemnified Party and its subcontractors indemnified against all proceedings, costs, claims, expenses and liabilities whatsoever in respect of any loss or injury sustained by the Indemnified Party, its servants, agents or any other persons employed or acting for the Indemnified Party in or about the Vessel or in the premises of the Contractor or any subcontractor at the request of or on behalf of the Indemnifying Party, caused by the negligence of the Indemnifying Party of its servants, agents or independent contractors.

Loss, Damage, or Frustration

13.1 If damage to the vessel in the course of the Contract Work amounts to an actual or constructive or arranged total loss of the Vessel or if by reason of some supervening enactment or even the Contract is otherwise frustrated at law, the Contract shall thereupon be terminated whereupon

EITHER

(a) The Owner shall pay to the Contractor the amount by which the cost (including establishment charges and profit at the rate applied to the Contract) of work done and materials purchased for the Contract prior to termination exceeds the aggregate of (i) All sums paid by the Owner to the

Contractor before termination and (ii) the value to the Contractor for other use of any materials or goods not placed in the Vessel before and remaining in the Contractor's hands after the time of termination and (iii) any sum for which the Contractor is liable in accordance with sub-condition 13.1

OR

(b) If the aggregate of the sums at (i), (ii) and (iii) exceeds the amount at (a), the Contractor shall pay such excess to the Owner.

13.2 If the Vessel or any part thereof is damaged during or in course of the Contract Work but the Contract is not terminated pursuant to sub-condition 13.1 the Owner shall pay to the Contractor in addition to the Contract Value the cost (including establishment charges and profit at the rate applied to the Contract) of repairing the damage less any amount for which the Contractor is liable in accordance with Condition 11.1

Delay

14 The Contractor shall have no liability for delay howsoever caused or occurring if the Contract Work is extended by Additional Works or if any delay to the Contract Work shall occur due to War, Hostilities, Acts of God, Riots, Civil Commotions, Government Restrictions, Strikes, Lock Outs, or other industrial action, Fire, Accident of Explosion (whether in the Contractor's Works or elsewhere), weather conditions preventing the Contractor's performance of the Contract Work or delay in supply of or defects in terms of machinery or equipment or materials or services to be provided by or on behalf of the Owner or Sub-Contractors or if the Contract Work is delayed by any other cause whatsoever (whether or not of the same nature as the foregoing) beyond the Contractor's control or if work is suspended Conditions 8.3 and/or 11.6(b), the Contract Period shall be extended by the period or periods of such extension, suspension or delay.

Trials or Movements

15 Any trials or movements of the Vessel shall be at the Owner's sole risk in every respect and neither the Contractor nor any Sub-Contractor shall be under any liability whatsoever to the Owner for any act or default in, or arising out of such trials or movements and the Owner shall keep the Contractor and any Sub-Contractor fully and effectually indemnified in respect of any claims whatsoever brought by third parties against the Contractor or Sub-Contractor howsoever arising out of such trials or movements.

Third Party Property

16 The Contractor shall not be liable for any damage caused by defects or deficiencies in any docks and premises which are not his property or permanently occupied by him, or by any defect in cranes or other equipment not owned by him and, where the Contractor has granted an indemnity in connection with the occupancy or hiring of such docks, premises, cranes, or equipment, the Owner shall indemnify the Contractor in respect of any claim by the owner of such docks, premises, cranes, or equipment arising out of the Contract Work except to the extent that (subject to Overall Limit) any such claim results solely from the negligence of the Contractor.

Owner's Personnel

17 (a) Any Owner bringing on board the Vessel any independent contractors or Owner's employees or sub-contractors to undertake or supervise work on its behalf must protect such contractors, employees and/or sub-contractors with the Vessel's insurances. The Owner undertakes to keep the

Contractor fully and effectually indemnified against any and all claims by or liability to independent Contractors, Sub-Contractor's Yard or elsewhere in connection with the Contract.

(b) In the event that the Contractor supplies personnel to enable or assist specialist contractors appointed by the Owner to carry out work on the Vessel under the supervision of the Owner's specialist contractor, such personnel shall be deemed to be employees of the Owner and the employees of the Owner and the Contractor shall have no liability and shall be indemnified by the Owner in respect of any defect, liability or claim arising from work carried out or claim brought by such Contractor's Personnel.

Safety and Security

18.1 Throughout the stay in the Yard, the Vessel shall be under the supervision and control of the Master of the Vessel.

18.2 The Owner shall promptly report the presence of asbestos in work areas in accordance with law in order to protect workers and ensure safety at work.

Confidentiality

19 Each party shall consider all information concerning the other party's business of which that party has become aware during the carrying out of Works as confidential.

No Waiver

20 No failure or forbearance of the Contractor to exercise any of its rights or remedies under the Contract shall constitute a waiver thereof or prevent the Contractor from subsequently exercising any such rights or remedies in full.

Cancellation

21 The Owner may not cancel the Contract without prior written consent of the Contractor, which if given shall be deemed to be on the express condition that the Owner shall indemnify the Contractor against all loss (including loss of profit), damage, expenses, claims, or actions arising out of such cancellation unless otherwise agreed in writing.

Entire Contract

22 The Contract constitutes the entire contract between the parties in relation to the Contract Work and no representation, warranty or statement by either party prior to the date of the contract shall affect the Contract nor shall any modification of the Contract be of any effect unless in writing signed by or on behalf of the parties.

Severance

23 If by any reason of any enactment or judgment any provision of the Contract shall be deemed or held to be illegal, void, or enforceable in whole or in part, all other provisions of the Contract shall be unaffected thereby and shall remain in full force and effect.

Assignment

24 No assignment by the Owner of this Contract or of any right hereunder shall be valid unless made with prior written consent of the Contractor.

Insolvency of Owner

25 IF (i) the Owner makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm), becomes bankrupt or (being a Company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or (ii) an encumbrance takes possession, or a receiver is appointed, of any of the property or assets of the Owner; or (iii) the Contractor reasonably apprehends that any of the events mentioned above is about to occur in relation to the Owner and notifies the Owner accordingly

THEN, without prejudice to any other right or remedy available to the Contractor, the Contractor shall be entitled to cancel the Contract or suspend any further deliveries or further Contract Work without any liability to the Contractor, and if any Contract Work has been performed but not paid for, the Contract Value shall become immediately due.

Law and Jurisdiction

26.1 *LAW*: This contract, its validity, construction and interpretation and any dispute arising out of or in connection with this Agreement shall be governed by Maltese Law.

26.2 *DISPUTE*: Any dispute, difference or claim relating to conformity of any design, construction, material or quality of work with the requirements of this Contract of the Specification Works shall, if the parties so agree, be referred to a mutually agreed technical expert for determination (who shall act as such and not as arbitrator) as an expert (the "Expert"). The Expert shall be able to and shall provide his written expert determination within sixty (60) days of his appointment. The parties shall be entitled to provide written submissions only to the Expert to assist him in determining the dispute. The parties shall each bear their own costs of any expert determination. The decision of the Expert shall not be binding on the parties.

26.3 *JURISDICTION*: Any dispute, difference or claim arising out of or in connection with this Contract, other than any dispute which is successfully determined in accordance with sub-clause 26.2 above shall be referred to the courts in Malta, which shall have exclusive jurisdiction on to determine any such dispute, difference or claim.

26.4 *ALTERATION OF COMPLETION DATE*: In the event of a reference to either expert determination of any dispute arising out of matters occurring prior to re-delivery of the Vessel to the Owner, the Expert or the Court(s) may alter the Scheduled Completion Date to the extent, if any, it is fair to do so.