

XYZ REPAIR YARD
VESSEL REPAIR ORDER TERMS AND CONDITIONS

This Agreement is entered into between XYZ Repair Yard, Inc. ("Contractor"), and _____ ("Owner"), for and on behalf of itself and the vessel _____ (the "Vessel"), on the following terms and conditions:

1. **STATEMENT OF WORK.** Contractor agrees to furnish materials, parts, supplies and labor necessary to perform the work described in the Work Order attached hereto (the "Work"). Owner has specifically requested the Work, shall inspect the progress of the Work from time to time as Owner or Owner's authorized representative deems necessary, and has satisfied itself as to the suitability for Owner's intended purpose of all machinery, parts, equipment, supplies and accessories to be installed pursuant to this Agreement.
2. **LIMITED WARRANTY.**
 - a. The Work shall be free from defects in workmanship and material for thirty (30) days from the date the Vessel is redelivered to Owner or its authorized agent or representative.
 - b. All equipment manufactured by others and furnished by Owner to be installed aboard the Vessel by Contractor will be installed in a workmanlike manner in accordance with the equipment manufacturer's specifications and good marine practice.
 - c. Contractor provides no additional warranties for any equipment provided by Owner for installation on the Vessel. Owner agrees to look solely to the equipment manufacturer for any warranty claim. Contractor does not assume any responsibility for said manufacturers' warranties and does not make any warranty of its own on these items, except as set forth herein.
3. **WARRANTY EXCLUSIONS. THE WARRANTIES SET FORTH IN PARAGRAPH 2 ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING THE WARRANTY OF WORKMANLIKE PERFORMANCE. CONTRACTOR DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, THAT MATERIALS PROVIDED BY CONTRACTOR IN PERFORMANCE OF THE WORK ARE MERCHANTABLE OR FIT FOR ANY PARTICULAR USE OR PURPOSE.**
4. **CONTRACT PRICE.** Owner shall pay to Contractor for the Work to be furnished hereunder the total amount set forth in the Work Order (herein the "Contract Price"). The total amount set forth in the Work Order shall be paid to Contractor without deduction or offset on completion of the Work and prior to redelivery of the Vessel to Owner or its agent or representative.
5. **INSURANCE AND RISK OF LOSS.** In addition to such other coverage as Owner may deem necessary, Owner shall maintain in full force and effect during the term of this Agreement the following insurance coverages and shall bear the risk of loss for any losses that would be covered by such insurance: (1) hull insurance to cover the value of the Vessel and its contents; (2) marine protection and indemnity ("P&I") coverage; and (3) marine general liability coverage ("MGL") with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence. P&I Coverage shall include coverage for oil pollution and wreck removal. Contractor shall be named as an additional insured on such policies, and Owner shall obtain a waiver of subrogation against Contractor in all said policies. By execution of this Agreement, Owner certifies that such insurance is in effect, and Owner agrees to provide evidence of such coverage to the Contractor upon request. A breach of this clause by Owner shall not operate to release Owner from any other obligation imposed on Owner by this Agreement. Should Owner fail to maintain such coverage, Owner shall be the insurer of last resort.
6. **RELEASE, INDEMNIFICATION, AND HOLD HARMLESS AGREEMENT AND LIMITATION OF CONTRACTOR'S LIABILITY. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, OWNER EXPRESSLY RELEASES CONTRACTOR AND AGREES TO HOLD CONTRACTOR HARMLESS FROM ANY AND ALL CLAIMS FOR INJURY OR DEATH OF PERSONS, PROPERTY DAMAGE OR LOSS, AND OTHER DIRECT, INDIRECT AND CONSEQUENTIAL DAMAGES OR EXPENSES (INCLUDING ATTORNEY'S FEES), ARISING FROM OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, WHETHER SUCH CLAIMS BE ASSERTED BY OWNER, THE VESSEL, OR OWNER'S GUESTS, VENDORS AND INVITEES, UNLESS SUCH LIABILITY, DAMAGE OR EXPENSE IS DUE TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF CONTRACTOR. THIS INCLUDES WITHOUT LIMITATION ANY LOSS CAUSED BY FIRE, FLOOD OR POLLUTION OF ANY TYPE. OWNER FURTHER AGREES THAT OWNER WILL LOOK SOLELY TO OWNER'S INSURANCE COVERAGE, AND NOT TO THE CONTRACTOR OR ITS INSURANCE CARRIERS, IN THE EVENT OF ANY INJURY, LOSS OR DAMAGE FROM ANY CAUSE, INCLUDING LOSS BY FIRE OR DUE TO THE NEGLIGENCE OF OWNER, CONTRACTOR OR ITS EMPLOYEES OR ANY THIRD PERSON.**
7. **LIMITED LIABILITY.** Within the exception of warranty claims arising under Paragraph 2, above, under no circumstances shall Contractor have any liability to Owner, the Vessel, or any agent, employee or representative of Owner for death, personal injury, property damage, pollution, or other loss under any theory of liability, in an amount in excess of \$250,000, regardless of the basis for such loss, including Contractor's gross negligence. Owner understands and agrees the Contract Price as set forth above is predicated in part on this limitation of Contractor's liability. If Owner wishes to impose any risk of loss on Contractor for any potential future act of negligence, property damage, breach of warranty, or for any other cause, Owner will advise Contractor accordingly and will agree to pay such increase in the Contract Price as Contractor determines shall be necessary to compensate Contractor for the increased risk of liability.
8. **TIME LIMIT ON ALL CLAIMS.** No claim arising from the transactions contemplated by this Agreement, including but not limited to claims for breach of contract, breach of warranty (including the warranty of workmanlike performance or other warranty claims arising under Paragraph 2.a., above), or any tort claims shall be valid against Contractor unless such claims are presented in writing to Contractor within sixty (60) days after redelivery of the Vessel to Owner or its authorized agent or representative. Suit on any such claim must be

commenced within the earlier of six (6) months after redelivery of the Vessel to Owner or the date of breach of this Agreement by Contractor, whichever is sooner.

9. OWNER’S OBLIGATIONS.

- a. If Owner makes a timely claim for breach of the warranties provided in Paragraph 2, above, Owner shall provide Contractor with an opportunity to inspect and repair any such defects, said opportunity to be provided within a commercially reasonable time, before Owner seeks to have said defects remedied by any third party. Owner agrees to perform such surveys, inspections and sea trials prior to accepting redelivery of the Vessel as Owner sees fit. Acceptance of redelivery of the Vessel constitutes Owner’s agreement the Vessel has been redelivered free from defects in materials and workmanship.
- b. Owner hereby agrees to indemnify and hold Contractor harmless for any incidental, special, or consequential damages of any nature whatsoever, including but not limited to any claims related to delay or loss of use of Vessel, lost revenues, lost profits, crew wages or shares, salvage, fuel costs, pilotage or tug expenses, whether such damages be predicted upon alleged breach of this Agreement, negligence by the Contractor, strict liability in tort or any other basis whatsoever.

10. CONTRACTOR’S REMEDIES.

- a. In the absence of Contractor’s prior written agreement, Owner agrees payment in full is due and owing upon completion of the Work, and that the Owner will make no attempt to cause the Vessel to depart from Contractor’s facility until such payment is made to Contractor. If not paid, Owner agrees to pay Contractor interest thereon at the rate of eighteen (12%) per annum from the date due until paid. Owner further agrees to pay \$_____ per day for every day payment is delayed after Contractor tenders the Vessel for redelivery. Owner agrees the Vessel, *in rem*, and the Owner, *in personam*, will be liable to Contractor for such payment including all costs and reasonable attorney fees incurred by Contractor for collection of any outstanding sums due and owing.
- b. Owner expressly agrees that Contractor shall have the right to seize, hold, or otherwise detain the Vessel or any other property of Owner in Contractor’s possession without judicial process until such time as all sums due under this Agreement have been paid; and Contractor shall not be liable for any damages suffered or claimed to have been suffered as a result of any such seizure, holding or detention.
- c. Contractor reserves all rights to proceed against the Vessel *in rem* and against Owner *in personam* in the event of any breach of any provision(s) of this Agreement by Owner. NOTHING HEREIN SHALL BE CONSTRUED AS A WAIVER BY CONTRACTOR OF ITS MARITIME LIEN ON THE VESSEL OR ANY LIEN ARISING UNDER STATE LAW ARISING FROM WORK PERFORMED AND/OR MATERIALS FURNISHED UNDER THIS AGREEMENT.

- 11. **WAIVER AND CONSENT.** The consent by either party hereto to any act by the other party requiring consent shall not be deemed to waive or render unnecessary consent to any subsequent act requiring consent by such party.
- 12. **INVALIDITY.** In the event any provision of this Agreement is declared to be invalid or unenforceable by a court of competent jurisdiction, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- 13. **CAPTIONS.** The various headings and numbers herein and the grouping of the provisions of this Agreement into separate paragraphs and subparagraphs, are for the purpose of convenience only and shall not be considered a part thereof.
- 14. **ENTIRE AGREEMENT.** This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter hereof and merges and supersedes all prior discussions, agreements, and understanding between the parties. This Agreement may be amended or modified only by a writing signed by both parties. This Agreement is intended solely for the benefit of the parties hereto and is not intended to benefit any third person or party. In the event of any conflict between any provisions of the Order and any provisions of the Yard Terms and Regulations or Schedule of Services, such conflict shall be resolved in favor of the provisions of the Order.
- 15. **INTERPRETION.** Owner agrees this Agreement is governed by the general maritime law of the United States as supplemented by the law of the State of _____, and that jurisdiction over any disputes arising under, or as a result of, this Agreement shall lie exclusively with the United States District Court for the _____ District of _____.

THE PERSON SIGNING BELOW DOES HEREBY CERTIFY THAT HE/SHE IS THE OWNER OF THE VESSEL HEREINABOVE DESCRIBED OR IS AUTHORIZED TO SUBJECT SAID VESSEL AND THE OWNER(S) TO THE PROVISIONS OF THIS AGREEMENT.

AGREED:

Vessel Owner or Authorized Representative:

Name:

By: _____ Date: _____

