



General Terms and Conditions for Repairs and Services

Only the following General Terms and Conditions exclusively apply to the performance of inspections, maintenance and repairs on equipment or parts of ships and any kind of work in this connection. They form an integral part of all quotations contracts of Fassmer Service ("Fassmer") for supplies and services and shall apply to any current or future business relationship in case Fassmer acts as consignee. Agreements deviating from these General Terms and Conditions, including but not limited to contradictory terms and conditions of the customer ("Customer"), and side agreements shall only become an integral part of the contract upon Fassmer consenting expressly and in writing to its inclusion. The following conditions also exclusively apply if Fassmer, after being informed of the Customers conditions contrary to or deviating from the following conditions, performs inspections, maintenance or repairs on equipment or the like without any reservation or contradictions.

1. Offer and Conclusion of the Contract

- 1.1 Offers and quotations of Fassmer are not binding. They shall only include such services that are explicitly specified therein.
- 1.2 Contracts are only deemed to have been concluded once Fassmer has accepted in writing the orders place with in, has confirmed in writing letters of acceptance sent to it, or has delivered the supplies or performed the services ordered by the Customer. This shall apply mutatis mutandis to all amendments to or alterations of contracts.

2. Scope of Contractual Obligations / Documents

- 2.1 In cases of doubt regarding the scope and period of time of the contractual obligations, the content of the written contract or order confirmation by Fassmer and of the documents listed therein shall be decisive. Additional expenses due to errors in drawings and other documents provided by the Customer shall be borne by the Customer.
- 2.2 All data provided by Fassmer to the Customer and Fassmer's documents forming the basis of the contract (such as drawings, details of measurements and weights or technical descriptions) only contain approximate descriptions as customary in shipbuilding / shiprepair. Fassmer reserves the right to make minor changes (such as modifications to design, from or colour).



General Terms and Conditions for Repairs and Services

- 2.3 Fassmer reserves its proprietary rights, copyrights and other industrial property rights in the documents referred to under 2.2 above. Unless agreed otherwise in writing by Fassmer, above documents may not be used for any other purpose but the fulfilment of the respective contracts entered into with Fassmer; in particular they shall not be reproduced or disclosed to third parties. Upon request of Fassmer, they shall be returned by the Customer to Fassmer without delay.
- 2.4 If Fassmer uses plans or other documents and information provided by the Customer to perform its services, the Customer shall be obliged to indemnify and hold Fassmer harmless against any claims from third parties based on violations or proprietary rights, copyrights and industrial property rights resulting from the utilization of such plans, documents or information provided by the Customer.
- 2.5 The scope of repairs and their appropriateness shall be determined exclusively by the Customer. Fassmer does not verify the correctness with regard to the contents of statements provided by a classification society or its representatives. Fassmer is not obligated to examine the ship or the object of its performance for the purpose of identifying latent defects.
- 2.6 Fassmer shall be entitled to subcontract all or part of the work assigned to it. Fassmer is entitled to assign adequate subcontractors to carry out the works and services. The subcontractors and their personnel do not have the power of legal representation of Fassmer unless the subcontractors are explicitly authorized by Fassmer.

3. Size, Weight and Nationality of the Vessel

- 3.1 The measurements provided in the "Register of Ships" kept by the Lloyd's Register of Shipping or, otherwise, those stated in the International Tonnage Certificate shall be applicable with regard to the dimensions and determination of the cubic metre capacity of a ship.
- 3.2 In case of doubt, the nationality shall be determined by reference to the flag the ship was flying at the conclusion of contract.



General Terms and Conditions for Repairs and Services

4. Authorized Representatives

The Customer shall inform Fassmer in writing not later than upon arrival of the ship or delivery of the object of performance which person or persons other than the master shall be authorized as representative in his absence to make and receive legally binding declarations to and from Fassmer and to enter into legally binding agreements with Fassmer.

5. Prices

- 5.1 All prices are net in euros (EUR), ex Fassmer, plus value-added tax where and to the extent applicable.
- 5.2 In the event of cost increases (for wages, energy, taxes, materials, etc.) occurring between the conclusion of contract and the time of performance, Fassmer shall be entitled at its fair discretion to demand a price adjusted accordingly that shall not exceed its prices generally in force at the time of performance, provided that more than four (4) months have elapsed between the conclusion of contract and its performance.
- 5.3 Initial filling and refills of lubricating and hydraulic oils as well as other materials and consumables shall be charged separately by Fassmer. This shall apply accordingly to costs for certificates attesting the gas-free condition, for any necessary degasifying of tanks, bilges, etc. carried out by Fassmer.
- 5.4 In the event that performance of the contract by Fassmer becomes entirely or partially impossible for reasons beyond Fassmer's control, the Customer shall owe the pro-rata share of the remuneration for supplies and services so far provided.

6. Payments

- 6.1 Payment to Fassmer shall become due immediately upon receipt of invoice without deduction.



General Terms and Conditions for Repairs and Services

- 6.2 Fassmer shall be entitled to interest at 5% p. a. from the date payment is due and at 8 percentage points above the then applicable base rate from the date of default.
- 6.3 The object of Fassmer's performance shall only be redelivered by Fassmer to the Customer upon full satisfaction of claims for remuneration then due. If the redelivery of the object of Fassmer's performance is delayed due to default in payment by the Customer, all demurrage and other costs shall be for the account of the Customer.

7. Assignment, Set-off, Right of Retention

- 7.1 The Customer shall not have the right to assign any claims or rights it may be entitled to against Fassmer to third parties without Fassmer's prior written consent.
- 7.2 The Customer may only set-off such claims against Fassmer's claims as are uncontested, non-appealable or ready for judgment (proven).
- 7.3 The Customer may assert a right of retention only to the extent its claim is based on the same contractual relationship.



General Terms and Conditions for Repairs and Services

8. Lime Limits and Dates

- 8.1 Time limits and dates shall be binding on Fassmer only if they have been expressly agreed in writing. Where no time limits or dates have been agreed upon in writing, the time limits or dates estimated by Fassmer shall apply. In all other respects, the time limits and dates that are appropriate considering the nature and extent of performance, difficulty of the task, etc. shall apply.
- 8.2 Prerequisite for the timely delivery or performance of services is the complete and timely fulfilment of all the Customer's responsibilities and obligations of cooperation including but not limited to the timely delivery of documents to be provided by the Customer, the timely provision of the ship in a condition allowing the performance of work on her, and the clarification of all commercial and technical questions (including price agreements). Agreed time limits and dates shall be extended by any delay of due payments even in cases where Fassmer has not asserted the right of retention or the right to refuse performance.
- 8.3 Subsequent changes of or supplements to the scope of supplies and services shall extend the time limits and dates in accordance with the supplementary time required therefore.
- 8.4 Any occurrence for force Majeure or of other circumstances beyond Fassmer's control – regardless of whether they affect Fassmer or its suppliers – shall release Fassmer from its obligation to deliver supplies or perform services for the duration of the effects thereof. Events of Force Majeure are in particular: act of God, war, blockade, embargo, insurrection, mobilization, government, riot, civil commotion, terrorism, warlike condition, strike, lockout, slowdown, sabotage, prolonged failure or shortage of electric current, plague or other epidemics, quarantine, earthquake, fire, flood, typhoon, hurricane, tidal wave, lightning, explosion. Should any such occurrence render Fassmer's supplies or services impossible, Fassmer shall be fully released from its obligation.
- 8.5 If the completion of the object of performance by Fassmer is delayed, the Customer shall have the right, if it has suffered a proven damage, and notwithstanding the Customer's right to rescind the contract in accordance with the statutory requirements for such rescission, to claim without rescinding the contract compensation for such delay in the amount of 0,5% of the contract price per full week of delay with a maximum of 10% of the contract price to the exclusion of any further claim for damages. The liability according to Article 15.4 is unaffected thereof.



General Terms and Conditions for Repairs and Services

9. Provision of the Ship or of the Object of Performance

The Customer must provide to Fassmer the ship or the respective service-zones of the ship or the object of performance in a condition that allows the performance of work thereon, in particular gas free, cleaned without hazardous cargo (goods, materials etc.) and in accordance with all safety requirements, at the agreed place (pier/dock) and at the agreed time in a manner to allow commencement of the works. If the Customer does not provide the ship or the respective service-zones or the object of performance in a good condition allowing the performance of work thereon, or not at the agreed time, Fassmer shall be entitled to refuse taking delivery of the ship or of the object of performance and/or to charge all costs connected therewith to the Customer.

10. Access to Fassmer's Premises and Execution of the Work

- 10.1 For the period of Service Works carried out by Fassmer and their subcontractors, no persons and entities other than those mandated by Fassmer and other than the ship's crew shall be allowed to execute work on the ship or the object of performance without prior written consent of Fassmer. The Customer must notify Fassmer timely and in writing of any work executed by the ship's crew or by authorized third parties. Such work is performed at the exclusive risk and responsibility of the Customer.
- 10.2 All facilities and areas of the ship or of the object of performance not worked on by Fassmer must be protected by the Customer against accident hazards. Where work is performed in holds, the hatch covers of such holds must be removed and safely stored by the Customer prior to the commencement of work.
- 10.3 All scarp (replaced parts, substances, etc.) removed in the course of works shall pass into Fassmer's ownership without compensation if Fassmer so desires, unless the scrap inheres a considerable resale value.
- 10.4 In derogation of paragraph 10.3 above, the Customer must dispose of all toxic substances and hazardous waste at its own expense and without delay, unless such disposal is included in Fassmer's contractual obligations.



General Terms and Conditions for Repairs and Services

11. Acceptance and Trial Runs

- 11.1 The Customer must accept the work or the object of performance immediately upon Fassmer's request. Acceptance shall be deemed to have occurred at least upon the Customer taking into service the ship or the object of performance.
- 11.2 If the Customer does not accept the work or the object of performance within the time allowed despite Fassmer having sent a reminder setting an appropriate time limit to the Customer, Fassmer shall be entitled to rescind the contract and/or to claim damages at Fassmer's option either in the form of indemnification of the loss actually suffered or – without proof or loss – in the amount of 10% of the agreed contract price. The Customer, however, retains the right to prove in particular that Fassmer did not suffer any loss at all or suffered only a significantly lower loss.
- 11.3 In cases where testing is planned, the Customer shall provide the crew of the ship as well as any consumables, materials and other supplies required for the implementation. For the duration of testing, the Customer shall assume the nautical responsibility, the risk of errors in operation by the ship's crew or other statutory agents employed in the performance of the Customer's obligation, as well as the risk of accidental loss or accidental deterioration of the ship or the object of performance.



General Terms and Conditions for Repairs and Services

12. Place of Performance and Passing of Risk

- 12.1 The place of Fassmer's contractual performance shall be Fassmer's premises unless another place of performance has been agreed upon. In case the place of Fassmer's performance is not defined in written form, the place of performance shall be where the works have been accomplished by Fassmer or their subcontractors.
- 12.2 Subject to the provisions of paragraph 11.3 hereof, the risk of accidental loss or accidental deterioration of the object of performance shall pass to the Customer in any case upon delivery of the object of performance to the Customer. Should the same be delayed for reasons for which the Customer is responsible, the risk of accidental loss and accidental deterioration of the object of performance shall pass to the Customer on the day on which notice of readiness for delivery is given to the Customer.
- 12.3 Fassmer shall not be responsible for any damage not caused by Fassmer or the statutory agents employed by Fassmer in the performance of its obligations, regardless of the time when the damage occurs unless paragraph 15.4 hereof applies.

13. Reservation of Title

- 13.1 Fassmer reserves title to goods delivered by it ("Conditional Goods") until full satisfaction of all claims to which Fassmer is entitled from the Customer under the respective contracts and all claims arising in connection with the business relationship with the Customer, regardless of the legal basis thereof, that have arisen or existed at the time of conclusion of contract, or will arise in the future.
- 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 by way of security of Conditional Goods to third parties. The Customer must notify Fassmer promptly in writing about any attachment or seizure of property, or any other disposal.



General Terms and Conditions for Repairs and Services

- 13.3 Any processing or converting of Conditional Goods shall be done by the Customer exclusively on Fassmer's behalf. In cases where the Customer combines or mixes Conditional Goods with other goods not being Fassmer's property, Fassmer 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 Fassmer in advance and as 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. Fassmer accepts the assignment. If the Conditional Goods are sold by the Customer with other goods not belonging to Fassmer, regardless of whether without or after processing, above claims shall be deemed to have been assigned to Fassmer in the amount of the outstanding invoice value of the Conditional Goods. Above assignment shall not constitute a deferral of Fassmer's claim for payment against the Customer.
- 13.5 The Customer shall retain its right to collect claims assigned to Fassmer despite such assignment. Fassmer's authority to collect the claims itself is not affected hereby. Fassmer 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 on the Customer's assets or such proceedings have not been rejected due to insufficiency of assets, or no suspension of payments has occurred. If any of such events has occurred, the Customer shall promptly notify Fassmer in writing about the claims assigned and the debtors of such claims, shall provide Fassmer with the necessary information and documents for collection of the claims, and shall inform the various debtors of the assignment of the claims to Fassmer in writing.
- 13.6 The Customer shall maintain the Conditional Goods in proper condition and shall – to the extent the Conditional Goods are not installed – store them separately and mark the Conditional Goods as goods owned by Fassmer.
- 13.7 Upon the Customer's request, Fassmer shall re-assign to the Customer Fassmer's title to the Conditional Goods and the claims assigned to Fassmer to such extent as the value of such collateral exceeds the value of all claims Fassmer has against the Customer by more than 20 percent.



General Terms and Conditions for Repairs and Services

14. Defects

- 14.1 The Customer must notify Fassmer of any defect in writing immediately upon its discovery. Subject to paragraph 15.4 hereof, Fassmer shall not be liable for the aggravation of defects occurring due to late notice of defects.
- 14.2 The Customer must first provide Fassmer to the opportunity to rectify the defect within reasonable time, which, at the choice of Fassmer, may be by repair or using new parts.
- 14.3 The ship or the object of performance must be made available to Fassmer for the purpose of rectification of defects at the place of performance specified in paragraph 12.1 hereof or if the place of performance is inefficient for Fassmer at a harbour chosen by the parties mutually agreed.
- 14.4 The Customer's claim for reimbursement of expenses incurred for the facilitation of rectification including but not limited to the cost of making the ship or the object of performance available at the place of performance specified in paragraph 12.2 hereof, shall be excluded.
- 14.5 In cases of notified defects, Fassmer shall only be obligated to rectify the defect after the Customer having paid a portion of the contract price that is deemed reasonable considering the notified defect. Therefore the Customer is authorized to deduct from the contract price an amount up to a maximum of triple of the costs which are necessary for the rectification.
- 14.6 If rectification finally fails, or if such rectification cannot be reasonably expected to be acceptable to Fassmer or the Customer, or if rectification is associated with disproportionate costs and is, for this reason, refused by Fassmer, the Customer may, subject to statutory requirements, rescind the contract or reasonably reduce the remuneration without prejudice to claims for damages that the Customer may otherwise have.
- 14.7 Fassmer's obligation for payment of damages shall be governed by paragraph 15.4 hereof.



General Terms and Conditions for Repairs and Services

- 14.8 Subject to paragraph 15.4 hereof, any claims and rights of the Customer in connection with defects shall be null and void if the supplies or services performed are altered, treated, processed, or handled or repaired improperly by the Customer or third parties not authorized by Fassmer.
- 14.9 Unless agreed otherwise between Fassmer and the Customer, all claims of the Customer against Fassmer regarding defects shall become time-barred after one year. This period of limitation, however, shall not apply if the defect was maliciously concealed, in the case of §§ 438 Abs. 1 Nr. 2 BGB, 634a Abs. 1 Nr. 2 BGB, and/or any of the liability cases specified under paragraph 15.4 hereof apply.

15. Liability

- 15.1 The Customer shall be responsible for the surveillance of its ship, the cargo and all Customer supplied items, in particular for watch guards, as well as for the observation of all relevant laws and statutory rules and regulations (such as regulations for the prevention of accidents) by the Customer itself and the statutory agents employed by it in the performance of its obligations and its vicarious agents. All other measures required for the prevention of damages and mooring fall within the responsibility of the Customer. When hazardous work is performed on board, the Customer through its own surveillance measures must ensure that all customary requirements of due care are observed. The Customer must notify Fassmer in writing about any imminent danger.



General Terms and Conditions for Repairs and Services

- 15.2 Subject to paragraph 15.4 hereof, Fassmer shall not be liable for damages resulting from, incorrect drawings or other documents provided by the Customer or the lack of stability or of seaworthiness of the ship. The Customer must expressly notify Fassmer in writing about circumstances affecting the stability or seaworthiness of the ship and which could be create a risk of damage to the ship or her equipment despite proper execution of work by Fassmer.
- 15.3 Claims other than those provided herein, or in the contract entered into with the Customer shall be excluded unless such claims arise from the provisions set out in the Product Liability Act (Produkthaftungsgesetz), the international or grossly negligent breach of contractual or legal obligations by the executive bodies or senior management of Fassmer, personal injuries of the Customer or its employees caused by a breach of duty for which Fassmer is responsible, the warranty for the presence of particular characteristics or violation by Fassmer of its essential contractual obligations. Without prejudice to the events of liability specified above, Fassmer shall not be liable, except in the case of its violation of essential contractual obligations, for damages of the Customer arising from a grossly negligent breach of duty, in particular the breach of duty to exercise proper care and supervision of ordinary statutory agents employed by Fassmer in the performance of obligations.
- 15.4 If Fassmer has violated essential contractual obligations, damage claims by the Customer against Fassmer shall be limited to foreseeable damages that are typical for the contract, unless there is international misconduct or gross negligence involved, or the claim against Fassmer based on personal injury of the Customer or its employees or a breach of Fassmer's warranty for the presence of particular characteristics.
- 15.5 To protect itself against the consequences of above exclusion and limitation of liability, the Customer shall cover the relevant risks by taking out all necessary insurance policies. The Customer shall in particular ensure that the hull and P&I Insurance is in place for the duration of the maintenance, conversion of repair work assumed by Fassmer and that the relevant insurance policy is extended to cover builder's risks (including trial run). The Customer must include Fassmer as well as its executive bodies, senior management and statutory agents employed by it in the performance of its obligations by way of co-insurance in the insurance policy.



General Terms and Conditions for Repairs and Services

16. Jurisdiction and Applicable Law

- 16.1 The local/regional court (Amtsgericht/Landgericht) at the principal place of business of Fassmer shall have exclusive jurisdiction for any litigation that may directly or indirectly arise out of the contractual relationship between Fassmer and the Customer, including litigation referring to the documents, bills of exchange and checks. Fassmer shall, however, at its option, be entitled to assert claims against the Customer also 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 shall remain unaffected. For contractual relationships between traders Bremen shall be the exclusive place of jurisdiction for any litigation – including litigation regarding documents, exchanges and cheques – arising directly or indirectly out of the contract.
- 16.2 The laws of the Federal Republic of Germany shall apply exclusively as they are applicable among domestic persons, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.

17. Partial Invalidity

Should any of the provisions contained in a contract of which these General Terms and Conditions form an integral part, be or become invalid, the remaining provisions shall remain unaffected thereby.