

# WÄRTSILÄ GENERAL TERMS AND CONDITIONS SERVICE WORK (2008)

## 1. INTRODUCTION

These General Terms and Conditions – Service Work (2008) (the “Conditions”) shall, unless otherwise agreed in writing, apply to all service work performed in the field (“Service Work”) by any authorized member, agent or representative of the Wäertsilä Group (the “Contractor”) to a customer (the “Customer”). Contractor’s offers are non-binding until accepted and confirmed by a purchase order issued by Customer in compliance with these Conditions which is acknowledged by Contractor (any such acknowledged purchase order, a “Contract”). These Conditions shall form an integral part of the Contract. Customer may not change or cancel any purchase order after it has been received by Contractor unless Contractor has agreed in writing to such change or cancellation.

## 2. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

Neither party shall copy or disclose to a third party any document or data provided by the other party without the prior written consent of the other party or use them for purposes other than those for which they were provided. Intellectual property rights associated with the Service Work or any document or data provided by Contractor in connection therewith shall remain Contractor’s property. Customer shall defend, indemnify and hold harmless Contractor against all claims, losses and damages, including reasonable attorneys’ fees, arising out of or resulting from any reuse, modification, reproduction or publication of Contractor’s intellectual property documents or data.

## 3. PERFORMANCE AND ACCEPTANCE OF WORK

Customer shall be deemed to have accepted the Service Work performed by Contractor as being in accordance with the Contract unless Customer has notified Contractor of any non-conformity within three (3) days following the last day on which the Service Work was performed. Any date or period for completion stipulated or quoted shall be deemed to be an estimate only, and there shall be no express or implied time limit in dispatching or completing any Service Work.

## 4. COMPENSATION, PAYMENT AND OWNERSHIP

**4.1** If not expressly agreed otherwise in writing, the Contract’s price is based on the Service Work performed during normal working hours. Time sheets for each week shall be provided thereafter by Contractor to Customer and shall be promptly checked and attested by Customer. The time sheets provided by Contractor shall be deemed to be evidence of the working hours invoiced by Contractor. Hourly rates, overtime rates and daily allowances shall be as specified in Contractor’s standard rates then in effect (such rates are subject to change from time to time). Customer will be charged a daily allowance for each of Contractor’s personnel based on the number of working days from the date of departure of such personnel until their return. A normal working week is comprised of forty (40) hours; eight (8) hours per working day, spread over five (5) working days. Local holidays shall be observed. Unless otherwise agreed, any Service Work done outside normal working hours shall be charged to Customer as overtime. Any waiting time for which Contractor is not responsible shall be charged to Customer as normal working time. Time spent by Contractor’s personnel travelling to and from Contractor’s office, the work site and Customer-provided lodging shall be for Customer’s account. The daily remuneration and allowances shall be payable during incapacity caused by sickness of or accident to any of Contractor’s personnel if caused by failure of Customer to maintain safety in the work site environment.

**4.2** All travel expenses incurred in connection with the Contract shall be for the account of Customer. Travel expenses include: (a) fares for journey by rail, sea, air, car and/or bus; (b) carriage, freight and customs duties as well as insurance due in connection with personal effects, instruments and tools required for the Service Work, including necessary costs for overweight on air freight; and (c) all out-of-pocket expenses incurred by Contractor for the Service Work ordered by Customer, such as internet use, facsimile and telephone calls.

**4.3** In the event of any illness or accident affecting any of Contractor’s personnel, whether during the performance of Service Work or otherwise, necessitating medical attention or hospital treatment, Customer shall ensure that the best and appropriate medical facilities and medications are made available to Contractor’s personnel. If it is necessary to repatriate an ill, injured or deceased member of Contractor’s personnel, Customer shall assist Contractor in arranging for such repatriation in the safest and most expedient manner. All costs incurred under this Clause 4.3 shall be borne by Contractor.

**4.4** Unless otherwise agreed, payment shall be made by bank remittance in the currency and to the bank account set forth in the invoice within twenty

(20) days following the date of the invoice. Payment shall be made in full without any set off, counterclaim or deduction. Customer shall pay interest on overdue payments from the maturity date until the actual date of payment at the rate of one and one quarter percent (1.25%) per month, compounded annually. Customer shall pay Contractor all costs related to the collection of overdue amounts, including reasonable attorneys’ fees. In the event any payment is more than thirty (30) days late, Contractor shall be entitled to suspend or terminate the Contract by written notice to Customer, and such remedies shall not be exclusive of Contractor’s additional rights under contract or law. Title to any part, material, equipment, supplies, consumables or replacement and any other items furnished, provided or supplied by Contractor in performance of the Service Work shall pass to Customer only when payment in full has been received by Contractor. Contractor may as a precondition for the performance of the Service Work, request that Customer provides Contractor with security covering any unpaid amount already owed to Contractor or one of its affiliates.

**4.5** Any assistance or work performed by Contractor outside the scope of Contract shall be charged as extra work in accordance with Contractor’s standard rates then in effect and with these Conditions.

## 5. WARRANTY

**5.1** Contractor shall repair or re-perform, in whole or in part, at its sole discretion, any defective Service Work which appears during the warranty period. Customer shall immediately take appropriate steps to prevent any defect from becoming more serious, and all warranty claims with respect to this warranty shall be made in writing without delay and not later than fourteen (14) days following discovery of such defect during the warranty period. Customer shall have the responsibility to establish that its claim is covered by this warranty. Replaced parts shall become Contractor’s property and upon Contractor’s request, be returned at Contractor’s cost. Delivery of repairs or re-performance under this warranty will be made in accordance with the original Contract delivery terms.

**5.2** The warranty period for the Service Work begins on the date of delivery and ends six (6) months from the last day of performance of the applicable Service Work. The warranty period in respect of Service Work which has been re-performed under the warranty shall expire six (6) months following the last day on which the Service Work was re-performed under the warranty. The warranty for re-performed Service Work shall be subject to the same terms, conditions and limitations of liability, as those applicable to the originally-performed Service Work. Under no circumstances shall the warranty period of any Service Work (whether original or re-performed) extend beyond the date that is twelve (12) months following the date of commencement of the original warranty period as stipulated above in the first sentence of this Clause 5.2.

**5.3** Contractor shall not be liable for any defect due to or arising in connection with: (1) any materials, components, tools, designs or software provided by Customer; (2) negligence or willful misconduct of Customer; (3) parts, accessories or attachments other than those supplied by Contractor in the course of performance of the Service Work; (4) improper service work, installation or alterations carried out by Customer; (5) normal wear and tear; (6) use of unsuitable material or consumables by Customer; (7) fluctuation in the grid; or (8) any use, service or operation of any equipment, parts or components upon which Service Work was performed which is not in conformity with manuals, instructions or specifications provided by Contractor or which is otherwise not in accordance with normal industry practice. Contractor’s warranty obligation does not include any craneage, electricity, scaffolding, docking, diving, sub-sea work, towage costs, demounting or mounting costs and expenses of Contractor’s personnel or representatives, and all such costs and expenses shall be reimbursed by Customer to Contractor when applicable. If after Contractor’s warranty investigation it is found that Customer does not have a warranty claim within the scope of these Conditions, then Customer shall be responsible for all applicable costs and expenses for such inspection, repaired or replaced parts or other service work.

**5.4** THIS CLAUSE 5 SETS FORTH THE ONLY WARRANTY APPLICABLE TO THE SERVICE WORK AND IS IN LIEU OF ANY OTHER WARRANTIES, GUARANTEES, OBLIGATIONS AND LIABILITIES EXPRESS OR IMPLIED INCLUDING WARRANTIES, GUARANTEES, OBLIGATIONS OR LIABILITIES AGAINST NON-CONFORMITY OR DEFECTS. CUSTOMER HEREBY WAIVES ALL OTHER REMEDIES, WARRANTIES, GUARANTEES AND LIABILITIES, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE (INCLUDING WITHOUT LIMITATION FITNESS FOR PURPOSE, MERCHANTABILITY OR SATISFACTORY QUALITY).

## 6. CONTRACTOR'S LIABILITY

6.1 IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR ANY INDIRECT, CONTINGENT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, HOWEVER CAUSED OR ARISING (INCLUDING (WITHOUT LIMITATION) FOR ANY LOSS OF ACTUAL OR ANTICIPATED PROFITS OR REVENUE OR ANTICIPATED SAVINGS, PUNITIVE OR EXEMPLARY DAMAGES, THE COST OF SUBSTITUTED EQUIPMENT OR REPLACEMENT, REMOVAL OR REINSTALLATION SERVICE WORK NOT ARISING FROM THE WARRANTY PROVIDED HEREIN, TOWAGE CHARGES, POLLUTION REMEDIATION COSTS, COSTS OF DOCKING, DIVING OR SUB-SEA WORK, DAMAGE TO ANY VESSEL, ENGINE ROOM OR POWER PLANT SITE, YARD OR OTHER PROPERTY (INCLUDING DAMAGE TO GOODS OWNED BY CUSTOMER), DAMAGE TO ANY EQUIPMENT OR PROPERTY OTHER THAN DAMAGE TO THE EQUIPMENT, COMPONENTS AND PARTS ON WHICH SERVICE WORK WAS PERFORMED HEREUNDER CAUSED BY SUCH PERFORMANCE OF SERVICE WORK, COSTS FOR ANY ADDITIONAL TESTS (INCLUDING, WITHOUT LIMITATION, SEA TRIALS), DEBRIS REMOVAL, OR FOR LOSS OF TIME OR USE OF ANY EQUIPMENT, INSTALLATION SYSTEM, OPERATION OR SERVICE). THIS LIMITATION ON CONTRACTOR'S LIABILITY SHALL APPLY TO ANY LIABILITY FOR BREACH OF THE CONTRACTOR'S OBLIGATIONS UNDER OR IN CONNECTION WITH THE SERVICE WORK PERFORMED HEREUNDER, WHETHER BASED ON WARRANTY, FAILURE OF OR DELAY IN DELIVERY OR OTHERWISE.

6.2 Notwithstanding any other provision of the Contract, Contractor's aggregate liability under the Contract shall not exceed thirty percent (30%) of the Contract price.

6.3 Contractor shall not be liable for any work carried out by Customer or by any third party, even though carried out with assistance of Contractor's personnel. Customer shall bear the risk of loss of its equipment and other goods in connection with the Service Work, even if such equipment or goods are in facilities used by Contractor.

## 7. INSURANCE

Each of Contractor and Customer shall at its own cost provide for and maintain comprehensive insurance coverage to protect its own property and personnel.

## 8. FORCE MAJEURE AND OTHER EXCUSABLE DELAYS

8.1 Neither Contractor nor Customer shall be liable for any failure or delay in performing its obligations hereunder, or for any loss or damage resulting therefrom, caused by or arising from an event of force majeure ("Force Majeure"), which includes without limitation acts of God, war, riot, embargos, acts of civil or military authorities, fire, flood, accidents, strikes, failure of a subcontractor to provide manpower, materials or goods caused by an event that qualifies under this Clause 8.1, epidemics, unusually severe weather affecting either party, or causes beyond their control.

8.2 If the Service Work is interrupted by Force Majeure or for other reasons not attributable to Contractor, the costs for maintaining personnel at or near the work site (including, without limitation, wages and lodging) will be borne by Customer. If the interruption continues for more than one week, Contractor's personnel may be returned to Contractor's country. All expenses in relation to such withdrawal and/or subsequent return shall be borne by Customer. If the period of suspension exceeds two (2) months, either party may terminate the Contract by three (3) days' notice in writing to the other party without prejudice to the rights of either party up to the date of termination. All reasonable additional costs incurred by Contractor as a consequence of the suspension and any subsequent resumption or completion of the Service Work shall be reimbursed by Customer.

## 9. SECURITY AGREEMENT

To the extent permitted by law, Customer hereby grants to Contractor a lien on and a continuing security interest, and when applicable a maritime lien for necessities, in and to all equipment, parts and components upon which the Service Work is performed and all products and proceeds derived from the sale or lease thereof as security for the payment in full of such Service Work. Customer hereby waives any and all claims, defenses, and causes of action that Customer may have in connection with the exercise of any such lien rights by Contractor.

## 10. CUSTOMER'S ADDITIONAL PERFORMANCE OBLIGATIONS

Customer shall comply with all laws, rules and regulations applicable at the work site, arising out of the performance of the Service Work. Customer shall provide at no cost to Contractor all of the following facilities and services which must be of sufficient quality and/or quantity for Contractor's performance of the Service Work, unless otherwise agreed to in writing by the parties:

10.1 Ancillary manpower equipped with appropriate tools (such as drills and hand lamps), heavy duty hoisting and transport facilities along with the necessary fuel, lubricants, water, electricity, compressed air and cleaning facilities for Contractor's performance of the Service Work;

10.2 Heated and/or air-conditioned facilities with available drinking water for working, boarding and lodging of Contractor's personnel in close proximity to the work site as follows:

- service storage sheds with locks, equipped with shelves and bins for tools, equipment and supplies of Contractor's personnel;
- changing rooms, provided with locks, toilet and washing facilities for the use of Contractor's personnel;
- furnished offices with locks, equipped with telephones, facsimile, internet and other communication requirements of Contractor's personnel;

10.3 Assistance requested by Contractor with the customs formalities required for the import and export of Contractor's equipment and tools, free of all duties and taxes;

10.4 Assistance to ensure that Contractor's personnel obtain visas and any other official entry, exit, residence or working permits that may be required by the country of the work site including free ingress to and egress from the work site;

10.5 Information concerning (i) the local laws and regulations applicable to the Service Work and (ii) any dangerous conditions or unusual risks that may be encountered in Customer's country, at the work site or in the use of any equipment or tools provided by Customer; and

10.6 Additional safety measures reasonably requested by Contractor.

In the event Customer is unable or unwilling to provide any such facility or service, Contractor may, at its option, terminate the Contract without liability to Customer or itself provide such facility or service for the account of Customer.

## 11. DUTIES, TAXES AND FEES

Customer shall pay, where applicable, all duties, withholding and other taxes, customs fees and charges and all charges and fees by a classification or inspection society. All such documentation or approvals which are required by applicable laws, and any applicable modifications of such laws, shall be the responsibility of and paid by Customer.

## 12. GOVERNING LAW AND ARBITRATION

The Contract shall be governed by and interpreted in accordance with the laws in force at the registered office of Contractor, excluding the conflict of law rules applicable in such jurisdiction. Any controversy, claim or dispute between the parties hereto arising out of or related to this Contract shall be submitted to the International Court of Arbitration of the International Chamber of Commerce for final and binding arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce by three (3) arbitrators appointed in accordance with the said Rules. The arbitration proceedings shall be in the English language and shall take place in Paris, France.

## 13. ENTIRE AGREEMENT

These Conditions, plus the additional agreed upon terms of the Contract (relating only to price, time and location for performance, and technical specifications and scope of Service Work to be performed) contain the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings relating to such subject matter. The sale of any parts purchased from Contractor by Customer shall be in accordance with Contractor's General Terms and Conditions – Parts (2008). If a provision of these Conditions is at variance with necessary requirements of applicable law, then these Conditions shall be deemed to be amended to the minimum extent necessary to comply with such applicable law. No terms, conditions, representations, warranties or covenants contained in any correspondence, catalogue, or in any other form shall be applicable unless incorporated herein by express written agreement of the parties hereto.

