

**WEST BAY SHIPYARDS LTD.
VESSEL REPAIR AGREEMENT
TERMS AND CONDITIONS**

These terms together with the "West Bay Shipyards Ltd. Estimate" form (the "**Estimate**") and any supplemental or consolidated Estimate comprise the entirety of the agreement between the Owner (as stated in the Estimate) of the vessel and West Bay Shipyards Ltd. The definitions found in the Estimate apply to this Agreement unless otherwise specified.

THE PARTIES HEREBY AGREE to the following terms and conditions:

1. Definitions

- 1.1. "*Change Order*" means all work, if any, in addition to or in modification of the Required Works, as agreed between the parties and which are described on a supplemental or consolidated Estimate.
- 1.2. "*Contract Period*" means the period commencing on the first working day after the Date of Delivery and ending upon the Date of Redelivery as agreed between the parties to complete the Required Works, and as may be amended as a result of a Change Order and/or Reductions or work disruptions pursuant to clause 2.5 and clause 6 of these terms and conditions.
- 1.3. "*Contract Price*" means the price for the Required Works as described in the Estimate and calculated in accordance with the current labour rates and material charges and markups of West Bay (available upon request) or by specific reference to a "fixed price" for service as may be adjusted by the value of any Change Order, less any Reductions as agreed between the parties and recorded on a supplemental or consolidated Estimate, all net of taxes which remain the responsibility of the Owner. If not stated to be a "fixed price", work will be calculated on a time and materials basis.
- 1.4. "*Date of Delivery*" means the date on which the Vessel is delivered by the Owner to West Bay at West Bay's facility located at 8295 River Road, Delta, British Columbia, V4G 1B4 (the "**Shipyard**") or the date of attendance by West Bay at an offsite location for the purpose of Offsite Works.
- 1.5. "*Date of Redelivery*" means the date on which the Vessel is redelivered by West Bay to the Owner at the Shipyard and/or the date the Offsite Works are substantially completed, such determination of completion to be decided solely by West Bay acting reasonably.
- 1.6. "*Offsite Works*" means any Works West Bay performs for an Owner at a location other than the Shipyard.
- 1.7. "*Reductions*" means all deletions, if any, to the Required Works, as agreed between the parties and that are recorded on a supplemental or consolidated Estimate.
- 1.8. "*Required Works*" means the work agreed between the parties to be carried out under the Estimate or any supplemental or consolidated Estimate and these terms and conditions and includes the Offsite Works.
- 1.9. "*Works*" means the Required Works as may be amended by any Change Order and/or Reductions.

2. Performance of Works

- 2.1. West Bay will perform the Works in accordance with the provisions of the Estimate and any supplemental or consolidated Estimate and these terms and conditions.

- 2.2. West Bay will furnish all necessary, labour, material and equipment to perform the Works. Should any of the specified materials or equipment not be available at the time required for use in the Vessel, West Bay will have the right to use other suitable materials or equipment of equivalent standard in replacement thereof, subject to the agreement of the Owner, the latter's consent not to be unreasonably withheld.
- 2.3. West Bay will perform the Works for the Contract Price. No outside trades are allowed to perform the Works unless approval is granted by the Shipyard.
- 2.4. West Bay will make all reasonable efforts to perform any Change Order as requested by the Owner and recorded in any supplemental or consolidated Estimate.
- 2.5. West Bay will, wherever possible, perform a Change Order within the Contract Period; however, where the parties agree that a Change Order will extend, or Reductions shorten, the Contract Period, the increase or decrease in duration shall be recorded on a supplemental or consolidated Estimate and the Date of Redelivery will automatically be extended or shortened by the same period.
- 2.6. The Owner will at all times provide reasonable assistance to facilitate timely and efficient completion of the Works.
- 2.7. West Bay may, in its absolute discretion, subcontract any or all portions of the Works.

3. Price

- 3.1. The Contract Price shall be calculated on a time and materials basis unless otherwise agreed in writing stating a "fixed price" and so recorded in the Estimate or any supplemental or consolidated Estimate.
- 3.2. West Bay may develop a cost estimate for the Works, however, any such estimate unless stated to be a "fixed price" shall be for budgetary purposes only. All estimates are not considered final and are subject to change.
- 3.3. West Bay will invoice the Owner separately for all storage or moorage charges after notice that the Vessel is ready for redelivery at West Bay's current charges for such services.

4. Term

- 4.1. The Works will be completed within the Contract Period (as defined herein).

5. Payment

- 5.1. The Contract Price and other charges payable, including taxes, unless specifically agreed in writing are and shall be due and payable by the Owner upon the following terms and upon the Date of Redelivery:
 - 5.1.1. deposit set out in the Estimate or any supplemental or consolidated Estimate payable prior to commencement of the Works by West Bay and upon execution of the Estimate or any supplemental or consolidated Estimate by the Owner; and
 - 5.1.2. all amounts invoiced monthly by West Bay to the Owner, detailing the total labour hours and material costs incurred to date less amounts previously billed and paid by the Owner, payable immediately upon the invoice being issued.
- 5.2. If the Owner fails to pay any such sums prior to launching or redelivery or such other dates as may be agreed, the Owner shall pay interest at the rate of 2% per month (24% per annum) on such outstanding sums. In the event that such sums (together with accrued interest) are not paid within 10 days of their due date, West Bay shall have

the right to suspend all Works without incurring any liability to the Owner until receipt of payment of such outstanding sums together with accrued interest.

- 5.3. West Bay shall, in addition to liens pursuant to the *Repairers Lien Act* (British Columbia) and the *Warehouseman's Lien Act* (British Columbia) (collectively, the "**Acts**"), have a specific and general lien for all amounts owed by the Owner to West Bay.
- 5.4. In the event that the Owner fails to pay all amounts owing prior to redelivery or following the completion of the Offsite Works, or following payment of all amounts owing, fails to take possession of the Vessel and immediately remove it from the Shipyard on the Date of Redelivery, the Owner shall pay additional storage and/or moorage fees at the rate of \$5.00 per foot of vessel length per day, such fees to be paid in full by the Owner before West Bay will release the Vessel for Redelivery and/or, in the case of Offsite Works, release any lien that West Bay may have registered against the Vessel including without limitation liens pursuant to the *Repairers Lien Act (British Columbia) and/or Warehouseman's Lien Act (British Columbia)*.
- 5.5. In the event that the Owner fails to take possession of the Vessel following the expiration of 90 days after the Date of Redelivery, the Vessel will be deemed to have been abandoned by the Owner and West Bay shall have the right to sell the Vessel, in accordance with the Acts, in satisfaction of any amounts due and payable under this clause 4.
- 5.6. All costs arising in connection with the collection of accounts, sale or disposal of the Vessel, and/or in the case of Offsite Works fees associated with liens or other charges registered by West Bay, including all legal costs on a solicitor and own client basis shall be for the Owner's account.

6. Liabilities and Indemnities

- 6.1. In the event that Redelivery is delayed beyond the Contract Period, West Bay shall not be liable for any damages arising from such delay.
- 6.2. The Owner and his/her guests or invitees assume all risk and liability arising from their use of and presence in West Bay's facilities and the Shipyard and agrees to indemnify West Bay for any claims made by his/her guests, employees or invitees, including legal costs for deciding such claims.
- 6.3. The Owner and his/her guests, employees or invitees assume all risk and liability from their use of and presence in, around or at the Offsite Works, including but not limited to any attendance of or use of the Vessel or West Bay's equipment used to perform the Offsite Works, and agrees to indemnify West Bay for any claims made by his/her guests, employees or invitees, including legal costs for deciding such claims.
- 6.4. West Bay shall not be liable for the security of the Vessel from theft or other loss, and further, shall not be liable for any loss due to theft, damage or otherwise in respect of any articles left in any automobile or any vessel at the Shipyard or in the case of Offsite Works on, in or around the Vessel where the Offsite Works are being performed.
- 6.5. West Bay shall only be liable to the Owner when proven loss or damage has been caused solely by the negligence or willful default of West Bay or that of those for whom they are responsible and such loss or damage is not otherwise covered by the insurance required under clause 7.1.
- 6.6. When operating in respect of Offsite Works, any work site shall remain under the control of the Owner for, among other purposes obligations under the Workers Compensation Act, unless expressly agreed to in writing by West Bay.
- 6.7. Except in the event of prior cancellation or termination, all of West Bay's liabilities of whatsoever nature and

howsoever arising shall cease upon Redelivery or in the case of Offsite Works upon the completion of the Offsite Works.

- 6.8. Any tests, trials or movements of the Vessel shall be at the Owner's sole risk and responsibility, and West Bay shall not be under any liability whatsoever to the Owner for any loss, damage or expense resulting from such tests, trials or movements.
- 6.9. In no circumstances shall West Bay's liability to the Owner include any sum in respect of loss of hire, profit, use or business, or any similar direct, indirect or consequential loss, damage or expense arising out of or in connection with the Works.
- 6.10. West Bay makes no representations, warranties or conditions, express or implied, other than those set out in the Estimate or any supplemental or consolidated Estimate.
- 6.11. West Bay shall not be considered a warehouse for the purposes of the *Warehouse Receipt Act*.

7. Third Parties

- 7.1.1. Each party agrees to indemnify the other party against all claims made against the other party by third parties (being those individuals and entities for whom either party is responsible at law including, without limitation, employees, servants, agents and invitees to the facilities of West Bay) in any way related to the Works or this agreement, where such claims are caused by, or to the extent they are contributed to by the indemnifying party's negligence, gross negligence or willful default or that of those for whom such party is responsible at law.
- 7.1.2. The indemnifying party shall bear the expense of investigations and defenses of all claims against which the other party is indemnified under clause 5.12.1 and all lawsuits arising therefrom including the legal costs of the indemnified party.
- 7.2. West Bay's liability arising out of or in connection with this agreement shall in any event be limited to \$25,000.
- 7.3. The limitations on each party's liability in this clause 5 shall also apply to the liability of those for whom that party is responsible at law. Each party further agrees that it will not, and will ensure that those for whom it is responsible do not, circumvent the aforesaid limitations and allocation of responsibility by taking legal proceedings against the employees, servants or agents of the other party, and to this extent each party shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons. Nothing herein contained shall affect any right that the parties may have to limit their liability under any statutory enactment for the time being in force. The Owner shall arrange for the insurance required by clause 7 herein to extend to all employees, servants, agents and sub-contractors, and without limitation, all those for whom each party is responsible.
- 7.4. Notwithstanding any other provision of the Estimate or any supplemental or consolidated Estimate and/or these terms and conditions, West Bay shall not be considered a bailee of the Vessel and shall not be responsible for damage to the Vessel, including any damage from wind, waves, or weather, during the Contract Period.

8. Disruptions

- 8.1. The Contract Period shall be extended when any of the following events cause delay to West Bay's performance of the Works, provided always that West Bay shall have complied with clause 6.2 hereunder and shall have made all reasonable efforts to avoid or minimize the effects such events may have on the performance of the Works:
 - 8.1.1. **Force majeure** events including any and all acts of God; any government requisition, control, intervention, requirement of interference; any circumstances arising out of war, threatened act of

war or warlike operations, acts of terrorists or the consequences thereof; riots, civil commotions, blockades or embargoes; epidemics; earthquakes, landslides, floods or other extraordinary weather conditions; strikes, lockouts or other industrial action, but only of a general nature and not limited to West Bay and/or its sub-contractors; fire, accident, and explosion (whether in the Shipyard or elsewhere) except where caused by the proven negligence of West Bay and/or its sub-contractors.

8.1.2. Other events including the failure of the Owner to review/approve technical information within a reasonable time; suspension of the Works pursuant to clause 4.2 (Payment); and late delivery of any items to be supplied by the Owner.

8.2. West Bay shall notify the Owner in writing within 5 working days of the occurrence of any event of delay, on account of which West Bay asserts that it is entitled to claim an extension of the Contract Period. A failure to so notify shall bar West Bay from claiming any extension to the Contract Period. West Bay shall also advise the Owner in writing (A) within 5 working days of the ending of any event notified under this clause that the event has ended, and (B) as soon as reasonably possible after (A), the length of extension of the Contract Period claimed by West Bay.

9. Insurance

9.1. The Owner shall have and keep in force protection and indemnity insurance including pollution cover and wreck removal to a minimum of \$3,000,000 (Cdn). All such insurance shall be primary insurance and no deductible under such insurance shall be borne by West Bay.

9.2. Notwithstanding the above (7.1), the Owner shall retain the right to claim for any defects or deficiencies in the Works themselves, exclusive of any consequential physical loss or damage.

10. Termination

10.1. West Bay shall be entitled to terminate the agreement evidenced by any Estimate or supplemental or consolidated Estimate in the event that the Owner fails to pay any sums when due for a period of 15 days; there is damage to West Bay's property in the course of the Works for which the Owner is liable; or the Owner fails to have proper and valid insurance pursuant to clause 7.1. Thereupon West Bay shall be entitled to recover any unpaid part of the Contract Price that relates to the Works performed up to the date of termination, together with any losses they may suffer, for liability to sub-contractors and others they may incur, by reason of the termination except as otherwise excluded and their reasonable costs of accommodating the Vessel pending payment of any amounts outstanding.

11. Miscellaneous

11.1. These terms and conditions and any Estimate shall constitute the complete and final agreement (the "**Agreement**") and understanding between the Owner and West Bay with respect to the Works. All representations of fact made by West Bay in negotiating this Agreement are expressly superseded by the terms and conditions hereof. Where there is a conflict between the terms and conditions and any Estimate, the Estimate shall prevail but only to the extent of the said conflict.

11.2. The failure of either party to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision or the right of such party thereafter to enforce that or any other provision of this Agreement.

11.3. This Agreement shall be binding upon and enure solely to the benefit of the parties hereto and their respective successors and assigns; provided, however, that this Agreement and/or any or all rights or obligations of either party hereunder shall not be assignable or transferable by either party hereto without the prior written consent

of the non-assigning party, which consent shall not be unreasonably withheld. Nothing in this Agreement, expressed or implied, is intended to confer upon any other person any rights or remedies under or by reason of this Agreement.

- 11.4. This Agreement shall be governed by and construed in accordance with the law of British Columbia and the law of Canada applicable therein and all disputes and claims, both at law and equity arising out of, or in any way connected with this Agreement will be referred to the courts of British Columbia and each of the parties hereby attorns to the jurisdiction of the courts of British Columbia.
- 11.5. Whenever possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such provision will be ineffective only to the extent of such invalidity, illegality or unenforceability in such jurisdiction, without invalidating the remainder of this Agreement in such jurisdiction or any provision hereof in any other jurisdiction.

The parties have executed this Agreement as of the date written on the Estimate.

WEST BAY SHIPYARDS LTD.

(INSERT OWNER NAME)

Per: _____
Authorized signatory

Per: _____
Authorized signatory