

# PETERSEN & SOERENSEN MOTORVAERKSTED A/S

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**Terms regarding repairs and rebuilding – including building berth and docking – as well as new installations and remedy work on ships, barges, boats etc. drawn up on the basis of the terms that applies for shipyards within the Danish Ship and Boat Building Industries Employer's Association.**

## 1. Commencement of the work

- 1.1. All work will be carried out in the order in which the ships announce their presence upon arrival at the yard, and provided that the ship arrives on the agreed date.
- 1.2. The yard may, however, postpone agreed work, including docking, if the yard considers this necessary due to urgent damage on other ships.
- 1.3. No later than upon arrival the orderer is obliged to inform the yard of the ship's construction, contents of tanks and cargo space as well as other conditions that may be of importance for the repair work and the stay at the yard, including docking and prevention of damage to persons, environment, ship and/or the yard.
- 1.4. Unless otherwise expressly agreed the orderer will guarantee that tankers are gas and explosion free.

## 2. Order and safety regulations

- 2.1. The yard is only responsible for the co-ordination of protection, safety and order regulations around and on board the ship during the period the ship is at the yard's premises. In case the yard performs work on the ship outside the yard's premises the before mentioned responsibility lies with the orderer.
- 2.2. Further, the regulations mentioned below applies regarding the stay at the yard:
- 2.3. Apart from on arrival and departure the ship's propeller may only be used according to the yard's instructions.
- 2.4. No waste oil may be discharged.
- 2.5. No discharge from the ship may take place during docking. The yard will point out toilets and baths to be used by the ship's crew in this period.
- 2.6. Further, the ship's crew and master are obliged to conduct according to the yard's instructions regarding order and safety within the yard's premises.

## 3. Regulations regarding the yard stay

- 3.1. The yard and its subcontractors solely perform all work on the ship. Unless agreed in writing the orderer is not entitled to have the ship's crew, fitters or others – including the yard's subcontractors – perform work during the stay at the yard.
- 3.2. The orderer is obliged free of charge, within or outside normal working hours and at his own risk, to place special tools and qualified crew at the yard's disposal to operate the ship's machinery and equipment and to perform shifting in accordance with the yard's instructions.
- 3.3. Unless otherwise agreed it is the responsibility of the orderer to report and obtain permission from the authorities or the classification society for the constructions and works that may be subject to demands from the authorities and to inform the yard hereof.
- 3.4. All work will be carried out by the yard in accordance with the yard's usual standard and practice.
- 3.5. Unless otherwise agreed old materials belong to the yard. Materials that belong to the orderer shall be removed from the yard's premises by the orderer and on his initiative and expense upon delivery of the ship. In case such goods are not removed within 30 days after delivery it will belong to the yard.
- 3.6. If the yard orders a tug boat for the ship such an order shall be considered made on behalf of the orderer who will be considered financial responsible towards the tug boat.
- 3.7. Harbour dues for the ship will be charged acc. to bill from the Harbour Office.
- 3.8. Delivery of electricity to the ship will be charged acc. to meter reading.

## 4. Delivery – transfer of risk

- 4.1. The yard carries the risk for damaging the repair work and equipment and materials purchased for this until delivery takes place. Unless otherwise agreed repair work will be considered successively delivered as it is performed on the ship, and equipment and material will be considered delivered when this is over the ship's side.

## 5. Responsibility for damage caused by the orderer

- 5.1. The orderer is liable to pay compensation for any loss or damage caused on the yard, its staff or subcontractors by the ship, the shipowner, the orderer and his staff or suppliers, unless the orderer can establish that the loss or damage is not caused by mistake or neglect.

## 6. The yard's liability to pay compensation - Exemption from responsibility and limitations.

- 6.1. The yard is liable to pay compensation for damage or loss towards the orderer caused by the yard, its staff or other persons for whom the yard is responsible if the orderer can prove that the damage has been caused by mistake or neglect.

6.2. The yard's total liability to pay compensation can under no circumstances exceed DKK 2 mill. for damage and loss caused by the same incident. A series of damage that can be traced back to the same incident will therefore be considered only one damage. Working deficit, time loss, loss of profit or other indirect losses (consequence losses) will not be compensated for.

6.3. Compensation for damage or loss that have been inflicted on a third party shall be covered beforehand by the above mentioned limited amount, while any remaining amount – if this is less than the demand – falls due to the orderer as full and final settlement of his claim for damages.

6.4. The orderer is obliged to indemnify the yard to the extent the yard may be held responsible by a third party beyond the herein agreed limitations, and the orderer is obliged to accept a lawsuit before the same court that handles the claim against the yard regarding the alleged responsibility.

6.5. The amount the yard must compensate for damage on the ship can not exceed the yard's usual price for comparable repairs, i.e. usual expenses for material, wages and general costs.

6.6. The yard is, however, not liable to compensate for damage or loss inflicted on the orderer by the yard, its staff or others for whom the yard is responsible while the ship is outside the yard's premises. This includes damage incurred during trial runs, shifting or sailing even if it can be proved that the person in question, including the management of the yard, is responsible for mistakes or neglects. The orderer is obliged to indemnify the yard if a third party raises a claim for damages against the yard.

6.7. Further, the yard is not liable to pay compensation for damage or loss inflicted on the orderer by the yard's sub-contractors or caused by deliveries from these. The yard shall, however, assign its rights against the sub-contractors to the orderer in case of such damage or loss.

## **7. Delays etc.**

7.1. It is expressly agreed that the yard under no circumstances is liable to pay compensation for working deficit, time loss, loss of profit or other indirect losses (consequence losses) inflicted on the orderer by the yard, its staff or sub-contractors or which is due to delays because of remedy of defective work.

7.2. Apart from the above will late completion of a job ordered at the yard be compensated for, whether a specific time of delivery has been agreed or not, only if the orderer can establish that the delay is due to mistake or neglect on the part of the yard or its staff.

7.3. Agreed time of delivery is subject to usual reservations regarding force majeure such as, but not limited to, war, warlike situations, rebellions, civil riots, legal and illegal strikes, lock-out, sabotage, fire, catastrophe of nature, late deliveries of parts, materials and services from sub-contractors, transport barriers, lack of energy supply, accidental damage to the ship and spare parts and materials before delivery, lack of work force on the yard or its sub-contractors as well as delays or delivery barriers due to mis-casting, discarding of materials, manufacturing accidents, disturbance of work, fire or any other circumstances the yard has not been reasonably able to act against.

7.4. Any claim raised against the yard hereafter for delays, including working deficit, time loss, loss of profit or other indirect losses will bear no consequences for the yard other than payment of a fine fixed in consideration of the extend of the delay and usual rest hours payment or (by the yard's choice) in consideration of the amount of the contract, however, not exceeding 5% of this.

## **8. Product responsibility**

8.1. The yard is only responsible for damage caused by the executed repair works (including material and equipment delivered) or is due to the use the orderer makes of these and/or the repaired ship (product damage) to the extend it can be maintained that the damage is caused by mistake or neglect on the part of the yard or its staff, and only to the extend persons are injured, while the yard is not liable to pay compensation for damage to real estate or things.

8.2. The yard is not responsible for working deficit, time loss, loss of profit or other indirect losses (consequence losses) as a consequence of product damage, and the liability for damages which the yard may incur hereinafter shall be limited to the regulations mentioned below:

8.3. The yard's total responsibility for damages can not exceed DKK 2 mill. for all damage and loss that derives from the same incident. A series of damage that can be traced back to the same incident shall be considered only one damage.

8.4. The orderer is obliged to indemnify the yard to the extend the yard should be incurred with product responsibility towards a third party beyond the limit agreed herein, and the orderer is obliged to accept a lawsuit before the same court that handles the claim against the yard regarding the alleged product responsibility.

## **9. Claims against the yard's employees etc.**

9.1. Under circumstances where the yard in accordance with the before mentioned regulations in articles 6., 7. and 8. is either free of liability or only limited liable to pay compensation, the orderer, including the ship's owner and/or other rights owners, waives their right to claim compensation from persons acting on behalf of the yard being the management, employees, workers or others, and the orderer is obliged to indemnify these persons in case such claims for compensation are raised against the persons in question by a third party.

## **10. The orderer's rights in case of defective work etc.**

10.1. In accordance with the regulations mentioned below the yard undertakes to rectify all defect repair works that are apparently due to failures in material or the work performed.

10.2. The rectification shall only comprise defects that are established and announced within 3 months from completion and only defective work performed by the yard and materials delivered by the yard. The yard will only rectify defects related to the yard's sub-contractors to the extend that such defects can be proven to be caused by conditions of the yard. However, the yard shall assign its rights against the sub-contractors to the orderer in case of defects on his works or deliveries.

10.3. The same terms apply to rectified work as apply to the original work. The rectifying period is, however, limited to 6 months from the original completion.

10.4. The orderer is entitled to let another yard perform the rectifying work. In such event the yard's liability for defects will be limited to the amount that the rectifying work would have amounted to at own yard.

10.5. The rectification does not comprise compensation for costs of sailing, shipment of materials and spare parts to the ship or travel expenses for the yard's fitters or others.

10.6. Working deficit, time loss, loss of profit or other indirect losses (consequence losses) will not be compensated for, cf. article 7 above.

**11. Complaints**

11.1. Complaints regarding defective repair works shall in all circumstances be made as soon as the defect is detected or should have been detected by usual attention.

11.2. The same obligation for immediate complaint applies if damage occurs on the ship and the orderer or others wish to raise a claim against the yard.

11.3. Complaints related to invoices must be forwarded no later than 30 days from the invoice date.

11.4. If a complaint has not been forwarded in connection with the completion of the repair work the yard is free of any responsibility. However, complaints can be made regarding hidden failures, defects and damage within 3 months from departure from the yard in case the defect in question could not or should not have been detected earlier.

11.5. All complaints must be specified and in writing.

**12. Payment – interest**

**12.1. Unless otherwise agreed the ship’s owner is liable for payment of the yard’s total invoice and other obligations that lie with the orderer under these regulations. In the event another person orders the work, this other person is equally liable to pay, unless it is specifically stated towards the yard when the order is placed that this is not the case.**

12.2. All payments are net cash upon completion of the work and in all circumstances before the ship leaves the yard.

12.3. During the work on the ship the yard is, however, entitled to receive on account up to 80% of the estimated invoice amount including wages, material costs, additional work, docking, rent of building berth and machinery and the value of sub-supplies.

12.4. If payment is not made on the due date the orderer will have to pay interest as from this date with the interest rate the yard charge for credit, however, not less than 9% above the Danish National Bank’s bank rate.

12.5. The orderer is not entitled to refrain from paying any part of the invoice amount on the grounds of a counterclaim.

**13. The yard’s lien.**

13.1. The yard has a lien on the ship with its fixtures for all claims against the orderer and the owner of the ship, regardless of who ordered the work.

13.2. In case the yard’s invoice is not paid the shipowner and/or other rights owners can only bring the lien to an end by

- a) paying an amount on account to the yard, equal to 80% of the yard’s claim, and
- b) depositing an amount or by having a Danish bank, savings bank or insurance company guarantee for the payment of the remaining part of the claim with an addition of 2 years’ interest and legal costs, and
- c) allowing the yard to receive payment in full through such a deposit or guarantee if legal proceedings to deny the yard’s claim are not initiated within 3 months from the day the payment was due and if this case is not properly proceeded.

**14. Venue – Arbitration**

14.1. Any disputes between the parties relating to issues that are covered by these present regulations shall be settled according to Danish law by the Maritime and Commercial Court in Copenhagen with appeal to the Danish Supreme Court, and consequently the yard is not obliged to meet before or accept a lawsuit before any other court in home country or abroad.

14.2. The yard shall, however, by choice be entitled to bring such a dispute before an arbitration court in Copenhagen in accordance with the Danish legislation on arbitration.

14.3. For disputes regarding product liability for claims from a third party special regulations for venue applies, cf. article 8.4.

***I, the undersigned have received and accepted the above stated ordinary terms of sale and delivery applying for Petersen & Soerensen Motorvaerksted A/S.***

**Date:** \_\_\_\_\_

\_\_\_\_\_  
**(signature + name in block capitals of orderer)**

(In block capitals or stamp:)

<b>Ship`s name:</b>	
<b>Owner`s name and address :</b>	

