



# **EDR ANTWERP SHIPYARD TERMS & CONDITIONS 2021**

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# GENERAL TERMS AND CONDITIONS 2021

## EDR ANTWERP SHIPYARD

EDR ANTWERP SHIPYARD is the commercial name of Engine Deck Repair nv. EDR Antwerp Shipyard, Engine Deck Repair nv and EDR shall mean Engine Deck Repair NV, Industrieweg 11 – Kaai 403, 2030 Antwerpen, Belgium and / or any subcontractor appointed by and working for Engine Deck Repair nv.

### 1. SCOPE

#### 1.1.

All Work performed by EDR, including all offers and contracts, are subject to these General Terms and Conditions.

#### 1.2.

Customer's terms and conditions are not part of the contract and cannot be invoked against EDR, even if the same are expressly referred to and/or included in or on any offer, acceptance or other documents. Such other conditions and stipulations are hereby expressly rejected by EDR.

#### 1.3.

Contracts are only deemed to have been concluded once EDR has accepted in writing the orders placed within, has confirmed in writing letters of acceptance sent to it, or has delivered the supplies or performed the services ordered by Customer. This shall apply mutatis mutandis to all amendments to or alterations of contracts.

#### 1.4.

Should any of the clauses contained herein be or become invalid the remaining clauses shall remain unaffected thereby.

### 2. DEFINITIONS

#### 2.1.

"Customer" shall mean the entity that enters into the contract with EDR. If this entity is not the owner of the Vessel, it shall be deemed to have acted both on its own behalf and on behalf of the owner of the Vessel, and both the entity entering into the contract and the owner of the Vessel shall be bound by the contract.

#### 2.2.

"Vessel" shall mean the vessel or any other object, of whatever nature, that is entrusted to EDR for the performance of Work, either initially or through later modifications.

### **2.3.**

“Work” shall mean all the work, of whatever nature (repairs, maintenance, construction, painting, cleaning... etc.) that EDR accepted to perform to the Vessel.

### **2.4.**

“EDR” shall mean Engine Deck Repair NV, Industrieweg 11 – Kaai 403, 2030 Antwerpen, Belgium and / or any subcontractor appointed by and working for Engine Deck Repair.

### **2.5.**

“EDR’s premises” shall mean a yard, dry dock, or any other place, berth or lay-by berth where the contracted works will be performed by EDR.

## **3. INFORMATION TO BE PROVIDED BY CUSTOMER**

### **3.1.**

Customer is to provide EDR with all drawings, samples, instruction manuals, technical data, descriptions and all relevant information which might be required by EDR for preparation of the offer. This should be provided promptly and free of charge to EDR by the Customer.

EDR shall never be required to verify the information provided by Customer, nor be responsible for its accuracy, completeness and permissibility.

### **3.2.**

The Customer shall inform EDR in writing no later than upon arrival of the Vessel 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 EDR and to enter into legally binding agreements with EDR.

## **4. OFFERS, ORDERS AND AGREEMENTS**

### **4.1.**

Any offer shall be based upon the information and data provided by Customer. The scope of works and their appropriateness shall be determined exclusively by Customer. EDR does not verify the correctness with regard to the contents of statements provided by a classification society or by hull and machinery underwriters or its agents.

### **4.2.**

Unless otherwise agreed, EDR’s offer shall remain valid for 30 days as from the date of the quotation. Customer has to give written notice of acceptance of the offer within said validity period. If no such notice is given, the offer shall become void and EDR shall no longer be bound by it. If Customer accepts the offer within the validity period, the contract is deemed being made at the date and time of the notice of acceptance. However, EDR shall always remain entitled to refuse Customer’s notice of acceptance within one week from the date of said notice, without any compensation whatsoever and without need for any justification.

### **4.3.**

If Customer, the Master or Customer's representative wish to place an additional order without preliminary Offer, they will need to confirm this additional order in writing to EDR and the contract can only be deemed made at the date of the written acceptance of this order by EDR.

### **4.4.**

Customer's representative shall have the authority to approve offers, additional work, to accept work that has been performed, to accept invoices and to enter into legally binding agreements with EDR on behalf of the Customer.

## **5. TIME LIITS AND DATES**

### **5.1.**

The date of the commencement of the Work shall be agreed upon between Customer and EDR. If the Vessel has not been presented, ready for the requested / contracted Work to be carried out on the agreed date, EDR can send an official notice to the Customer. If the Vessel is still not presented ready for the intended / agreed Work within one week after the sending of the notice, EDR shall have the right to either cancel the contract or to agree to a later starting date with consequently modified completion terms. EDR shall in any case be entitled to charge all costs and expenses, caused by the Vessel not having been presented on the agreed date, to Customer (such costs include, for instance but not limited to unavailability of EDR's facilities for other customers, workers idle time, specifically provided equipment, daily dock dues, etc. ).

### **5.2.**

Unless specifically agreed otherwise, the contractual agreed completion dates or periods are indicative only. Completion periods are given in working days. Under no circumstances can a possible delay entitle the Customer to cancel the contract.

### **5.3.**

Unless specifically agreed otherwise, the contractual agreed completion period shall commence from the day following the date of Vessel's arrival at EDR's premises, ready in all respects for the requested / contracted works.

### **5.4.**

If modifications of the initial Order or additional work are requested by Customer and are accepted in writing by EDR, then, as per provisions of paragraph 6 below, the completion period or date shall be adjusted accordingly, to take into account the modified work order and / or additional work.

### **5.5.**

In cases where EDR can be held liable for delay, a claim for damages is only possible if EDR has been put on notice in writing with regard to the delay. Compensation shall be limited to the damage directly caused by the delay, and shall never exceed 5% of the order value under this contract, with a maximum not exceeding in any case the sum of € 250.000.

## **6. MODIFICATION OF THE ORDER AND ADDITIONAL WORK**

### **6.1.**

The Customer may ask in writing for modifications or additional work, and EDR shall be entitled to accept or reject at its sole discretion, these written requests from the Customer to modify the initial order or to perform additional work. Accepted modifications and additional work shall be subject to these General Terms and Conditions.

### **6.2.**

If EDR has to suspend work due to Customer failing to decide on modifications or additional work requested by Customer, all costs related to this suspension (including but not limited to the cost of workers idle time) shall be charged to Customer.

### **6.3.**

If modifications or additional work are requested, they will be charged at the standard rates valid at the time these modifications or additional work are requested and confirmed by EDR. Prices quoted for similar work in the initial offer are only valid for the work included in the initial offer and shall not apply to modified work orders or additional work orders.

### **6.4.**

If Customer cancels a substantial part of the initial order, EDR shall be entitled to full compensation : payment for the work already performed and material already ordered / supplied, and / or to adjust pro rata the prices quoted in the initial order. EDR shall also be entitled to charge specific costs and expenses, caused by such cancellation, to Customer (such costs to include, for instance but not limited to, equipment or labour that had been reserved but will not be used, unavailable for other customers, etc. ).

## **7. DRAWINGS AND DESCRIPTIONS**

### **7.1.**

All weights, dimensions, capacities and other data communicated by Shipyard are for guidance only.

### **7.2.**

EDR's drawings and calculations remain intellectual property of the Shipyard. In case Customer wishes to obtain them for further use, market prices shall be charged.

### **7.3.**

Additional expenses due to errors in drawings and other documents or information provided by Customer shall be borne by Customer.

## **8. PREMISES**

The place of EDR's contractual performance shall be at EDR's premises, or any dry dock, place, berth or lay-by berth as agreed between parties. Changing circumstances between the time of signing the contract and the commencement of the Work, or during the course of the performance of the Work, may oblige EDR to change the location for the performance of the Work. Any costs of shifting shall in such case be for account of the Customer.

## **9. VESSEL PARTICULARS**

### **9.1.**

The data in the ship's classification and statutory certificate shall be consider for all official purposes.

### **9.2.**

The nationality of the ship shall be determined by the flag the Vessel was flying at the time the contract was entered into.

### **9.3.**

Customer shall coordinate the docking requirements for his Vessel (trim, weight, etc. ) with EDR. All measures that are required in this respect are to be taken by and for account of the Customer.

### **9.4.**

EDR shall not be liable for damage resulting from an incorrect docking plan, incorrect drawings or other documents or information provided by Customer.

## **10. SCRAP MATERIAL**

### **10.1.**

All scrap removed in the course of the work shall pass, without compensation, into EDR's ownership, unless EDR decides not to apply this paragraph. In that case paragraph 10.2 is applicable.

### **10.2**

Notwithstanding paragraph 10.1 above, Customer must dispose of all toxic substances, (contaminated) scrap and hazardous waste at its own expense and without delay and as per applicable regulations and legislation as in force at the EDR premises.

### **10.3.**

Replaced components become property of EDR.

## **11. INSPECTION**

Customer is entitled to inspect quality of work carried out, equipment and components used, by authorized representative. The expenses arising from such inspections shall be borne by Customer. For safety and ISPS purposes, the name(s) and coordinates of the Customer's representative(s) must be notified in advance in writing by the Customer.

## **12. INSURANCE AND INDEMNITY**

### **12.1.**

Customer shall ensure that, throughout the term of this contract, adequate insurance cover is maintained for the Vessel, her hull and machinery, stores, the crew, equipment on board and other goods owned or held by Customer against any and all risks or liabilities, save for EDR's legal liability as a ship repairer. Customer shall ensure that his insurers waive all rights of recovery against EDR, its subcontractors and or any affiliated company and or each of their employees, directors and officers.

### **12.2.**

Customer shall be responsible for keeping guard of its Vessel, cargo in the Vessel and all other objects provided by Customer, in particular for watch guards, and for observing all relevant laws, statutory rules and regulations (such as but not limited to regulations for the prevention of accidents, etc. ).

### **12.3.**

If EDR performs security tasks (such as security guards), it will be done on behalf of and under the responsibility of Customer.

## **13. CREWMEMBERS, CUSTOMER'S OWN CONTRACTORS AND THIRD PARTIES**

### **13.1.**

While the Vessel is at the yard, Customer shall not be entitled to have work performed on the Vessel by the crew, Customer's contractors and / or third parties without the prior written consent of EDR, except for the daily operations routinely performed by the crew. Dry dock related work and work for which EDR's installations or premises have to be used shall never be allowed.



### **13.2.**

If EDR has agreed that work shall be carried out by Customer, Customer shall inform EDR in due time and in writing of any work that will be performed by the ship's crew, Customer's own subcontractors or by authorized third parties. Such work is performed at the exclusive risk and responsibility of the Customer. EDR shall be entitled to charge a fee if it allows the crew, Customer's contractors or third parties to perform work on the Vessel. Customer remains fully responsible for compliance with all local official rules and regulations as to social matters and safe working facilities. EDR is to be advised on a daily base as to location, nature and progress of above work.

### **13.3.**

Customer shall be liable for death or injury to EDR's personnel, and loss of or damage to EDR's property caused by the fault or negligence of its own staff or contractors. This paragraph also applies in favour of the subcontractors of EDR and third parties.

### **13.4.**

EDR shall, at its sole discretion, be entitled to have all or part of the Work performed by third parties or subcontractors.

## **14. DELIVERY OF THE WORK. ACCEPTANCE BY CUSTOMER**

### **14.1.**

Customer shall be deemed to have accepted the Work by signing off on the Work List or by removing the Vessel from the yard, whichever comes first. Failure to accept the Vessel shall not release Customer from its obligation to immediately pay the amounts due upon completion of the Work.

### **14.2.**

The Customer must accept the Vessel immediately upon EDR's request. Acceptance shall be deemed to have occurred at the latest upon the Customer using the Vessel. If the Customer does not accept the Vessel within the time allowed, despite EDR having sent a written notice within 24 hours to the Customer, EDR shall be entitled to rescind the agreement and / or to claim damages in the form of a fixed compensation of 10% of the agreed contract price, notwithstanding the right of EDR to claim higher damages.

### **14.3.**

In the event the Customer does not comply with EDR's request to remove the Vessel on time, despite EDR having sent a reminder setting an appropriate time limit and warning of these consequences to the Customer, EDR shall be entitled to have the Vessel warped on behalf, at the risk and at the expense of the Customer. In this respect, EDR shall be entitled to order warping crews, tugboats and pilotmen, all at the risk and expenses of the Customer.

#### **14.4.**

In cases where testing or a trial run is planned, the Customer shall provide, free of charge, the crew of the Vessel as well as any consumables, materials and other supplies required for the implementation of testing or of the trial run. For the duration of testing or of the trial run, the Customer shall assume the nautical responsibility, the risk of errors in operation by the Vessel's crew or other agents employed in the performance of the Customer's obligations, as well as the risk of accidental loss or accidental deterioration of the Vessel.

## **15. WARRANTY**

#### **15.1.**

By accepting the Work, Customer confirms that all required work was performed as per contract in accordance with the standards of good practices. Claims related to defects, which were discoverable by the exercise of due diligence at the moment of acceptance, shall be barred by the acceptance, even when the defect had its origin before the acceptance.

#### **15.2.**

Defects in connection with EDR's performance, which were not discoverable by the exercise of due diligence at the moment of acceptance, shall be corrected or repaired by EDR under warranty provided they:

- a) have not been caused by misuse or use other than initially contemplated ;
- b) have not been caused by any intervention carried out by Customer himself;
- c) are not the result of normal wear and tear;
- d) have not occurred in equipment and or materials provided by Customer;
- e) are not consequences of a concept or repair method, imposed by Customer.

Customer has to give written notice of such defects within one (1) week from the departure date. After expiry of this period, all claims will be time barred. Customer has to render his full assistance in order to enable EDR to remedy the defects in the Work performed. EDR will perform the necessary corrections or repairs as soon as feasible at EDR's discretion.

#### **15.3.**

No warranty applies to objects supplied or provided by Customer. Painting and coating work is likewise excluded from warranty.

#### **15.4.**

Possible warranty remains strictly limited to replacing the defective part, or re-performing the work causing the defect. However, the cumulative cost of the intervention can never exceed the total amount due for the particular item under the contract. Customer shall not, under any circumstance whatsoever, be entitled to claim financial compensation because of hidden defects in the Work performed.

### **15.5.**

Customer shall not himself perform any warranty repairs or have any warranty repairs performed by third parties without the prior written consent of EDR. If Customer is authorized to perform warranty repairs himself or to have warranty repairs performed by third parties, the costs of such repairs shall only be recoverable up to the amount that these repairs would have cost had they been performed by EDR at the EDR premises.

### **15.6.**

Defective components replaced pursuant to this article will become the property of EDR.

### **15.7.**

EDR does not warrant any material or equipment installed on the Vessel, but will assign to Customer all warranties as provided by manufacturers and suppliers.

### **15.8.**

Warranty interventions shall only be carried out if all amounts due to EDR, under this Contract or under other contracts, have been paid in full, or guaranteed in full, at EDR's sole discretion.

### **15.9.**

If Customer invokes the warranty with regard to a defect that turns out not to be covered by the warranty, EDR is entitled to charge all its relevant costs (including, without limitation, survey and study costs) to Customer.

## **16. PRICES**

### **16.1.**

Prices shall be calculated based upon daily rates applicable to raw materials, wages and social security contributions.

### **16.2.**

All taxes, present and future, of whatever nature, are to be paid by Customer.

### **16.3.**

If, for construction materials such as steel, the intended thickness / grade is not available in the market, EDR shall be entitled to use the nearest available thickness or the equivalent or higher grade, and shall charge Customer on the basis of the price of the material actually used.

### **16.4.**

In the event of increase of wages, taxes, costs of materials or energy, etc. occurring between the date that the contract was made and the time of performance, EDR shall be entitled to charge the price-rise to Customer's account.

## **16.5.**

Remunerations of tugboats, pilots and warping crews as well as port and lock dues are not included in the EDR's prices unless otherwise agreed.

## **16.6.**

In the event performance of the contract by EDR becomes entirely or partially impossible for reasons beyond EDR's control, such as but not limited to the case of Force Majeure as specified under paragraph 22 below, Customer shall owe the pro rata share of the remuneration for Work, services, supplies, etc. provided so far.

# **17. INVOICES AND PAYMENT**

## **17.1**

All invoices are payable immediately unless stated otherwise and are due without possibility of set-off. All payments shall be made into EDR's bank account in Euro.

## **17.2.**

Any protest about an invoice must be received in writing within 8 days of the sending of the invoice.

## **17.3.**

Agreed advanced payments are due on the agreed date.

## **17.4.**

If no payment is made on the due date, legal interests shall be due by force of law, as well as lump sum damages of 10% of the amount of the invoice, without a formal notice being required.

## **17.5.**

Claims or disputes shall not entitle Customer to suspend his payment obligations.

# **18. LIENS AND GUARANTEES**

## **18.1.**

EDR shall have a lien on the Vessel and all other of Customer's objects. EDR shall be entitled to retain the Vessel and these objects until all amounts owed by Customer to EDR have been settled. It is expressly agreed that EDR shall be entitled to apply this lien and retention right for all outstanding amounts owed by Customer, included those not directly related to the present contract.

## **18.2.**

If during the course of the contract, Customer's creditworthiness becomes doubtful, EDR shall be entitled to demand Customer to provide such guarantees as required to secure his financial obligations. Customer's creditworthiness shall be deemed doubtful when, for instance, Customer requests a deferment of payment, when all or part of his goods are attached by creditors, when he is behind with his payments to taxes or social security authorities, etc.

## **18.3.**

If invoices or advances are not paid on the due date, or if guarantees are not given, EDR shall be entitled to suspend all Work to the Vessel.

## **18.4.**

In case the Vessel is blocked at the yard because of EDR exercising its lien or its right of retention, or because of suspending the Work to the Vessel, the costs and damage caused by the resulting unavailability of the yard's facilities, such as but not limited to harbor and / or wharfage dues, loss of income, shall be owed by Customer. Time required for the Work shall be extended by the corresponding period of suspension. EDR will be under no duty whatsoever to guard or maintain the Vessel so blocked. However, if EDR, at its own discretion, chooses to have the Vessel guarded all costs thereof will be owed by Customer.

## **18.5.**

Customer shall indemnify EDR against any and all costs, losses and / or expenses incurred due to any arrest of the Vessel by other parties than EDR whilst the Vessel is at EDR's premises. EDR shall be entitled to suspend all Work on the Vessel for such period of arrest. Time required for the Work shall be extended by the corresponding period of arrest.

## **18.6.**

All goods delivered by EDR on board of the Vessel, shall remain the property of EDR until such time as the Customer has paid in full all that is owed to EDR in connection with the underlying agreement and with other agreements with the Customer.

# **19. LIABILITY**

## **19.1.**

EDR's liability in connection with defects is limited to the fulfilment of the warranty described in paragraph 15.

## **19.2**

EDR shall not be liable for death of or personal injury to crewmembers, other contractors of the Customer or third parties, nor for damage to or loss of Customer's property. EDR shall not be liable for damage to or loss of the Vessel itself.

### **19.3.**

EDR shall in no case whatsoever be liable for consequential or indirect damage including but not limited to loss of profit, loss of time, trading loss.

### **19.4.**

In cases where EDR can be held liable for damage or loss arising out or in connection with the Work, a claim for damage or loss is only possible if EDR has been put on notice in writing with regard to the damage or the loss. Compensation shall be limited to the damage directly caused and shall never exceed 5% of the order value under this contract, with a maximum not exceeding in any case the sum of € 250.000.

## **20. MOVING THE VESSEL**

### **20.1.**

EDR shall be entitled to move the Vessel (including shifting, re-launching and dry docking) and / or other goods belonging to the Customer if, in its reasonable judgment, such is necessary to cope with EDR's planning in connection with commitments made with other customers.

### **20.2.**

Said moving will be at the risk and expenses of Customer.

## **21. SAFETY AND SECURITY RULES**

### **21.1.**

The Vessel is to be presented at EDR's premises in a condition that allows the performance of work and in particular free of gas, poisonous fumes or any other hazardous products. Any exception to this general rule has to be discussed, prior to Vessel's arrival, with and approved by EDR. EDR is to be notified as to location, type and quantity of all hazardous substances on board of the Vessel.

If Customer does not provide the Vessel in a condition allowing the performance of work thereon, EDR shall be entitled to refuse the Vessel and to charge all costs connected therewith to Customer. EDR not to be responsible for ensuing delay.

Evidence of Vessel's safe condition is to be provided by Customer and certified as per local regulations by an officially authorized body.

### **21.2.**

Prior to starting and during the progress of each part of the Work, the local safety conditions of that part of the Vessel where the work is performed shall be checked and recertified by the nature of the work carried out and subject to the applicable rules and regulations.

### **21.3.**

All the foregoing shall be the responsibility of Customer and consequently to be carried out at Customer's expense.

### **21.4.**

During the Vessel's stay at EDR's premises, ship's crew, Customer's employees, agents and contractors have to comply with EDR's and official safety and security rules and regulations.

### **21.5.**

When hazardous work is performed on board, Customer must ensure through its own surveillance measures that all customary requirements of due care are observed. Customer must notify EDR in writing about any known hazardous situation on board.

### **21.6.**

In order to safeguard the health of crew on board and shipyard personnel, EDR Antwerp Shipyard holds the right, whenever it feels necessary, to perform Covid tests (PCR, and/or quick test) on board of the vessel whether being at our layby berth or in the drydock. Owners, Manager and Master and crew will provide maximum co-operation. Any 3rd party appointed by Owners/Managers will comply to the current covid regulations imposed by EDR Antwerp Shipyard at that time.

### **21.7.**

The shipyard has the right to take photographs of projects for commercial use only. Customer can decline this right by written declaration to the shipyard prior commencing the project.

## **22. FORCE MAJEURE**

### **22.1.**

Neither party shall be liable for delays in completion or for extension of the completion date or in other performance due to causes beyond a party's reasonable control. Same includes, without limitation and as example only: acts of God, acts of civil or military authorities, fires, strikes or other disturbances, wars, riots, insurrection, embargoes, attachments or seizures, shortages of energy or restrictions on energy consumption, unusual delays in transportation or shortage of transport means, prohibition of foreign currency transfers, general scarcity of raw materials, adverse weather conditions, breakdown of machinery, etc., even if occurring with subcontractors or suppliers of EDR (collectively, "Force Majeure").

### **22.2.**

In the event of any of such Force Majeure, the completion date will be extended for a period equal to the time lost by reason of the latter.

### **22.3.**

However, in case of such Force Majeure lasting for more than 30 days, with no reasonable expectation of prompt solution, EDR may at its sole discretion, elect to consider the contract as frustrated. EDR will in such circumstances be relieved of further responsibility under the contract, but will be entitled to full compensation for the works and materials supplied and the costs incurred till the date of invoking the frustration.

## **23. ENVIRONMENT**

### **23.1.**

The Vessel is only allowed to discharge clean ballast during its stay at yard's premises.

### **23.2.**

All garbage that Customer wishes to dispose of is to be presorted by nature, as per local regulations, and collected into the appropriate bins provided. This at the expense of the Customer.

As EDR is responsible vis-à-vis the authorities for the disposal of all produced waste, Customer shall deliver all relevant certificates to EDR prior to the Vessel's departure, if Customer decides not to use EDR's disposal services.

With regard to galley refuse, rules and regulations in force on-site are applicable.

### **23.3.**

EDR is to be advised about the possible presence of asbestos-containing materials on board the Vessel. If so, the appropriate actions, according to the rules and regulations in force, will have to be taken prior to the start of a particular work. EDR is entitled to verify this at all times and to stop all activities on board, until the situation is remedied.

### **23.4.**

All consequences of the above and possible actions to be taken in this respect will be at Customer's account.

## **24. CANCELLATION**

If Customer does not satisfy its contractual obligations, EDR shall be entitled to cancel the contract by giving notice in writing to Customer. If Customer does not remove the Vessel from EDR's premises within 24 hours from the moment of giving notice, EDR shall be entitled to have the Vessel removed at Customer's risk and expenses. This without prejudice to any and all other contractual or legal rights of EDR as per present General Terms and Conditions and / or specific and / or implied provisions of the contract and / or applicable law.

## **25. JURISDICTION AND APPLICABLE LAW**

This contract and performance, interpretation and validity thereof will be governed by Belgian law. Any dispute arising under this contract will be exclusively decided in the courts of Antwerp.