

SERVICE TERMS AND CONDITIONS

Fassmer Service America LLC

3650 NW 15th Street Lauderhill, FL 33311

- 1. Applicability.** These Service Terms and Conditions (the “Terms”) shall govern the services provided by Fassmer Service America LLC, a Florida limited liability company (“Fassmer”) to the Customer (the person or entity for which services are to be performed by Fassmer). The services may include but are not limited to the performance of inspections, maintenance and repairs on equipment or parts and all related work thereto of ships and other water vessels. These Terms automatically shall be incorporated into any contractual agreements for services by Fassmer to the Customer to perform services. In the event of a conflict between these Terms and any other agreement or arrangement between Fassmer and the Customer, these Terms shall prevail, unless Fassmer expressly agrees to modify the applicability of these Terms in signed writing and by specific reference to these Terms.
- 2. Offer and Acceptance.** All offers or quotations by Fassmer, including any change orders or modifications requested by the Customer, are not firm or binding until and unless (1) Fassmer confirms in writing its acceptance to enter into a service contract with the Customer, or (2) Fassmer delivers the supplies or products or performs the services requested by the Customer.
- 3. Scope of Obligations.** In cases of doubt regarding the scope and period of time of contractual obligations that Fassmer and the Customer have to each other, the written contract or order confirmation by Fassmer together with any documents listed therein shall control.
- 4. Information Provided by Fassmer.** All information and documents provided by Fassmer to Customer (including but not limited to drawings, details of measurements and weights or technical descriptions) are to be construed only as reasonable approximate descriptions as is customary in the industry of ship building and repair. Fassmer reserves the right to make changes to its information and documentation (such as modifications to the design, form or color, etc.).
- 5. Proprietary Technology.** All information and documents (including but not limited to technical drawings, plans, calculations, and evaluations) provided by Fassmer to the Customer and all technologies, techniques, skills and trade secrets used to perform the services are and shall remain the proprietary property of Fassmer (the “Proprietary Technology”). The Proprietary Technology includes all information and documents in any media form that is not disclosed or reasonably can be expected not to be disclosed to the public. The Proprietary Technology does not include information that is previously disclosed to the public through no fault of the Customer. Fassmer expressly reserves all rights to all the Proprietary Technology, including but not limited to copyrights, patent rights and other industrial property rights. Unless otherwise agreed to by Fassmer in writing, any Proprietary Technology that is provided or deployed to perform services for the Customer shall not be used by the Customer or its agents and affiliates for any other purpose but for the fulfillment of the services and the Customer agrees to be liable for any unauthorized reproduction or disclosure to third parties of such Proprietary Technology. The Customer agrees to promptly return all information and documents provided by Fassmer without delay upon request by Fassmer.
- 6. Customer Provided Information.** The Customer shall be responsible for the accuracy of and rights to any information that the Customer, its affiliates or agents provides to Fassmer in the performance of its services. The Customer shall indemnify and hold Fassmer harmless against any claims from third parties arising out of a violation of proprietary rights and industrial property rights by utilizing information provided by the Customer. Additional expenses incurred due to errors in drawings and other documents and information provided by the Customer shall be borne by the Customer.
- 7. Scope of Services.** The scope of repairs and their proper execution shall be determined exclusively by the Customer. Fassmer does not verify nor guarantee in any way the correctness of any content of statements provided by a classification society or of any of its representatives. Fassmer is not obligated to examine the ship/vessel or the object of its performance for the purpose of identifying latent defects.
- 8. Subcontractors.** Fassmer may subcontract all or part of the services to be provided to the Customer. All subcontractors used in the performance of the services shall not have any power to make any representations or binding commitments on or behalf of Fassmer except to the extent expressly authorized by Fassmer in writing.
- 9. Size, Weight and Nationality of Vessels.** Unless expressly stated otherwise in the contract between Fassmer and the Customer, the measurements provided in the “Register of Ships” administered by Lloyd’s Register of Shipping or those stated in the International Tonnage Certificate shall be applicable regarding dimensions and determination of the cubic meter capacity of a vessel. The Customer expressly acknowledges that all measurements at the time of contracting with Fassmer are subject to regulatory changes and changes in applicable law and Fassmer accordingly assumes no liability for such changes. In the event of such changes Fassmer, at the request of the Customer, will reasonably endeavor to adjust the objectives of the contract with the Customer accordingly, subject to price adjustments, but no such endeavor shall be construed as an obligation on Fassmer to make such adjustments. In cases where nationality or place of origin is in doubt, the nationality or place of origin shall be determined by reference to the flag the subject vessel was flying at the time of contract formation.
- 10. Customer Representatives.** The Customer shall inform Fassmer in writing no later than upon the arrival of Fassmer or its agents or subcontractors at the ship or location for performing the services as to which persons (other than the ship master) are authorized as to be the Customer’s representative and in the Customer’s absence to make and receive legally binding declarations to and from Fassmer respectively and to enter into legally binding agreements with Fassmer. The Customer agrees that if the Customer fails to name its authorized agents according to this paragraph, then Fassmer may rely on the statements on the apparent authority of any persons at the location for performing the services purporting to be agents of the Customer or making statements on behalf of the Customer, and the Customer agrees to be legally bound by such apparent authority and to indemnify and hold Fassmer harmless for its reliance on such apparent authority.
- 11. Prices.** Unless expressly agreed otherwise by Fassmer, all prices are net prices in U.S. Dollars plus any value-added tax where and to the extent applicable. In the event of any increase in costs (i.e. for wages, energy, taxes, materials, etc.) that occurs between contract formation and contract performance, Fassmer shall be entitled at its discretion to make a price adjustment that shall not exceed its prices generally in force at the time of performance, provided that more than four (4) months have lapsed between contract formation and beginning of performance.
- 12. Payments.** All payments are due upon receipt. Fassmer will invoice the Customer for services as they are performed. If the Customer fails to pay on the due date, Fassmer shall be entitled to interest from the day payment was due at a rate of Libor plus 5% (five per cent) per annum. The object of Fassmer’s performance shall only be returned to the Customer upon the Customer’s full satisfaction of Fassmer’s invoices for services performed and/or supplies provided. If the return of the object of Fassmer’s performance is delayed due to the Customer’s default of payment, all demurrage and other costs shall be borne by the Customer. Notwithstanding

the means of payment, payment shall not be deemed to have been effected before the full outstanding amount has been irrevocably credited to Fassmer's account. All banking charges and fees incurred in the making of payments, including those charged by the Customer's bank, shall be borne by the Customer. In the case of late payment by the Customer, Fassmer may at its discretion suspend performance of any of its obligations under the contract until full payment has been received by Fassmer. Fassmer shall give the Customer notice of such suspension. Any delay in payment by Customer shall be deemed a breach of contract entitling Fassmer to terminate the contract and to claim from the Customer any damages incurred thereby.

13. **Place of Performance.** The place of performance for the services shall be the location designated by Fassmer unless another place of performance has been agreed upon between Fassmer and the Customer.
14. **Risk of Loss.** Risk of accidental loss or accidental deterioration of the object of performance shall pass to the Customer in the event of delivery of the vessel or the object of performance to the Customer. Should a delivery be delayed for reasons for which the Customer is responsible, then the risk of accidental loss and accidental deterioration of the vessel or object of performance shall pass to the Customer on the day on which notice of readiness for delivery has been given to the Customer. Fassmer shall not be responsible for any damage not caused by Fassmer or its employed statutory agents employed in the course of performance of Fassmer's obligations regardless of the time the damage occurred.
15. **Work Procedures.** Customer must provide the vessel, respective service zones or the object of performance to Fassmer at a reasonable time at the agreed location and in a reasonable good and safe condition that allows Fassmer to perform the required work thereon free of any hazardous gases, cleared by hazardous cargo or other objects or supplies or materials and in accordance with any safety requirements. If the Customer fails to make such provisions, then Fassmer reserves the right to refuse taking possession or accepting delivery and the Customer shall reimburse Fassmer for any loss or expenses incurred thereby. During the period of services carried out by Fassmer and/or its subcontractors, no persons or entities other than those authorized by Fassmer and other than the vessel's crew shall be allowed to perform the contracted work on the vessel or on the object of performance without prior written consent by Fassmer. The Customer must notify Fassmer in a timely manner and in writing about any work executed by the vessel's crew or by third parties authorized by the Customer and such work is performed at the exclusive risk and responsibility of the Customer. All facilities and areas of the vessel or of the object of performance not worked on by Fassmer must be protected by the Customer against potential accidents or hazards. Where work is performed on holds, the hatch covers of such holds must be removed and stored safely by the Customer prior to Fassmer's commencement of work. Ownership of all scrap material, replaced parts and other substances removed in the course of work passes to Fassmer without any compensation if Fassmer so desires unless such material has a considerable resale value. The Customer must dispose of all toxic substances and hazardous waste at the Customer's expense and without delay, unless such disposal is included in Fassmer's contractual obligations.
16. **Acceptance of Work and Test Runs.** The Customer must accept the work or the object of performance immediately upon Fassmer's request. Acceptance shall be deemed to have occurred when the Customer resumes use of the vessel or object of performance. If the Customer does not accept the work or object of performance within the time allowed and despite Fassmer having sent reminders to the Customer setting an appropriate time limit, then Fassmer shall be entitled to rescind the contract and/or claim damages. Fassmer's claim for damages can then be either in the form of indemnification of the loss actually suffered or, without showing of any proof of loss, an amount equal to 10% of the agreed contract price. The Customer however retains the right to prove in particularity that Fassmer did not suffer any loss at all or suffered a significant lesser loss. In cases where testing is planned and agreed on, the Customer shall provide the vessel and its crew with any consumables, materials and other supplies required for the implementation of such testing. For the entire duration of testing and test runs, the Customer assumes the nautical responsibilities, the risk of any errors in operating the vessel by the vessel's crew or its other statutory agents employed in the performance of the Customer's obligations as well as the risk of accidental loss or accidental deterioration of the vessel or the object of performance.
17. **Treatment.** The Customer agrees to indemnify and hold Fassmer harmless (1) for initial filling and refills of lubricating and hydraulic oils as well as other materials and consumables used in the services, and (2) for expenses incurred for certificates attesting a gas-free condition, any degasifying of tanks, bilges or other containers carried out by Fassmer.
18. **Force Majeure.** In the event that performance of the contract by Fassmer becomes entirely or partially impossible for reasons beyond Fassmer's control, the Customer shall remunerate Fassmer for services and supplies provided up to the point of complete or partial impossibility of performance. Any occurrence of 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 perform services or to deliver supplies for the duration of such causes. Events of force majeure include but are not limited to acts of God, war, trade embargo and blockade, 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 and explosion. Should any such events render Fassmer's supplies or services impossible, Fassmer shall be fully released from its obligations in the contract with the Customer.
19. **Time Limits and Delays.** Time limits and dates shall be binding on Fassmer only upon Fassmer's express written agreement. Where no time limits or dates have been agreed to in writing, the time limits and/or dates estimated by Fassmer shall apply. In all other circumstances, the time limits and/or dates applicable are those that are appropriate considering the nature and extent of performance, the difficulty, skills and know-how required for the task. Prerequisites for the timely delivery of performance of services are the complete and timely fulfillment of the Customer's responsibilities and obligations and the Customer's cooperation including but not limited to the timely delivery of documents to be provided by the Customer, the timely submission of the vessel in a condition allowing the performance of work on it and clarification of all commercial and technical questions (including price agreements). Agreed to time limits and dates shall be extended by any delay of payments due even in cases where Fassmer has not yet asserted a right of retention or the right to refuse performance. Subsequent changes of or supplements to the scope of services and supplies shall extend the time limits and/or dates in accordance with the necessary compliance of such changes or supplements. If the completion of the object of performance is delayed by Fassmer without contractual excuse, the Customer has the right to claim 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 and without rescinding the contract, provided however that the Customer has suffered proven damages and notwithstanding the Customer's right to rescind the contract in accordance with the statutory rights of such rescission.
20. **Delivery of Services.** If the Customer for any reason is unwilling or unable to accept delivery of the object of performance or the vessel on the agreed time and/or date of delivery, then the Customer shall immediately notify Fassmer in writing thereof stating the reason and the time when delivery will be accepted. If the Customer fails to accept delivery at the agreed time, then the Customer shall pay to Fassmer such amount of the contract price as becomes due on delivery as if delivery had occurred. If necessary, Fassmer shall arrange for storage of the object of performance at the Customer's risk and expense. In case of the Customer's refusal to accept delivery, Fassmer may set a reasonable final delivery time and place. If Customer refuses or fails to accept delivery within this final time period, then Fassmer may terminate the contract in whole or in part. In such case, Fassmer shall be entitled to liquidated damages equal to 10% of the contract price and any loss sustained by Fassmer in excess thereof. Fassmer and the Customer agree that the determination of liquidated damages under this paragraph is not a penalty but a reasonable determination of damages which otherwise are difficult to ascertain.

21. **Reservation of Title.** Fassmer reserves title to any and all goods (conditional goods) delivered by it until full satisfaction of all claims to which Fassmer is entitled from the Customer under the respective contracts and all claims arising out of the business relationship with the Customer, regardless of the legal basis thereof, that have arisen or existed at the time of contract formation or that may arise in the future. The Customer shall be entitled to resell, possess, mix or combine and subsequently sell conditional goods within the scope of extended reservation to title as long as this is done in the ordinary course of business. The Customer may not pledge or transfer ownership by way of a security interest in a conditional good to third parties. The Customer must notify Fassmer promptly in writing about any attachment or seizure of property or of any other disposal. Any processing or converting of conditional goods shall be done by the Customer exclusively on the behalf of Fassmer. In cases where the Customer combines or mixes conditional goods with other goods that are not Fassmer's property, Fassmer shall acquire a property interest in the new product in proportion to the total value of this product to the invoiced value of the conditional good(s). The new products resulting from such processing also shall be deemed conditional goods. 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 hereby accepts any such assignments. If the conditional goods are sold by the Customer together with other goods not the property of Fassmer, regardless of whether with or without or after processing, the aforementioned claims shall be deemed to have been assigned to Fassmer in an amount equal to the outstanding invoice value of the conditional goods. This assignment shall not constitute a deferral of Fassmer's claim for payment against the Customer. The Customer shall retain its right to collect on claims assigned to Fassmer despite such assignment. Fassmer's authority to collect such claims itself is hereby not precluded. Fassmer will, however, not collect on such claims as long as the Customer is not in default of any payment, no petition has been filed for opening insolvency or bankruptcy proceedings on the Customer's assets or where such proceedings have not been rejected due to insufficiency of assets, or no suspension of payments has occurred. If any of these events has occurred, the Customer shall promptly notify Fassmer in writing about the claims assigned and the names of debtors of such claims. The Customer also shall provide Fassmer with the necessary information and documents to be able to collect on such claims and the Customer shall inform the various debtors of the assignment of such claims to Fassmer in writing. The Customer shall maintain conditional goods in proper condition and shall, to the extent conditional goods are not installed, store them separately and mark same as goods owned by Fassmer. Upon the Customer's request, Fassmer shall re-assign to the Customer Fassmer's title to conditional goods as well as any claims Fassmer has against such goods to the extent that the value of such collateral exceeds the value of all claims Fassmer has against Customer by more than 20%.
22. **Assignment, Set-off and Right of Retention.** The Customer may not assign any claims or rights it may be entitled to under a contract with Fassmer to third parties without Fassmer's prior written consent. The Customer may set off only such claims against Fassmer's which uncontested, non-appealable or proven by judgment. The Customer may assert a right of retention only to the extent the Customer's claim is based on the same contractual relationship with Fassmer.
23. **Inspections and Defects.** The Customer shall examine the vessel or object of performance or cause same to be examined immediately after they arrive at their agreed upon destination. The Customer shall notify Fassmer in writing immediately about any non-conformity discovered or which ought to have been discovered during its inspection, but no later than one week of arrival of the vessel or object of performance at the agreed upon destination. If the Customer fails to give such notice, its right to rely on any remedy is lost. The Customer shall notify Fassmer of any non-conformity immediately upon discovery. Any such notice to Fassmer shall be made in writing specifying the nature of the non-conformity. Unless otherwise agreed by Fassmer any and all claims of the Customer against Fassmer regarding defects shall become time-barred after one year of delivery of the vessel or object of performance. The Customer shall give Fassmer the opportunity to rectify any defect within a reasonable time, in which case Fassmer may, at its discretion, choose either to deliver a substitute good or repair any defect in the vessel or object of performance. The vessel or object of performance must be made available and accessible for Fassmer for the purpose of rectifying any defects at the place of performance or, if the place of performance is unsuitable to Fassmer, at a harbor mutually agreed on by the parties. The Customer's claims for reimbursement of expenses incurred for the rectification of defects including but not limited to the cost of constructing the vessel or the object of performance shall be excluded. In cases where Fassmer has been notified about defects in accordance with the notification provisions herein, Fassmer shall only be obligated to rectify a defect after the Customer has already paid a reasonable portion of the contract price. The Customer is authorized to deduct from the contract price a maximum of triple the necessary costs of rectifying the defect. If rectification of the defect fails or becomes impossible or if such rectification is not reasonably acceptable to either the satisfaction of Fassmer or the Customer or if rectification is associated with additional disproportionate costs and expenses and refused by Fassmer for that reason, then the Customer may, subject to any statutory requirements, rescind the contract or reasonably reduce Fassmer's enumeration without prejudice to claims for damages that the Customer may otherwise have. If Fassmer has not rectified the non-conformity on the vessel or object of performance or delivered a substitute product within a reasonable time after having received notice of the non-conformity, then the Customer shall fix an additional reasonable period of time for Fassmer to repair the defect or to deliver a substitute product. If Fassmer fails to rectify the non-conformity within this additional time period, then the Customer shall be entitled to either (1) a proportionate price reduction not to exceed 10% of the contract price or (2) terminate the contract provided that the non-conformity constitutes a fundamental breach by Fassmer and to claim damages for any loss incurred by the Customer provided that such damages shall not exceed 10% of the contract price. Any non-conforming vessel, part or object of performance that have been replaced by Fassmer are the property of Fassmer and shall be made available by the Customer to Fassmer upon Fassmer's request. Fassmer will not be held liable for any non-conformity arising out of any illegal activity or out of any use of the vessel or object of performance not in accordance with the conditions of operation or out of any other improper use of the vessel or object of performance. Fassmer will not be held liable for any non-conformity that was caused by the lack of or performance of faulty maintenance, incorrect installation or faulty repair by the Customer or its agents or by any alteration by Customer carried out without Fassmer's prior written consent. Fassmer will not be held liable for normal wear and tear or deterioration. The remedies for non-conformity provided in this paragraph shall be the sole and exclusive remedies available to the Customer.
24. **Warranties.** EXCEPT AS EXPRESSLY AGREED OTHERWISE, FASSMER ALL PRODUCTS AND SERVICES PROVIDED BY FASSMER ARE SOLD "AS IS" AND FASSMER EXCLUDES AND DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE. FASSMER SHALL NOT BE LIABLE FOR AND DOES NOT WARRANT FOR ANY PRODUCT MODIFICATIONS, ALTERATIONS, INNOVATIONS OR CHANGES, WHETHER THESE ARE MADE BY THE CUSTOMER OR BY ANY OTHER PERSON NOT UNDER THE EMPLOY OF FASSMER. ANY WARRANTIES GIVEN BY FASSMER ARE FOR THE CUSTOMER'S BENEFIT ONLY AND ARE NOT TRANSFERABLE.
25. **Liability.** The Customer agrees to indemnify and hold Fassmer and its subcontractors and authorized agents harmless from any liability whatsoever arising in connection with the performance of services for the Customer. The Customer shall be responsible for the safety, security and surveillance of its vessels, cargo and all of the Customer's supplies, in particular for watch guards and for the observation and adherence to relevant laws and statutory rules and regulations (i.e. regulations for the prevention of accidents). The Customer shall be responsible for any statutory agents employed by it in the course of performance of its duties and obligations as well as for its vicarious agents. All other measures required for the prevention of damages and accidents and mooring fall are the Customer's responsibility. When hazardous work is performed on board of a vessel, the Customer through its own surveillance measures must ensure that all customary requirements of due care are adhered to. The Customer must notify Fassmer in writing about any imminent dangers. Claims other than those provided for herein or in the contract agreement entered into with the Customer shall be excluded, unless they arise from the statutory products liability provisions or from the intentional or grossly negligent breach of contractual or from legal obligations by the executive bodies or senior management of Fassmer; or from personal injuries of Customer or its employees caused by a breach of duty for which Fassmer is responsible; or from the warranty for the presence of particular characteristics; or from violation

of essential contract obligations by Fassmer. Without any prejudice to the events of liability specified above, Fassmer shall not be liable for damages to the Customer arising out of an intentional or grossly negligent breach of duty, except in case of a violation of an essential contract obligation. In particular, Fassmer shall not be liable for a breach of duty owed to the Customer to exercise proper care and supervision of ordinary statutory agents employed by Fassmer in the performance of its contract obligations. If Fassmer has violated essential contract obligations, any claims for damages by the Customer against Fassmer shall be limited to foreseeable damages that are typical for the contract unless there is intentional misconduct or gross negligence involved or the claim against Fassmer is based on personal injury of Customer or its employees or on a breach of Fassmer's warranty for the presence of particular characteristics.

26. **Insurance.** The Customer shall cover all relevant risks in the performance of the services by Fassmer by purchasing the necessary insurances available therefore. The Customer shall ensure that the hull and P&I insurance is in place for the duration of maintenance, conversion or repair work assumed and carried out by Fassmer and that the relevant insurance policy is extended to cover builders' risk (including trial runs). 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 named co-insureds in the insurance policy.
27. **Resolution of Disputes.** Unless the contract between the parties expressly states otherwise, the parties agree that these Terms and the respective obligations the parties have to each other shall be governed and construed according to the laws of the State of Florida without regard to any conflicts of law principles. The parties hereby expressly derogate any application of the United Nations Convention on Contracts for the International Sale of Goods and other international laws. Venue for the resolution of any disputes between the parties by legal or alternative dispute resolution means shall be in Miami-Dade County, Florida. THE PARTIES HEREBY EXPRESSLY WAIVE THEIR RIGHT TO TRIAL BY JURY FOR THE RESOLUTION OF ANY DISPUTES.
28. **Invalid Provisions.** Should any of the provisions contained in a contract, to which these Terms form an integral part, be or become invalid, then the remaining provisions shall nonetheless remain unaffected thereby.