

## **General Terms of Contract Implementation**

### **1. General provisions.**

- 1.1. These General Terms of Contract Implementation [hereinafter: "**GToCI**"] regulate the principles of sales of goods and services by Phoenix Poland Sp. z o.o. and Phoenix Poland Sp. z o.o. Sp.k. [hereinafter: "**Phoenix Poland**"].
- 1.2. GToCI constitute an integral part of contracts, offers, orders and order confirmations, and in such scope they apply to Phoenix Poland and its Client [hereinafter the "**Client**"], unless both contracting parties decide otherwise.
- 1.3. The GToCI shall apply to all contracts concluded between Phoenix Poland and the Client and to all factual and legal actions undertaken by Phoenix Poland and the Client in order to perform the concluded contracts.
- 1.4. The application of any general terms and conditions (contract templates) of the Client is hereby excluded.
- 1.5. Any changes to the terms of the contract require the express consent of Phoenix Poland, expressed, under pain of being declared null and void, in documentary form (in writing, by e-mail or by fax).

### **2. Awarding of the contract.**

- 2.1. The contract is concluded by the Client submitting an order to Phoenix Poland to perform a service or sale of goods by Phoenix Poland on the basis of Phoenix Poland's offer or without such an offer, which integral part is the GToCI, and then confirming the acceptance of the Client's order by Phoenix Poland.
- 2.2. The Client's order shall be deemed accepted if Phoenix Poland confirms the acceptance of the order in documentary form (in writing, by e-mail or by fax).
- 2.3. The conclusion of the contract shall mean acceptance of the GToCI by the Client.

### **3. Performance of an order to provide services.**

- 3.1. Phoenix Poland performs services within the time specified in the accepted order. Phoenix Poland guarantees the performance of services within the agreed time on condition that the Client performs all the necessary actions for the proper order performance by Phoenix Poland, in particular, provides the relevant parts, materials and documentation, as well as makes available the appropriate place to perform the services.
- 3.2. The Client shall be obliged, at its own expense, to provide Phoenix Poland, during the performance of services, with access to electricity, drinking water, a properly secured place for storing tools and a social room for Phoenix Poland's personnel.
- 3.3. The Client is obliged to cooperate fully with Phoenix Poland in order for Phoenix Poland to properly perform the services.

- 3.4. If in the place of performing services by Phoenix Poland, there are internal procedures, regulations, fire and occupational health and safety regulations in force, the Client is obliged to train Phoenix Poland's personnel in this field free of charge.
- 3.5. If, in the event of the Client's delay in the performance of its obligations provided for in sections 3.1 - 3.4 above, Phoenix Poland could not provide services despite its readiness, the Client shall be obliged to pay remuneration for Phoenix Poland's readiness to provide services in the amount determined in the order.
- 3.6. If the delay referred to in paragraph 3.5 above exceeds 5 days, Phoenix Poland shall be entitled, but not obliged, to withdraw from the contract. In this case, the Client shall pay Phoenix Poland remuneration for the period of readiness to provide services in the amount established in the order, as well as reimburse Phoenix Poland for the expenses incurred.
- 3.7. All transport costs related to the execution of the order, including travel costs of Phoenix Poland personnel to and from the place of service provision, local travel costs and costs of accommodation and meals of Phoenix Poland's personnel, shall be borne by the Client. The provision of paragraph 3.6 above shall apply accordingly. The costs of accommodation and meals shall be charged to the Client even in the event of inability to perform the works subject to the Contract for reasons beyond Phoenix's control (including inability to perform the works subject to the Contract confirmed by a medical certificate).
- 3.8. In any case, Phoenix Poland shall be entitled to entrust part or all of the services to subcontractors, unless the parties have expressly agreed in the order that Phoenix Poland will perform them personally.
- 3.9. If, in the course of providing the services, the need arises for additional work that was not included in the order, Phoenix Poland shall provide the Client with a list of the additional work necessary to be carried out and the remuneration due to Phoenix Poland on this account. The Client's acceptance of the offer to perform additional works shall mean its consent to the additional remuneration. In the event that the Client does not agree to the additional works, which in the opinion of Phoenix Poland determine the execution of the order, Phoenix Poland is entitled to withdraw from the contract. The provision of section 3.6 above shall apply accordingly.
- 3.10. The date of completion of the order is given in the Timesheet issued by Phoenix Poland after the completion of the provision of services. Signing of the Timesheet by the Client's representative (in particular, by the ship's captain or superintendent) means confirmation of the completion by Phoenix Poland of the works listed in this document, their completion time and materials used.
- 3.11. In the event that prior to the signing of the Timesheet, the Client commences the operation of the equipment in relation to which Phoenix Poland performed the work specified in the order, it shall be deemed that the parties have accepted the work performed by Phoenix Poland without reservation.
- 3.12. The Client is obliged to specify the way of collecting waste produced during the works performed under contract, the way of their disposal, as well as to ensure that the contract is implemented in accordance with current legal regulations concerning environmental protection.

- 3.13. Should the provision of services require supervision, including audits of quality during and after performing all the works subject to the contract or part of them, the cost of supervision, of audits by classifying associations or other qualified authorities and institutions, as well as of preparation of appropriate technical documentation are charged to the Client.
- 3.14. The Client can at any time demand a change to the subject of the contract. In such case, besides the agreed remuneration, the Client is obliged to pay the remuneration increased in accordance with the broadened scope of works and to cover any additional costs connected with the change to the subject of the contract. In case of a change to the subject of the contract resulting in a decrease in the value of the works or in a lack of increase in the value of the works, the Client is obliged to pay the agreed remuneration and to cover additional costs connected with the change to the subject of the contract.
- 3.15. The Client is obliged to take out an insurance on the subject of the contract against the risks connected with the performance of the ordered works.

#### **4. Performance of an order for the delivery of goods.**

- 4.1. Phoenix Poland undertakes to provide the Client with the necessary information on products delivered by Phoenix Poland, their functionality and conditions of use. By placing an order for a given Phoenix Poland product, the Client declares that it has familiarised itself with all the information and documents necessary to ascertain the product's functionality.
- 4.2. In the event that Phoenix Poland manufactures a product dedicated to the Client and according to its specifications, the Client shall be responsible for the consequences of providing incorrect or incomplete technical data.
- 4.3. Phoenix Poland undertakes to deliver the product on the date specified in the accepted delivery order. Phoenix Poland is entitled to postpone the delivery date in the event of circumstances for which it is not responsible. In this case, Phoenix Poland shall immediately inform the Client of the nearest possible delivery date.
- 4.4. The delivery of products takes place at the expense and risk of the Client. Unless otherwise specified in the contract the terms of delivery are EXW according to INCOTERMS 2020.
- 4.5. The document confirming the product delivery shall be a delivery note, which the Client is obliged to sign upon the product delivery.
- 4.6. The Client shall be obliged to examine the delivered shipment containing the ordered product in the manner adopted for this type of shipments. In the event any damage is found, the Client shall demand that a damage protocol is drawn up and signed by the supplier.
- 4.7. The Client shall examine the products immediately after delivery, but not later than within 3 days of delivery and notify Phoenix Poland of the discovered apparent quantitative deficiencies, apparent quality defects or other non-conformity of the delivery with the order.
- 4.8. The Client shall be entitled to complain about products which do not correspond with the order, provisions of the contract, samples previously delivered or defective products.
- 4.9. The defect of the product shall be its physical defect, legal defect, as well as quantity shortage and its non-compliance with any provisions of the contract.



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- 4.10. In order to execute its rights of complaint, the Client shall immediately, but not later than within 4 days from the date of delivery of the product, notify Phoenix Poland of the defect, specifying in the notice the type of defect and actions expected from Phoenix Poland.
- 4.11. Phoenix Poland is obliged to respond to the complaint immediately, but no later than within 14 days from the date of filing a complaint.
- 4.12. In the case of the validity of the complaint, Phoenix Poland shall provide the Contractor with products free from defects or remove the defect (at its own discretion), and the Client shall send the advertised products to Phoenix Poland.

## 5. Documentation relating to the performance of services

- 5.1. Upon completion by Phoenix Poland of the services referred to in clause 3 above, Phoenix Poland shall prepare abbreviated technical documentation relating to the performance of the order, to the extent necessary to enable an inspection by the competent classification society or other authorized authorities or institutions [hereinafter: the "**Technical Report**"].
- 5.2. The Technical Report is prepared solely for the purpose of enabling a technical assessment by a classification society or other authorized authorities or institutions and does not constitute full final documentation of the performance of the order.
- 5.3. Independently of the Technical Report, Phoenix Poland shall prepare a full final report on the performance of the order, including in particular a detailed description of the scope of work performed, the technical solutions applied, and other information relevant from the perspective of the execution of the order [hereinafter: the "**Final Report**"].
- 5.4. The release of the Final Report to the Client shall take place only after the Client has first settled in full all remuneration due to Phoenix Poland, as well as any other amounts payable under the agreement, the order, or the GToCI.
- 5.5. Until the Client fulfills the condition referred to in clause 5.4 above, Phoenix Poland shall be entitled to withhold the release of the Final Report, which shall not constitute a breach of the agreement or improper performance of Phoenix Poland's obligations.
- 5.6. The preparation or delivery of the Technical Report by Phoenix Poland shall not constitute:
  - 5.6.1. acceptance of the works performed by Phoenix Poland;
  - 5.6.2. confirmation that all works covered by the order have been completed;
  - 5.6.3. grounds for demanding the release of the Final Report.
- 5.7. The Parties hereby agree that the Technical Report may not be used by the Client for purposes other than those specified in clause 5.1 above; in particular, it may not be treated as final documentation of the performance of the order or as a document confirming that settlements between the Parties have been completed.
- 5.8. The provisions of this clause shall apply exclusively to orders covering the provision of services by Phoenix Poland as referred to in clause 3 above and shall not apply to orders performed in connection with the supply of goods referred to in clause 4 above.

## 6. Remuneration.

- 6.1. The amount of remuneration due to Phoenix Poland and the date of its payment shall be specified each time in the accepted order or other document accepted by Phoenix Poland.
- 6.2. The hourly rates in the contract also applies during the travel to / from place of work. Travel wage is calculated as an hourly rate multiply by number of travelling hours but not more than 8 hours per day (every 24 hours).
- 6.3. Work during Polish National Holidays will be charged double (100% more).
- 6.4. Phoenix Poland is entitled to remuneration specified in the contract for readiness to perform the works subject to the contract by the person used by Phoenix Poland to implement the contract even if the company's inability to provides its services was caused by the Client or persons for whom the Client is liable, who are his subordinates or who are connected with him.
- 6.5. The basis for issuing a VAT invoice for services rendered by Phoenix Poland is the Timesheet.
- 6.6. The amount due is payable within 14 days of invoice.
- 6.7. The costs of bank transfers will be charged to the Client.
- 6.8. Should the term of contract exceed 30 days, it will be possible to issue down payment invoices on conditions agreed by both parties.
- 6.9. The Parties hereby agree that the preparation or release of the Final Report referred to in clause 5 above shall not constitute a condition for the creation or maturity of the remuneration due to Phoenix Poland, and the failure to release such report, in particular for reasons attributable to the Client, shall not entitle the Client to withhold payment or to raise any objection of improper performance of the agreement.

## **7. Payment of remuneration and procedure of debt collection.**

- 7.1. After the half of the payment period of Phoenix Poland's remuneration specified in the VAT invoice, the Phoenix Poland's representative will contact the Client's payment department to confirm receipt of the VAT invoice by the Client and the date of the planned payment. If Client did not receive a VAT invoice, for whatever reason, Phoenix Poland will send a VAT invoice to the e-mail address indicated by the Client and the e-mail address of the superintendent responsible for the ship on which the Phoenix Poland services were provided. Re-submission of the VAT invoice does not extend the payment period, unless the nondelivery of the VAT invoice was due to the fault of Phoenix Poland.
- 7.2. On the day preceding the payment date of Phoenix Poland 's remuneration specified in the VAT invoice, the Phoenix Poland's representative will contact the Client's payment department and ask for confirmation of the payment order. In the event of non-payment of remuneration due to: (1) the lack of the superintendent's signature - Phoenix Poland will contact the competent person directly to determine the reasons for withholding the payment transfer, (2) the lack of funds on the part of the client – Phoenix Poland is authorized, but not obliged, to agree with the Client a new payment deadline or repayment schedule.
- 7.3. Within 3 - 5 days after the date of payment of Phoenix Poland 's remuneration specified in the VAT invoice, Phoenix Poland will send the first request for payment to the Client's payment department and the superintendent responsible for the ship on which the Phoenix Poland 's services were provided.



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- 7.4. Within 7 - 10 days after the payment of Phoenix Poland 's remuneration specified in the VAT invoice, Phoenix Poland will send a demand for payment to the Client's payment department and the superintendent responsible for the ship on which the Phoenix Poland services were provided, stating that non-payment will result in billing by Phoenix Poland interest for untimely payment.
- 7.5. Within 14 days of the date of payment of Phoenix Poland 's remuneration specified in the VAT invoice, Phoenix Poland will send a demand for payment to the Client's payment department and the superintendent responsible for the ship, with an interest note.
- 7.6. Within 21 - 28 days after the payment of Phoenix Poland 's remuneration specified in the VAT invoice, Phoenix Poland will send a demand for payment to the Client's payment department and the superintendent responsible for the ship on which the Phoenix Poland services were provided, with an interest note and at the same time Phoenix Poland will forward further collection to legal department.

## **8. Liability.**

- 8.1. Phoenix Poland undertakes that the quality, features, markings and packaging of delivered products and services will be consistent with applicable regulations and standards and that they will be free from legal and physical defects.
- 8.2. Phoenix Poland is responsible only for the compliance of products and services provided with the contract and the mandatory provisions of the law. Phoenix Poland's liability is limited to the value of the services and products purchased by the Client. The parties hereby exclude, pursuant to Article 558 § 1 of the Civil Code, the liability of Phoenix Poland under the warranty.
- 8.3. The liability of Phoenix Poland shall be limited to the value of the actual damage incurred by the Client, excluding any indirect damage, in particular, loss of profits and pure property loss, provided that the damage was caused by gross negligence or intentional fault of Phoenix Poland.
- 8.4. Phoenix Poland's liability is excluded if the damage is caused by the use of materials (including but not limited to individual components as well as entire engines) or documentation provided by the Client which are inappropriate, used, worn out or contain defects.
- 8.5. Should the Client provide Phoenix Poland with used materials, renovated materials or materials with faults to perform works subject to the contract, the liability of Phoenix Poland stemming from warranty is excluded.
- 8.6. In the event of injury to a person used by Phoenix Poland to perform works subject to the contract arising while performing the works subject to the contract on the facility owned by the Client, the Client is obliged to ensure appropriate care for the person, including medical care. Should the injury to the person be caused by actions or abandonment by the Client or other persons for whom Phoenix Poland is not liable, the Client is obliged to pay damages to the injured person.

## **9. Guarantee.**

- 9.1. Phoenix Poland hereby guarantees that the services supplied in the performance of the contract will comply with the specifications of the accepted order.
- 9.2. Unless otherwise agreed by the parties in the contract, the guarantee period is:
  - 9.2.1. 6 months in respect of engine repairs carried out and supervised by Phoenix Poland;
  - 9.2.2. 6 months in respect of workshop works involving the regeneration of components;
  - 9.2.3. 12 months in respect of installation of the synchronization and power distribution system design by Phoenix Poland;
  - 9.2.4. 12 months in respect of installation of the control system for Sole Diesel / Baudouin aggregates designed by Phoenix Poland.
- 9.3. The period referred to in clause 8.2. above shall be calculated from the date of signing of the Timesheet by the parties, and if the parties have not signed this document - from the date of termination of the provision of services by Phoenix Poland.
- 9.4. In the case of the supply or installation of new parts or modules, as well as the sale or supply of spare parts, the guarantee period indicated in the manufacturer's guarantee for a given part shall apply. All guarantee claims regarding such parts shall be submitted to the manufacturer of the part.
- 9.5. Under the guarantee, Phoenix Poland undertakes to remove at its own expense, physical defects of the service performed, if these defects are revealed during the guarantee period and are a consequence of faulty performance of services by Phoenix Poland.
- 9.6. The guarantee granted by Phoenix Poland does not cover defects and faults originating in materials or documentation provided by the Client, and also those which arise as a result of improper use of devices or products or mechanical damage.
- 9.7. All complaints must be reported to Phoenix Poland during the guarantee period, in electronic form (tech@phoenix-poland.com) or in writing, within 3 days of the discovery of a defect. The guarantee does not cover defects, which were reported in a manner other than that specified above.
- 9.8. Upon receipt of a complaint, Phoenix Poland within 14 days will verify its validity and issue a statement of acceptance or non-acceptance of the complaint. For this purpose, Phoenix Poland may commission an expert opinion from an independent entity or conduct an inspection through its representative.
- 9.9. In order to properly conduct the complaint procedure, the Client is absolutely obliged to refrain from using the items in which a defect was detected and from any interference with the object (including the disassembly of the object) until Phoenix Poland issues a statement of acceptance or non-acceptance of the complaint and a possible inspection by a representative of Phoenix Poland. In the event of non-compliance by the Client with the obligations set out in the preceding sentence, as well as conducting an inspection of the object without the participation of a representative of Phoenix Poland, the guarantee shall expire.

## **10. Withdrawal of the execution of the order.**

- 10.1. Until the completion of the execution of the order, the Client may withdraw from the order, with simultaneous payment to Phoenix Poland of the entire agreed remuneration and reimbursement of expenses incurred by Phoenix Poland.

- 10.2. If the Client's performance of the contract is uncertain due to the Client's financial condition, Phoenix Poland shall be entitled, at its discretion, to withhold the execution of the order until the Client has made full or agreed prepayment for the Phoenix Poland product or service or has provided Phoenix Poland with appropriate payment security.
- 10.3. Phoenix Poland shall be entitled to withdraw from the contract if the Client fails to perform the necessary actions for the proper execution of the order by Phoenix Poland, in particular fails to provide the relevant parts, materials and documentation and fails to make available a suitable place for the provision of services. In the event of withdrawal from the contract, the Client shall reimburse Phoenix Poland all costs incurred by Phoenix Poland in order to perform the order.
- 10.4. For non-performance or improper performance of duties by the Client, including delay in provision of materials or documentation or equipment necessary for Phoenix Poland to implement the contract correctly, other than payment of remuneration, Phoenix Poland is entitled to calculate and charge a fine of 2,000 EUR for each day of delay or for each failure.
- 10.5. The payment of contractual penalty does not mean that Phoenix Poland renounces the right to claim compensation in accordance with general rules of law.

## **11. Force Majeure.**

- 11.1. Neither party shall be liable for non-performance or improper performance of its obligations under the agreement if such non-performance or improper performance is caused by force majeure.
- 11.2. Force majeure shall be understood as an external event of extraordinary nature, beyond the control of the parties, which cannot be prevented with the use of the utmost diligence, in particular but not exclusively:
  - 11.2.1. decisions of the authorities;
  - 11.2.2. epidemics or pandemics;
  - 11.2.3. war, including civil war;
  - 11.2.4. riot, acts of sabotage, civil commotion;
  - 11.2.5. natural disasters such as storms, hurricanes, earthquakes, floods.
- 11.3. Each party undertakes, as far as possible, to inform the other party of any events having the characteristics of force majeure that may affect the performance of obligations under the agreement so as to enable the other party to take measures to minimise the consequences of such event.
- 11.4. If force majeure causes a party to fail to perform or improperly perform its obligations under the contract then:
  - 11.4.1. that party shall immediately notify the other party in writing at the address indicated as the party's registered address of the occurrence of such an event, and shall furthermore inform the other party of the relevant facts affecting the course of such an event, in particular the anticipated date of its termination and the anticipated date of the resumption of performance of the obligations under the contract and the termination of such an event, if possible providing documentation in this respect;
  - 11.4.2. the parties shall agree on how to deal with the event;

- 11.4.3. that party shall commence remediation of the event without delay;
- 11.4.4. each party shall exercise the utmost diligence for the proper performance of its obligations under the contract and shall promptly fulfil its obligations under the contract once the causes of the event and/or its consequences have been remedied.
- 11.5. If a delay in performance continues for more than three months, the other party may terminate the contract with immediate effect.

## **12. Confidentiality.**

- 12.1. Each party undertakes to keep strictly confidential all confidential information and facts of which it becomes aware in connection with the conclusion and performance of the agreement. This obligation also applies to documents, materials and any other information carriers. Confidential information is any information not disclosed to the public, irrespective of its legal, economic, organisational or any other nature, concerning the party and entities related to it by capital, contract or organisation. Confidential information also includes data and information concerning current, former and future employees, collaborators, suppliers and contractors of the parties. Confidential information includes, in particular, the business confidentiality referred to in Article 11 Cl. 4 of the Act of 16 April 1993 on Combating Unfair Competition.
- 12.2. The information referred to in clause 11.1 above may be disclosed only with the prior consent of the other party expressed in writing under pain of invalidity. The obligation of confidentiality shall also apply for 3 years after the termination of the agreement.
- 12.3. It shall not be a breach of confidentiality obligations to disclose information under mandatory provisions of law or a decision or order of a state authority or institution binding on one of the parties.

## **13. Contact.**

- 13.1. Contact persons as well as means of contact (address, e-mail, fax and the like) are specified by the parties in the contract, that is the Client specifies them in the order and Phoenix Poland in the confirmation of the order.
- 13.2. The other party is to be informed about any amendments to the contact data of the contact persons. Otherwise any information sent to the last known address or to the last known contact person shall be deemed successfully delivered.

## **14. Non-solicitation.**

- 14.1. The Client undertakes that during the term of the order and for a period of 24 months from the date of completion of the order performance, the Client shall be prohibited from establishing an employment relationship or any cooperation in any other form (i.e. in any form and on any legal basis, in particular, under civil law contracts other than employment contract) with persons who, during the term of the order, provided work for Phoenix Poland under an employment contract or performed, in the name and on behalf of Phoenix Poland, under any

civil law relationship, duties corresponding in their scope and nature to the activities covered by the order (including acting as Phoenix Poland's subcontractors).

- 14.2. To the same extent, the Client undertakes not to induce the persons listed in clause 13.1. above to terminate the agreement with Phoenix Poland or to fail to perform or improperly perform the agreement.
- 14.3. The Client agrees that in the event that it violates the prohibition set forth in clause 13.1. and 13.2. above, it shall pay Phoenix Poland a contractual penalty in the amount equivalent to three times the monthly standby rate of an employee or associate of Phoenix Poland specified in the Phoenix Poland's offer that is the basis of the order for each instance of violation of the prohibition set forth therein.

#### **15. Final provisions.**

- 15.1. Should a regulation of the GToCI be in conflict with any articles of law, the remaining regulations of the GToCI remain binding.
- 15.2. Any amendments to the contract are to be done in accordance with specifications agreed by the parties in the contract (in the Client's order and the confirmation of the order by Phoenix Poland).
- 15.3. All agreements concluded between Phoenix Poland and the Client are governed by Polish law. In the matters not regulated in GToCI and the contract between Phoenix Poland and the Client, the relevant provisions of Polish law shall apply.
- 15.4. Any disputes arising between Phoenix Poland and the Client shall be settled by a common court competent in terms of substance for the registered office of Phoenix Poland.
- 15.5. The Polish version of the GToCI is the binding one.
- 15.6. The current version of GToCI is always available at: <http://www.phoenix-poland.com/>.