

# NAVADAN

## General Terms and Conditions for Specialist Personnel Services and Sales



### 1 INTERPRETATION

1.1 In these Conditions the following words will (unless the context otherwise requires) have the following meanings:

**"Customer"** means the person, firm or company that has requested any Work identified in the Order;

**"Conditions"** means the General Terms and Conditions for Specialist Personnel Services and Sales set out herein;

**"Contract"** means any contract for Work between the Customer and NAVADAN;

**"Goods"** means goods supplied by NAVADAN (as defined in NAVADAN's tender or order acknowledgement);

**"IPRs"** means any intellectual property rights of any nature including without limitation any and all inventions, patents, utility models, design rights, copyright, know how, trade secrets, confidential information, trademarks, service marks, trade names and goodwill;

**"NAVADAN"** means NAVADAN APS and its branches and affiliates;

**"Order"** means an order placed by the Customer with NAVADAN for Work;

**"Services"** means services supplied by NAVADAN (as defined in NAVADAN's tender or order acknowledgement);

**"Site"** shall mean the place where the Services are to be performed by NAVADAN together with so much of the area surrounding the said place as NAVADAN shall actually use in connection therewith;

**"Specialist Personnel"** means the specialists chosen by NAVADAN to perform the Services;

**"Work"** means Goods and/or Services.

1.2 The headings in these Conditions are for convenience only and shall not affect their interpretation.

### 2 FORMATION

2.1 All tenders are made and Orders are accepted by NAVADAN subject to the Conditions and they shall apply to all Contracts to the exclusion of any other terms and conditions including without limit those which the Customer purports to apply under any Order. Variations to the terms of any Contract will only be effective if agreed in writing. If any such agreed variation increases the time or cost to NAVADAN of performing the Contract then the Contract price and/or program will be adjusted accordingly.

2.2 Orders from the Customer are only binding on NAVADAN after a written order acknowledgement has been issued and only on the conditions stated in the order acknowledgement.

2.3 All information on weight, dimensions, capacity, price, technical and other data stated in catalogues, prospectuses, circulars, advertisements, illustrated matter and price lists is to be considered approximate. Such information is only binding to the extent expressly stated in the order acknowledgement or in other documents forming part of the Contract expressly referring to such information.

### 3 DELIVERY AND NON-DELIVERY AND DELAY

3.1 Unless otherwise expressly agreed in writing by NAVADAN

- delivery times accepted by NAVADAN are given in good faith but are an estimate only; and

- delivery of the Goods is made „Ex Works“ in accordance with Incoterms 2000

3.2 Performance of the Services shall be at the Ship(s) specified in NAVADAN's tender or order acknowledgement.

3.3 NAVADAN may deliver Goods in installments and perform Services in sections in any sequence. Default by NAVADAN, howsoever caused, in respect of one or more installments and/or sections shall not entitle the Customer to terminate the relevant Contract as a whole.

3.4 Where:

(a) The Customer fails or refuses to accept delivery of any Goods when they are ready for delivery in accordance with the relevant Order; or

(b) NAVADAN agrees (at its sole discretion) to postpone delivery of the Goods at the request of the Customer; or

(c) The Customer fails to provide any instructions consents or authorizations required to enable the Goods to be delivered on the due date; the risk in the Goods shall pass immediately to the Customer, delivery of the Goods shall be deemed to have taken place and NAVADAN may store or arrange for storage of such Goods and charge the Customer for all related costs and expenses (including storage and insurance) and may sell such Goods after expiry of 28 days following such failure or refusal and deduct any monies payable to NAVADAN by the Customer from the sale proceeds and charge the Customer for any shortfall below the Contract price.

3.5 Upon delivery to the Customer, all Goods should be examined. NAVADAN shall not be liable for any shortages in, damage to or non-delivery of Goods unless the same is notified by the Customer to NAVADAN (together with all specific details) in writing within 10 hours of the actual date of delivery. Subject to such notice being provided NAVADAN shall, if it is satisfied that any Goods have not been delivered and the cause thereof being beyond the reasonable control of NAVADAN, at its sole discretion, either arrange for delivery as soon as reasonably possible or give credit to the Customer for such Goods and this shall be the Customer's only remedy and in lieu of all other rights and remedies which might otherwise be available to the Customer. Shortages in, or non-delivery of some or part of the Goods shall not affect the Contract in respect of the other or other parts of the Goods.

### 4 PRICE AND BINDING PERIOD OF QUOTATIONS AND TENDERS

4.1 Unless otherwise agreed, quotations and tenders cease after 30 days from their date.

4.2 Unless fixed prices have been agreed in writing by NAVADAN, all sales are made at the prices valid at the date of NAVADAN's tender or the date of NAVADAN's order acknowledgement (as the case may be).

4.3 NAVADAN shall neither be entitled nor obliged to implement changes in the scope of supply, before the Parties have reached an agreement regarding the corresponding adjustment of the Contract price and the delivery time.

4.4 Unless otherwise agreed by NAVADAN in writing, sums payable by the Customer to NAVADAN shall fall due and be effected by the Customer net cash not later than 30 days after the date of the invoice. If any sum payable under the Contract is not paid when due then without prejudice to NAVADAN's other rights under these Conditions, such sum shall bear interest from the due date until payment is made in full, both before and after any judgment, at 8% per annum over the rate of the main refinancing facility of the European Central Bank in force on the due date of payment.

### 5 PROVISION OF SERVICES

5.1 Unless otherwise expressly agreed in writing, Services rendered by NAVADAN shall be charged on a time basis in accordance with NAVADAN's general rates for personnel valid at the date of the provision of the Services. Such rates are exclusive of board, lodging and transportation and such other facilities as are to be provided by the Customer free of charge. All travelling expenses and costs of carriage of luggage, instruments and tools incurred by the Specialist Personnel shall be finally borne by the Customer. Unless otherwise agreed NAVADAN's execution of Services is subject to manual assistance being rendered by the Customer either through vessels crew or other persons made available by the Customer.

5.2 The taking-over of the Works by the Customer shall be deemed to have taken place at the latest, when the Customer has received NAVADAN's notice that the Work has been completed, provided that the Work is as required for taking-over according to the Contract. Minor deficiencies which do not affect the efficiency of the Work shall not prevent taking over. The period, referred to in Condition 6.1 shall start to run at the latest when the Work is ready for taking-over in accordance with this Condition 5.2.

5.3 NAVADAN shall be responsible for the adherence to legal or other regulations applicable at the Ship(s) only as far as the Customer has sufficiently informed NAVADAN of such regulations in advance.

5.4 The daily working time shall be arranged by the Customer and the Specialist Personnel at the Ship(s), and the actual working time shall be certified on work sheets by the Customer.

5.5 NAVADAN will invoice Customer within a reasonable period after the completion of the Works.

5.6 In the event of illness during employment of the Specialist Personnel, payment of the daily rates shall be continued for the time during which the Specialist Personnel has to remain in the country where the Ship(s) is located owing to illness. If it is necessary for the incapacitated Specialist Personnel to return home, the travelling costs including allowance and daily rates for the travelling time shall be borne by the Customer.

5.7 For Services rendered abroad, any costs arising in connection with illness or accidents, e.g. costs of medical treatment, hospital care or similar treatment, and medicine, shall be borne by the Customer.

### 6 WARRANTY

6.1 NAVADAN or any associated or subsidiary company's warranties of suitability, fitness and merchantability, if any, as well as any expressed warranties regarding NAVADAN Goods shall not be effective or actionable unless the Goods are used as directed and in no other manner due to potential hazards from improper use of the Goods described in NAVADAN Product Information Sheets and/or manuals. Goods may vary slightly depending on country of origin.

6.2 The obligations of NAVADAN under the Contract are limited so that in the event of any defect in any Goods or Services NAVADAN shall only be obliged (and shall have no further liability in contract, negligence or otherwise for any defect in quality of the Goods and/or Services) at its option either to:

(a) credit the price (if already paid) attributable to the faulty Goods or Services; or

(b) repair, rectify or replace the faulty Goods or Services provided that such Goods are returned to NAVADAN in their delivered state at the Customer's expense if so requested by NAVADAN within 6 months from the date of their delivery. NAVADAN shall especially not be responsible for offloading of cargo and/or any precondition works necessary to repair and/or rectify the defect. Condition 6.2 shall be the Customer's only remedy and in lieu of any other rights and remedies which might otherwise be available to the Customer.

Any replacement Goods will be warranted on the terms set out in this Condition 6.

### 7 FORCE MAJEURE

7.1 In case of Act of God, labour disputes, civil commotion, governmental or official actions or any other event which was unforeseeable or outside the reasonable control of the Party affected, the Parties shall be temporarily relieved from their obligations during the period of time such events continue and to the extent their liabilities are affected. The fore stated shall also be applicable to NAVADAN if a sub-supplier of NAVADAN is affected by such event and/or in case the Party concerned is already in default.

7.2 The Parties are committed to give each other the necessary information which may reasonably be expected without delay, and to adjust their obligations in good faith to the changed circumstances.

### 8 INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIALITY

8.1 The Customer shall not, under any circumstances acquire any right in or to any of the IPRs (including, without limitation, copyright) subsisting in, resulting from or relating to Work, or any plans, descriptions, blue-prints, designs, technical information, software, documents, drawings and/or specifications relating thereto either (a) supplied by or on behalf of NAVADAN to the Customer in connection with Work, or (b) resulting from the Work, unless otherwise expressly agreed by NAVADAN in writing. If the Customer shall in any way acquire any such rights then the Customer shall immediately

inform NAVADAN and shall forthwith take such steps as may be required by NAVADAN to assign such rights or vest such title in NAVADAN.

8.2 NAVADAN shall have the right to apply any trademarks, trade names and/or service marks to the Goods. The Customer acknowledges that no rights are granted to the Customer by the use by the Customer of such trademarks, trade names and/or service marks. The Customer shall not deface, remove or obliterate any trademarks, trade names or logos applied by NAVADAN on or in relation to the Goods.

8.3 The Customer shall keep confidential and not use, without the prior written consent of NAVADAN, all or any information including without limit, those supplied by NAVADAN to the Customer or disclosed to or obtained by the Customer pursuant to or as a result of the Contract, and shall not divulge the same to any third party except to the extent that any such information is or becomes public through no fault of the Customer, or disclosure of the same is required by law or by any other governmental or other regulatory body.

8.4 In the event that NAVADAN bases the production of the Goods on its own specifications, NAVADAN shall under the exclusion of any further liability warrant that such Goods do not interfere with IPRs published in USA and/or by the European Patent Office. This shall not apply, if NAVADAN has manufactured the Goods in accordance with drawings, models or other equivalent descriptions or information provided by the Customer. As far as NAVADAN is not liable pursuant to this Conditions 8.4, the Customer shall release NAVADAN from all third-party claims. In case an infringement of such third parties' IPRs appears to emerge, the Parties will enter into negotiations with due consideration of such situation and jointly agree on the consequences.

#### **9 LIMITATION OF LIABILITY**

9.1 Nothing in these Conditions shall exclude or limit the liability of NAVADAN for death or personal injury or damage to other property than the Goods, caused by NAVADAN's negligence or fraudulent misrepresentation.

9.2 NAVADAN shall not be liable to the Customer in contract, tort, law or otherwise howsoever and whatever the cause thereof, (i) for any loss of profit, hire, business contracts, revenues or anticipated savings, or (ii) for damage to the Customer's reputation or goodwill, or (iii) for any loss resulting from any claim made by any third party, or (iv) for any special, indirect or consequential loss or damage of any nature whatsoever.

9.3 Without prejudice to Conditions 3.6, 9.1 and 9.2 NAVADAN's total liability for each Order in contract, tort, law or otherwise shall be limited to the value of that Order.

#### **10 TERMINATION**

10.1 If the Customer fails to make any payment when due or to perform any of its other obligations on time, NAVADAN shall be entitled to suspend its performance of any assistance until the failure is remedied; and regardless of whether NAVADAN elects to suspend performance:

(a) the time for performance of the Contract by NAVADAN shall be automatically extended accordingly; and

(b) any cost (including financial costs and storage, demurrage or other charges) thereby incurred by NAVADAN shall be paid by the Customer.

10.2 Without prejudice to any of its other rights NAVADAN may immediately terminate the Contract if any of the following occurs or is likely to occur:

(a) the Customer is in breach of any of its obligations under the Contract which, if capable of remedy, the Customer has not remedied within 3 days of receiving written notice from NAVADAN; or

(b) the Customer is wound up or becomes insolvent or has a receiver or administrative receiver appointed or any equivalent or analogous event occurs in any other jurisdiction or the Customer ceases or threatens to cease to carry on business or otherwise is unable to pay its debts when they fall due.

10.3 Upon termination, howsoever arising, NAVADAN shall be entitled forthwith to suspend any further work under the Contract without any liability to the Customer. Without prejudice to NAVADAN's other remedies under the Contract, within 14 days of such a notice of termination, howsoever arising, the Customer shall pay to NAVADAN:

(a) the outstanding balance of the Contract price of the Work which has been delivered or performed, and

(b) the costs incurred or committed by NAVADAN up to the date of notice of termination in performing such work which is not yet completed plus a reasonable margin to be agreed between the Parties which shall not be less than 15% of the Contract price, and

(c) the costs reasonably incurred by NAVADAN as a result of the termination.

10.4 Termination, expiry or completion of the Contract or any part of it, shall not affect or prejudice the provisions of Conditions 8, 9, 10, 11 and 12.

#### **11 BUYER'S OBLIGATIONS**

11.1 The Customer shall provide the Specialist Personnel with assistance in obtaining official entry, exit or working permits required in the country where the Services are to be carried out and ensure that they have free access to the Ship(s).

11.2 The Customer shall provide the Specialist Personnel with unobstructed and safe access to the Ship(s) to enable them to perform the Work in accordance with the Contract.

11.3 The Customer shall be responsible for ensuring the health and safety of the Specialist Personnel whilst on the Ship(s). The Customer shall take appropriate measures to protect the Specialist Personnel from risks associated with lone working, working in confined spaces and with substances hazardous to health. When NAVADAN is to carry out the Work on the Ship(s), the Customer shall make available and bear the costs of an adequate number of fitters, local transport, lifting gear, towing, dockage, supply of electricity and similar supplies.

11.4 NAVADAN may, at its sole discretion, refuse to perform the Services in conditions or surroundings that it considers may be prejudicial to the health and/or safety of its Specialist Personnel and/ or where the Customer is in breach of this Conditions 11 and NAVADAN shall not be liable under the Contract for any delay in or failure of delivery in such event.

11.5 The Customer shall assume all responsibility for all acts or omissions of the Customer's personnel and NAVADAN shall have no liability with respect thereto.

11.6 The Customer shall provide all tools, test equipment and test facilities unless specifically stated otherwise in the Contract. Where NAVADAN does supply tools, the Customer shall give all necessary assistance with the customs formalities required for the import and re-export of NAVADAN's tools and equipment free of all customs and taxes.

11.7 The Customer shall to the best of its ability assist NAVADAN in obtaining all necessary information concerning such local laws and regulations as are applicable to NAVADAN's performance of the Services.

11.8 The Customer shall specify a firm delivery address for the ordered Goods immediately after receipt of NAVADAN's written confirmation of the date of readiness for dispatch. In case Customer fails to do so, NAVADAN is entitled to sell the Goods selected for delivery to the Customer to a third party and to set forth a new delivery time to be forwarded to the Customer for information. In such case the Customer is not entitled to claim liquidated damages according to Condition 3.6.

11.9 On NAVADAN's request the Customer shall undertake to arrange suitable accommodation for the Specialist Personnel and to assist in procuring food for the Specialist Personnel. The provision of board and lodging for the Specialist Personnel shall be at the Customer's expense.

11.10 If suitable accommodation cannot be obtained in the neighborhood of the Ship(s), the time for travelling between the lodgings and the Ship(s) will be charged as working time. In the event of the Specialist Personnel using public transport, the costs incurred thereby shall be borne by the Customer. The same shall apply to the transportation of equipment and other utilities necessary to perform the Services.

#### **12 GENERAL**

12.1 NAVADAN and the Customer shall only be entitled to assign or sub-contract any of its rights or the obligations under the Contract with the prior written consent of the other Party.

12.2 If any term, clause, condition or part of these Conditions is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision shall, to the extent required, be severed from these Conditions and shall be ineffective without, as far as is possible, modifying any other provision or part of these Conditions and this shall not affect any other provisions of the Contract which shall remain in full force and effect. The Parties are committed to replace the invalid provision by another - with respect to the commercial effect - equivalent provision, in so far as this is possible.

12.3 The Contract and these Conditions shall be construed in accordance with and governed in all aspects by the laws of Denmark, however, excluding the rules of conflicts of law and excluding the Convention of the United Nations of 11.4.1980 on Contracts for the International Sale of Goods.

12.4 If a difference of opinion cannot be settled by the Parties themselves, the dispute shall be finally decided by arbitration in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce in Paris (ICC), by three arbitrators, appointed under such Rules. The arbitration proceedings shall take place in Copenhagen, Denmark in the English language. However, NAVADAN shall not be prevented from choosing, at NAVADAN's own discretion, to bring an action against the Customer in any ordinary courts of law having jurisdiction over such action.