

Service and repair

Last updated: March 2011

1.0 GENERAL CONDITIONS

1.1

An order for assistance by service personnel from GBA, regardless of the form in which the order is given, pre-supposes the acceptance by the Buyer of these “Terms and Conditions for Service / Repair” by Global Boiler Aalborg A/S (hereinafter referred to as GBA).

These “Terms and Conditions for Service / Repair” are valid until otherwise notified to the Buyers by GBA.

1.2

Products supplied from GBA are subject to special terms and are described in a separate document : Terms and Conditions for Products (2014, rev 1)

2.0 WORKING HOURS – TIME SHEETS

2.1

A working week comprises 7 working days.

All working hours will be charged at the same rate between 00.00 – 24.00 all days.

2.2

The Chief Engineer or any other authorised representative of the Buyer is requested to follow the progress of the work closely.

2.3

Time sheets, showing the time GBA repair team has been working for the Buyer, shall be filled in weekly and shall be countersigned by the Chief Engineer or any other authorised representative of the Buyer. If the representative of the Buyer does not countersign the time sheets or if such representative does not approve of the time sheets that have been filled in by the foreman, the representative of the Buyer or the Buyer himself must immediately inform GBA by e-mail of the reason for the refusal to approve the time sheets. If a time sheet has been countersigned in accordance with this article or if the Buyer has not given due notice to GBA in accordance with this article regarding unapproved time sheets, then any and all objections to invoices based upon time debited to the Buyer will be null and void.

2.5

The effective working time is defined as the time from the commencement of work by our repair team until it leaves the job, less the time spent on meal breaks. In case the repair team is accommodated on hotel etc.

necessitating local transport to reach the work site, the daily time spent on local transport up to 2 x 30 min. will be considered working time, ref. 4.2.

3.0 WAITING TIME

3.1

Waiting time caused by lack of work or reduced number of working hours due to circumstances beyond the control of our personnel will be invoiced as normal working hours.

3.2

In those cases when our personnel have to wait for a vessel or the work site is not ready for any reason beyond our control, waiting time will be charged daily between 08.00 and 20.00 hours.

3.3

Waiting hours will be charged according to our Rates for Service.

4.0 TRAVELLING AND TRANSPORT EXPENSES

4.1

Travelling hours will be charged according to "Time Zones" specified with Rates for Service. The stated time zones are subject direct or continued travelling within the same day (24 hr counted from travelling commencement).

In special situations where final destination / available travelling route requires overnight stay at hotel – extensive road transport, or other time consuming situations – actual travelling hours may be invoiced, subject being informed to the Buyer in beforehand or in reasonable time after any changes / delays to travel has occurred.

4.2

In case our staffs stays at a hotel etc. the transportation time between the hotel and worksite will be included in the daily working time, ref 2.5

Only if the travelling time exceeds 2 x 30 min. – it will be charged separately.

4.3

Travelling and transport expenses will be invoiced at cost plus 15 % overhead charges.

5.0 HOTEL COSTS AND ALLOWANCES

5.1

Hotel and allowances will be invoiced at cost plus 15 % overhead charges.

5.2

Included in GBA's offer and prices for service on board is Buyers supply of free board and lodging of a reasonable standard.

5.3

Other costs necessary for the assistance, such as telephone calls, internet connection, etc., will be invoiced at cost plus 15 % overhead charges.

6.0 CONDITIONS WHEN STAYING ONBOARD A SHIP

6.1

Accommodations to be of a reasonable standard and to be well ventilated / air-conditioned.

6.2

Access to bath with hot and cold water to be available.

6.3

If possible a separate mess (duty mess) with access to refrigerator should be available.

6.4

Our team should be given at least 3 full meals a day.

These meals to be well nourishing and in sufficient quantities.

6.5

Possibilities to be given our team for buying beverages and other daily needs.

7.0 INVOICING

7.1

The invoice for the assistance will be forwarded according to terms and conditions mentioned in the quotation.

7.2

If payment is not made on the due date, interest is charged, from due date until payment is effected. Interest rate as stated in the invoice.

8.0 PERMITS, LICENCES AND CERTIFICATES

It is the sole responsibility of the Buyer to advise and where necessary to obtain permissions, permits, licences, or certificates

from the appropriate authorities or classification societies in respect of work to be carried out by GBA.

9.0 EQUIPMENT

9.1

GBA will supply special tools necessary for the job.

The cost is normally included in the quotation, or if otherwise stated to be invoiced according to a separate price list All such tools and similar equipment shall be brought back by the repair team when leaving the worksite.

All expenditures for transporting such tools and equipment will be charged to the Buyer.

9.2

The tools belonging to our team should be packed after use in the toolboxes under the supervision of the Buyer's representative.

Any shortages should be noted and the tool boxes then locked.

9.3 GBA arranges transportation and Insurance of toolboxes to the working place at the Buyer's expense.

The Buyer shall arrange transportation and Insurance of toolboxes on board and back to GBA at the earliest opportunity by sea, road or rail at the Buyer's expense.

9.4

Within 14 days from termination of the work the Buyer shall notify GBA from where the toolboxes have been sent and by which means.

If GBA has not received such message within 14 days, an invoice covering the tools will be issued.

Should the tools later be received undamaged and complete without shortages, a corresponding credit note will be issued.

Damaged or missing tools will be charged to the Buyer.

9.5

Hire of tools will be charged per week commenced, from date of dispatch from GBA, until safely received back to GBA – unless other terms have been stated in the quotation.

9.6

The Buyer will be expected to supply on own expense any welding gasses needed for the job.

Only in special situations GBA can offer to include such gasses.

Welding gasses can be (but not excluded to), e.g.: Oxygen, acetylene, argon, mix gas, etc.

9.7

All consumption materials for the repair job is normally included in the quotation. Only if otherwise stated it will be invoiced separately.

9.8

Provided no other arrangements have been made the following supplies and services are not included in our assistance but shall be at the disposal of our personnel.

Assistance in transporting of materials to and from site Availability of necessary scaffolding

General assistance for cleaning, etc.

Supplies of electricity, compressed air for personnel protection equipment and tools, water and fuel as well as necessary lighting Washing facilities for our personnel

9.9

Our team does not work with asbestos.

10.0 FORCE MAJEURE AND DELAYS

10.1

In case GBA is hindered by an event of force majeure from carrying out the agreed work within the agreed time, GBA shall be allowed the extra time that may be necessary from the time when the event of force majeure terminates.

10.2

A matter of force majeure shall include, but not be limited to, acts of God, strikes, lock-outs, general disturbance and major traffic disturbance in international transportation, bad weather conditions and other circumstances beyond the control of the parties.

10.3

If GBA is delayed in the work by reasons that are caused solely or partly by the Buyer or any of his representatives, employees, officers or agents, GBA shall not only be allowed the extra time that is necessary but shall also be allowed compensation for the extra costs that may have been caused GBA by such delay.

11.0 LIABILITY AGAINST DEFECTS AND PRODUCT LIABILITY

11.1

Definition point 11 and 12 :

When GBA is mentioned it should be defined incl. GBA's employees, subcontractors, sub suppliers and agents.

11.2

GBA warrants a good and sound quality of the workmanship in respect of work carried out by the GBA team.

11.3

The liability expires when the work has been examined and accepted by the representative of the classification society or when the Buyer or his representative accepts the work.

11.4

GBA shall not be liable to pay compensation for losses and/or damages due to inability to meet contractual obligations.

11.5

GBA shall be liable for personal injury only if it is proved that such injury was caused by negligence on the part of GBA or others for whom he is responsible.

GBA shall not be liable for damage to property occurring whilst the plant is in the possession of the Buyer. Nor shall GBA be liable for damage to products manufactured by the Buyer, or to the products of which the Buyer's products form a part. Apart from these limitations GBA shall be liable for damage to property on the same conditions as for personal injury.

GBA shall under no circumstances be liable for loss of production, loss of profit or any other consequential damage and indirect loss.

To the extent that GBA might incur product liability towards any third party, the Buyer shall indemnify GBA as far as the GBA's liability has been limited by the three preceding paragraphs.

The above limitations in GBA's liability shall not apply where GBA has been guilty of gross misconduct.

If a claim for damage as described in this Clause is lodged by a third party against one of the parties, the later party shall forthwith inform the other party thereof in writing.

11.6

The liability of GBA set forth in article 11 + 12 shall under no circumstances exceed the amount of more than DKK. 1.000.000 in compensation for damages or injuries.

12.0 LIABILITIES AND INSURANCE

12.1

The Buyer shall pay compensation and indemnify GBA in case of property damage or injury or death of personnel employed by GBA or any third party when and to the extent such injury or death is caused by

negligence, direct or indirect, on the Buyer's part. Such negligence may be constituted by lack of necessary instructions concerning the work to be carried out by the repair team.

12.2

For the protection of GBA in those cases when any of them may be held liable for payment of compensations for damages or injuries and when the above mentioned indemnification does not apply, the following Insurance are carried by GBA.

A)

General liability Insurance to cover the above mentioned liability limited to an amount of max. DKK. 1.000.000.

B)

Workmen's Compensation and Accident.

GBA carries insurance for all its employees. Such Insurance covers costs of transportation to country of origin in case of sickness, injury or death. Such Insurance also covers cost of doctor's treatment and hospitalisation. It is to be noted that such Insurance does not cover cost of deviation of ship, which always remains the cost of the Buyer.

13.0

The provisions set forth in article 11 and 12 shall survive the termination of the contract.

14.0 REPAIR OF DEFECTS

Should GBA make available service engineers and/or erectors for dismantling/assembling work in accordance with liability obligations for plants delivered by GBA, only the labour cost for the work will be covered by GBA.

Payment for travelling time, waiting time, travelling, hotel and meal expenses will be for the account of the Buyer and will be

invoiced.

15.0 MISCELLANEOUS

15.1

Unless otherwise specified, GBA calculates with an effective working day of 12 hours when deciding the number of repair people for a job.

15.2

Working hours exceeding 12 per day, 7 days a week, can only be undertaken by our repair team after agreement with the Chief Engineer and with his written approval, – signed timesheets.

At the conclusion of the work agreed our team might be used for other assignments.

The nature of these assignments is to be stated on the time sheet, and the work is to be performed under the supervision of the Buyer's representative.

If the Buyer wishes to retain one or more of our repair team for longer than the period agreed in advance, GBA should be informed of this fact by the Buyer.

15.3

We draw attention to the fact that our team on board a ship is required to inform GBA of the ship's position once a week and at the same time to give their comments on the progress of the work and other conditions.

15.4

Payment for beverages, etc. bought on board a ship should as far as possible be settled with our team before leaving the ship.

16.0 ARBITRATION AND LAW APPLICABLE

16.1

Any dispute between the parties regarding a situation arising from an agreement governed by these Conditions shall be settled according to Danish law in Copenhagen, which city shall be adopted as venue. The disputes shall be finally settled by a Court or Arbitration consisting of three members, of whom each of the parties shall appoint one member. Prior to commencement of proceedings, the said two members shall appoint the third arbitrator to conduct proceedings as chairman of the Court of Arbitration. Should the arbitrators fail to agree as to the appointment of a chairman, the matter shall be appointed by the President of the "Sø- og Handelsretten i København" (The Maritime and Commercial Court of Copenhagen).

The arbitrators to be selected by the parties shall be appointed within 14 days of the day on which one of the parties has notified the other party of his intention to have the Court of Arbitration set up. If either party fails to appoint an Arbitrator, the matter shall be appointed by the President of the "Sø- og Handelsretten i København". Furthermore, the rules of existing Danish law on arbitration shall apply.

16.2

Any dispute regarding an agreement or an invoice shall not legalise to postpone payment of the issued invoice

Products

1.0 VALIDITY OF THESE TERMS AND CONDITIONS FOR PRODUCTS

1.1

An order for delivery of products and materials from Global Boiler Aalborg A/S, hereinafter referred to as GBA, presupposes acceptance by the Buyer of these Terms and Conditions, regardless of the form in which the order is given. These Terms and Conditions are valid until otherwise notified to the Buyer by GBA.

1.2

Service assistance, repair work, etc. are subject to special terms and are described in a separate document : Terms and Conditions for Service / Repair (2011, rev 4)

2.0 INVOICING

2.1

The invoice will be forwarded as soon as possible after completion and products are ready for shipment / delivery and shall be paid by the Buyer within 20 days of the date of invoice, unless otherwise agreed.

2.2

Products delivered by GBA shall remain the property of GBA until paid for in full.

2.3

If payment is not received on the due date, interest will be charged from that date until payment is effected. Interest shall be added to the invoiced amount on the basis of interest rate as stated in invoice.

2.4

If the Buyer wishes to transfer the order to a third party, such transfer requires GBA's prior acceptance. In this situation, the Buyer shall remain liable for payment to GBA.

3.0 DELAYS

3.1

If GBA is delayed in delivery for reasons caused solely or partly by the Buyer or any of his representatives, employees, officers, subcontractors, or agents, GBA shall not only be allowed the necessary extra time but also compensation for extra costs that GBA may incur.

3.2

If GBA is delayed in delivery by its own fault, GBA shall be liable for compensation or liquidated damages only if such written agreement has been stipulated directly in the Contract entered between GBA and the Buyer. Liability for damages does not include consequential or indirect damages, irrespective of the nature of such damages. The Buyer is not entitled to any other remedies and may not cancel the contract due to delays on the part of GBA.

4.0 LIABILITY AGAINST DEFECTS

4.1

All agreements shall be made on the basis of the limited liability provisions set forth herein. Other or more extensive liability, including the right to cancel a contract or claim damages beyond the extent stated herein, shall be valid only if a written agreement stating the nature and extent thereof has been entered before acceptance of delivery and if the price is adjusted to include the costs of appropriate additional insurance or additional exposure.

4.2

GBA's liability for defects in materials delivered shall be limited to procuring and supplying replacement materials free of charge.

4.3

For repair of delivered products and other work related hereto, GBA's liability for defects shall be limited to repair of the defect in question. GBA shall cover only the direct costs of labour and materials for such repair. GBA disclaims any other cost, whether direct, indirect, consequential, or otherwise. Payment for travelling time, waiting time, travelling expenses, hotel, and meals shall be for the account of the Buyer and shall be invoiced accordingly.

4.4

GBA shall be liable for damage only if caused by gross negligence or intent on the part of GBA's personnel. GBA's liability shall be limited to repair of the direct damage and shall cover neither consequential costs nor indirect loss, irrespective of the nature of such loss. In no event shall GBA's aggregate liability arising out of a contract exceed the total value of the contract or the equivalent amount in local currency. In no event can the amount exceed the amount of the contract, the maximum being DKK 10 million. The Buyer agrees to indemnify GBA with respect to any liability in excess of this amount.

4.5

GBA shall make its best effort to pass on to the Buyer all manufacturers' warranties for machinery and equipment procured by GBA. In no event shall GBA's warranties/liability for machinery and equipment procured by GBA be more extensive than the manufacturer's warranties.

5.0 FORCE MAJEURE

5.1

In case GBA is hindered by an event of force majeure from carrying out the agreed work within the agreed time, then AI shall be allowed the necessary extra time from the point in time when the event of force majeure ceases. GBA shall not be liable for loss, damage, or delay caused by an event of force majeure.

5.2

Force majeure shall be taken to include, but not be limited to; acts of God, strikes, lockouts, general disturbance, major traffic disturbance in international transportation, inclement weather conditions, and other circumstances beyond GBA's control.

6.0 PRODUCT LIABILITY

6.1

Unless other statutory provisions apply, the following shall govern GBA's product liability:

6.2

GBA shall be liable for personal injury only if it is proved that such injury was caused by negligence on the part of GBA or others for whom GBA was responsible.

6.3

GBA shall not be liable for damage to property occurring whilst GBA's products are in the Buyer's possession. Nor shall GBA be liable for damage to products manufactured by the Buyer or to products or services of which the Buyer's products form a part.

6.4

In no event shall GBA be liable for loss of production, loss of profit, or any other consequential damages or indirect loss.

6.5

In no event shall GBA's liability exceed DKK 10 million.

6.6

To the extent that GBA incurs product liability to a third party, the Buyer shall indemnify GBA as far as GBA's liability has been limited by the four preceding paragraphs.

6.7

The above limitations in GBA's liability shall not apply where GBA has been guilty of gross misconduct.

6.8

If a claim for damages as described in this clause is lodged by a third party against GBA or the Buyer, that party shall forthwith inform the other party thereof in writing.

6.9

GBA and the Buyer shall be obliged to let themselves be summoned to the court or arbitration tribunal that examines claims for damages lodged against one of them on the basis of damage allegedly caused by GBA's products

7.0 DISCLAIMER

7.1

GBA disclaims any liability that is not covered by these Terms and Conditions for Products. GBA specifically disclaims all warranties of merchantability and fitness of GBA's products for a particular purpose.

8.0 ARBITRATION AND LAW APPLICABLE

8.1

Any dispute between the parties regarding a situation arising from an agreement governed by these Terms and

Conditions shall be settled according to Danish law in Copenhagen, which city shall be adopted as venue. The disputes shall be finally settled by a Court or Arbitration consisting of three members, of whom each of the parties shall appoint one member. Prior to commencement of proceedings, the said two members shall appoint the third arbitrator to conduct proceedings as chairman of the Court of Arbitration. Should the arbitrators fail to agree as to the appointment of a chairman, the matter shall be appointed by the President of the “Sø- og Handelsretten i København” (The Maritime and Commercial Court of Copenhagen). The arbitrators to be selected by the parties shall be appointed within 14 days of the day on which one of the parties has notified the other party of his intention to have the Court of Arbitration set up. If either party fails to appoint an Arbitrator, the matter shall be appointed by the President of the “Sø- og Handelsretten i København”. Furthermore, the rules of existing Danish law on arbitration shall apply.

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