



This Schedule, effective April 1, 2016, contains the Terms and Conditions for all repair services rendered by The Great Lakes Towing Company (d/b/a "Great Lakes Shipyard") (hereinafter referred to as "Shipyard"), whether at Great Lakes Shipyard or at any other location, to any vessel, whether self-propelled or not, barges, craft and other equipment (hereinafter referred to as "equipment", whether singular or plural) furnished by Owners, Operators and Charterers or their duly authorized agents (hereinafter referred to as "Owner"). These Terms and Conditions are paramount and supersede any provisions to the contrary contained in Owner's invitation to bid, instructions, purchase orders, or other documentation.

## **TERMS & CONDITIONS**

1. **Service:** All services rendered by Shipyard shall be rendered pursuant to this Schedule of Terms and Conditions unless Shipyard agrees otherwise, in writing, signed by all parties thereto prior to commencement of the service rendered. Arrival of equipment at Shipyard, or commencement of any service to equipment of Owner by Shipyard at any other location, shall be conclusive evidence of the acceptance of this Schedule of Terms and Conditions.
2. **Quotations:** Unless otherwise noted, all quotations and bid proposals shall be valid for thirty (30) days from date provided to Owner, unless otherwise specified in writing by Shipyard.
3. **Payment:** All payment terms are net, due in full immediately upon completion of repair service and receipt of invoice, unless otherwise agreed to by Shipyard and specified in writing prior to commencement of any service. Work scheduled for more than 30-days will require progress payments. Past due charges are subject to a finance charge of two percent (2.0%) per month from date of completion of repair service until paid. Invoices are payable, in United States funds only, to Great Lakes Shipyard at 4500 Division Avenue, Cleveland, Ohio 44102. A lien is reserved on any vessel for all charges which may accrue hereunder whether or not such charges are billed to the Owner, charterer or agent. In the event the charges hereunder shall not be paid in accordance with agreed upon terms, the Owner of the equipment to which the services have been rendered shall pay all expenses of collection, including reasonable attorney's fees and interest.
4. **Contingencies:** Shipyard shall not be liable for any damages or delays of whatsoever kind caused by strikes, accidents, sub-contractors, materialmen, or consultants, whether hired by the Owner or by Shipyard on behalf of the Owner, or events which are unavoidable or any causes which are beyond Shipyard's control, including any additional costs due to severe weather. All agreements as to time of completion are subject to this provision.
5. **Warranties:** Shipyard will repair or replace at its Shipyard without charge, workmanship or material furnished by it which proves defective under normal service conditions, provided written notice of the defect is received within 30 days after departure of the vessel from Great Lakes Shipyard or within 30 days after completion of the work performed at any other location. In consideration of the foregoing undertaking, Owner agrees that Shipyard's liability for defective workmanship or material shall be limited solely to such repair or replacement, and that Shipyard shall have no liability of any kind to the parties at interest for damages of any nature whatsoever, consequential, economic, compensatory or punitive, whether past, present or future, directly or indirectly caused by negligence and/or defective workmanship or material. Shipyard specifically disclaims any and all implied and/or express warranties, including warranties of workmanlike services or performance, merchantability and fitness for intended services, except as set forth above.
6. **Limitation of Liability:** Charges for vessel repairs, drydocking and other services are based on liabilities as set forth in these terms and conditions being applicable in lieu of any other liability or warranty, expressed or implied. Shipyard's aggregate liability directly or indirectly, to all parties at interest, and/or any and all third parties, for any claims for personal injury, death, loss or damage to the vessel, or any other property, or timeliness of completion of the work, howsoever caused, shall in no event exceed the total sum of the contract price or \$300,000.00, whichever is less, with respect to any one vessel and Owner agrees to indemnify, defend and hold Shipyard harmless with respect to all liabilities to all parties at interest, and/or any and all third parties, exceeding the total sum of the contract price.

The limitation of liability shall include damages incurred both prior to and after completion of the Work. The Shipyard shall not be liable for any consequential damages, including, but not limited to, faulty or negligent design or manufacture, delay, loss of revenue, detention, demurrage, tug expense, pilotage, crew wages, salvage, and loss of use. The customer agrees by bringing his vessel into the Shipyard or allowing Shipyard personnel onboard, to indemnify, defend and hold harmless with respect to all liabilities to all parties in interest exceeding the amount herein stated. Unless otherwise stated, all tenders are subject to immediate acceptance.

In the event of personal injury or death, or any loss or damage to the vessel or any other property, Shipyard shall be liable only for damages affirmatively proven to have been caused by sole negligence on its part, limited in amount as set forth above, provided, however, that in no event shall Shipyard be liable for any consequential damages whatsoever, including but not limited to lost revenue, crew wages, salvage or tug expense, delay or loss of use.

Owner and Vessel shall indemnify and hold Shipyard harmless from any liability for environmental pollution attributable to the vessel, and any costs, disbursements and attorney fees attendant thereto incurred by Shipyard. For those vessels required by size to have a valid FMC Certificate of Responsibility (Water Pollution), the owners and other parties in interest warrant that the Certificate will be kept in force at all times while the vessel is located in our yard or while we are performing work on it.

7. Insurance: Owner shall have and maintain at its sole cost and expense:

- (a) Hull and Machinery Insurance
- (b) Protection and Indemnity Insurance in an amount not less than \$10 Million with Shipyard named as additional insured.
- (c) Commercial General Liability Insurance in an amount not less than \$2 Million with Shipyard named as additional insured.
- (d) Pollution Insurance in an amount not less than \$10 Million.

The Shipyard does not agree to the accident, indemnity and insurance provisions, if any, contained in any invitation to bid or specifications, relating to liability for death or personal injury, and in such cases we accept only liability as is imposed upon us by law. In no event shall we be liable for the cost of defense, including attorney's fees, of any action whether commenced by our employees, subcontractors or others against the vessel, its owners, agents, charterers, or underwriters. The foregoing is in lieu of all warranties and liabilities, whether statutory, expressed or implied, including, but not limited to, warranties of merchantability, fitness for a particular purpose and workmanlike service. Different or more extensive liabilities will be accepted if an agreement in writing stating the nature and extent thereof is entered into before the vessel enters our yard or work is commenced, whichever first occurs, and if the price is adjusted to include the cost of appropriate additional insurance.

Materials for vessels in our yard will be procured by us unless agreed to in writing otherwise. Work on vessels in our yard will be performed only by our employees, subcontractors or agents unless otherwise agree in writing. All work performed by crew members, employees, subcontractors, agents, or otherwise of either the vessel or the owner, whether or not agreed to in writing, are the responsibility of the vessel and owner and the Shipyard shall NOT be responsible to the vessel or owner in any manner for any damages resulting therefrom. The vessel, its owners, and all parties in interest shall indemnify and hold us harmless from all liability to any party arising from such work, including but not limited to non-compliance with any Federal, state, and local regulations or statutes.

Nothing herein shall be deemed to constitute waiver of our maritime lien. Invalidity of any one or more provisions of this contract shall not affect nor impair the remaining provisions. This contract may not be changed orally.

### **GENERAL NOTES**

1. Availability – Shipyard Bids are subject to drydock availability, which will be reserved for the customer offering the earliest firm commitment.
2. Work Schedule/Overtime – The quoted prices and rates are for work performed on straight time and are subject to adjustment for any overtime authorized by Owner. Straight time work is performed during one regular 8-hour shift per day, 5-days per week. Weekends and off-shift work is performed at overtime rate.
3. Hazardous Materials/Asbestos/Lead or Tin Based Paint - Prices exclude any clean up, abatement, or disposal of any hazardous materials which require special handling or disposal. Proper precautions must be taken to protect shipyard personnel when the owner or their subcontractor is performing work with hazardous materials.
4. Special Tools – Owner will furnish all special tools and connecting fittings in good working order. Owner assumes responsibility for delays to work schedule and associated costs, if tools are not present and in good working order at vessel's arrival.
5. Technical Supervision – Unless written into the specifications, owner to furnish any technical supervisor required. Owner's Tech. Rep. to specify methods and materials to be used in repairs or overhauls and to be responsible for inspection and approval. Owner's Tech. Rep. also to be responsible for coordinating inspections by applicable regulatory bodies.
6. Classification Societies and Regulatory Bodies – All fees and costs associated with any classification societies or regulatory bodies are to be for the owner's account.

7. Owner's Crew/Subcontractors – Proposed work to be accomplished by personnel other than Shipyard employees is subject to the review and approval of Shipyard management. All crew members and subcontractors will comply with Shipyard insurance, environmental permits and safety requirements.
8. Docking Plan – Prior to drydocking of any vessel, a detailed owner-furnished docking plan will be required to confirm capability of drydock or mobile boat hoist and to determine block locations and/or sling placement.
9. Ballast Movement – Vessel will notify Shipyard of intent and receive approval prior to shifting ballast, fuel, etc. while on blocks in drydock or on land. Owner assumes responsibility for delays to work schedule and associated costs if vessel must shift ballast during docking or undocking operation.
10. Harbor Tug and Diver Services – Unless written into the specifications, the cost of any harbor tugs and divers to be for the Owner's account.
11. Paint Materials and Inspection – All paint, thinners and paint manufacturer's representatives to be for the Owner's account. All owner furnished coatings must meet the regulated limits of allowable VOC's in 40 CFR Part 63 Subpart II. All coatings applied by Owner and/or Owners subcontractors must be in compliance with 40 CFR Part 63 Subpart II. All coatings applied in the facility must have a Certificate of Compliance on file prior to commencement of work.
12. Arrival Condition - Vessel to arrive at Shipyard with minimal fuel, ballast, and other liquids, in a clean and gas free condition, unless otherwise specified and agreed in advance. Any cost to discharge liquids, for tank cleaning, for marine chemist services, etc. is for Owner's account.
13. Unit Pricing – Unit pricing applies to growth work and is to be used for guidance only. Variables such as location and vessel conditions in the area of repairs will be factored upon identification.
14. Sales Tax – Owner shall be responsible for applicable sales taxes.
15. Material Adjustments – Item pricing is based on current cost and availability of materials at the time of the proposal or quotation date. Shipyard reserves the right to apply surcharge costs and modify delivery date at the time of contract award.
16. Material Cost – Material and subcontractor "cost" is defined as invoice plus 20%.

### **ADDITIONAL TERMS AND CONDITIONS FOR OFFSITE WORK**

17. Dockage Agreement – Any payments by Owner to Shipyard for agreed upon rental of offsite dockage and shoreside work areas ("Premises") and shall be due and payable on the first day of each calendar month and if not made within ten days, shall be subject to an additional charge of two percent (2.0%) per month of the delinquent amount due and outstanding from Owner to Shipyard. Such amounts shall be added to the balance owed by Owner as unpaid rent and is due and owing when the next rent payment would regularly be payable to Shipyard. It is understood that this charge is for extra expenses incurred by Shipyard and shall not be deemed interest. Such amounts shall become additional rent due and owing under this Dockage paragraph and as such may accrue in the same fashion as unpaid payments hereunder. Said accrual shall continue on any outstanding amount even after termination of this Dockage Agreement.
18. The Owner agrees to be responsible and pay for all public utilities services rendered or furnished to the Premises during the term hereof, including services for security systems, water, sewer, heat, gas, telephone, and electricity; together with all other charges for such utilities services. In case any such water and sewer charges are not paid by Owner at the time when the same are payable to the proper city or village officials, Shipyard may nevertheless pay the same to such officials, and charge the same to Owner.
19. Shipyard does not warrant that any of the services set forth herein shall be free from interruptions caused by repairs, renewals, improvements, alterations, strikes, lockouts, labor disputes, accidents, inability of Shipyard to procure such services or to obtain fuel or supplies, failure or curtailment of any such service or supply, or other cause or causes beyond the reasonable control of Shipyard. Any such interruptions of the above services shall never be deemed an eviction or disturbance of Owner's use of the Premises or any part thereof or render Shipyard liable to Owner for damages, or relieve Owner from performance of any of Owner's obligations under this Dockage Agreement. This section shall survive termination of this Dockage Agreement.
20. Owner covenants at all times to save Shipyard harmless from and to indemnify and defend Shipyard against all losses, injury, damages, liability, claims, judgments and liens of every kind and nature that may occur or be claimed by, to or with respect to any person, corporation or property on or about the Premises resulting from any acts done or negligence by the Owner, its agents or invitees, or caused or resulting from Owner's use or possession of the Premises or the conduct of its business therein. This section shall survive termination of this Dockage Agreement. Owner shall keep the improvements now existing or hereafter erected on the Premises, and the appurtenances of

- each, in good and constant repair at Owner's own expense during said term; and Owner will save and indemnify Shipyard from all liability for and keep the Premises and the improvements free from all mechanics', labor and material liens in respect of work performed and materials obtained at the instance of Owner. Owner will, at Owner's own expense, obey and comply with all the requirements, rules, laws and ordinances of all lawfully constituted authorities in any way affecting the Premises and improvements or Owner's use and maintenance of the same or Owner's use of the streets and alleys and other public lands, thoroughfares and waterways on which the Premises abut, at any and all times during the said term.
21. Throughout the term of the Dockage, Owner shall have the right to make any additions, improvements or alterations to the Premises, provided Owner first submits plans, specifications and drawings, as the case may be, to Shipyard for its approval, which approval shall not be withheld unreasonably.
  22. Owner acknowledges that other companies may utilize the same bulkheading during the remaining months of the year and Owner has the duty to repair and/or replace any property belonging to others which is damaged or destroyed through Owner's use of the Premises.
  23. The Premises may be used for any lawful purpose; provided, however, that no liquor, whether spirituous, vinous or fermented, shall be sold either at wholesale or retail on the Premises, nor shall the Premises be used in any such way as shall impose a physical risk on neighboring premises of Shipyard, without the consent in writing of Shipyard, which consent shall not be withheld unreasonably.
  24. Owner agrees to obey fully and comply with all requirements, rules, laws and ordinances of all lawfully constituted authorities in any way affecting the Premises, or the use and maintenance of the same or the streets and alleys or other public lands, thoroughfares, railways and waterways, on which the Premises may abut, at all times during the continuance of this Dockage Agreement. Owner further agrees to operate its business in full and complete compliance with the laws, rules and regulations of the Environmental Protection Agency, and any pollution control or similar body of the Federal, State, County and City governments. Owner further agrees that it will keep its use of hazardous substances under lawful control and will remove, at its expense, any and all such hazardous substances from the Premises and from the land at the termination of this Dockage Agreement. Owner hereby indemnifies and holds Shipyard harmless from any loss, expense or cost arising from Owner's breach of the within agreements. If upon ten (10) days notice to Owner by Shipyard of any violation of this Paragraph 24 Owner does not commence a good faith effort to correct said violation, Shipyard may enter the premises and correct such violation at the sole cost of the Owner (such costs shall include but not be limited to attorney fees).
  25. Owner shall not cause or permit any Hazardous Material to be brought upon, kept, or used in or about the Premises by Owner, his agents, employees, contractors, or invitees, except for such Hazardous Material as is necessary or useful to Owner's business.
  26. Any Hazardous Material permitted on the Premises as provided above, and all associated containers, shall be used, kept, stored, and disposed of in a manner that complies with all federal, state, and local laws or regulations applicable to any such Hazardous Material.
  27. Owner shall not discharge, leak, or emit, or permit to be discharged, leaked, or emitted, any material into the atmosphere, ground, sewer system, or any body of water, if such material (as determined by the Shipyard or any governmental authority) does or may pollute or contaminate the same, or may adversely affect (a) the health, welfare, or safety of persons, whether located on the Premises or elsewhere; or (b) the condition, use, or enjoyment of the Building or any other real or personal property.
  28. At the commencement of the Dockage term, Owner shall disclose to Shipyard the names and approximate amounts of all Hazardous Material which Owner intends to store, use, or dispose of on the Premises. In addition, at the completion of the Dockage term, Owner shall disclose to Shipyard the names and amounts of all Hazardous Materials which were actually used, stored, or disposed of during the Dockage term. As used herein, the term "Hazardous Material" means:
    - a. Any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976, as amended from time to time, and regulations promulgated thereunder;
    - b. Any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, and regulations promulgated thereunder;
    - c. Any toxic, poisonous, radioactive, carcinogenic, human/ animal remains or pestilent material;
    - d. Any oil, petroleum products, and their byproducts; and
    - e. Any substance which is or becomes regulated by any federal, state, or local governmental authority.
  29. Owner agrees that it shall be fully liable for all costs and expenses related to the use, storage, and disposal of Hazardous Material kept on the Premises by the Owner, and the Owner shall give immediate notice to the Shipyard of

any violation or potential violation of the provisions of Section 13. Owner shall defend, indemnify, and hold harmless Shipyard and its agents from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses (including, reasonable attorneys' and consultant fees, court costs, and litigation expenses) of whatever kind or nature, known or unknown, contingent or otherwise, arising out of or in any way related to:

- a. The presence or disposal (even *de minimus*) of any such Hazardous Material which is on, from, or affects soil, water, vegetation, buildings, personal property, persons, animals, or otherwise;
  - b. Any personal injury (including but not limited to wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Material;
  - c. Any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Material; or
  - d. Any violation of any laws applicable thereto. The provisions of this paragraph shall be in addition to any other obligations and liabilities Owner may have to Shipyard at law or equity and shall survive the transactions contemplated herein and shall survive the termination of any Dockage term.
30. Owner agrees to keep the entire Premises in a clean and orderly condition, free and clear, at all times, of all trash, debris, rubble and waste and, especially, to comply with Shipyard's program respecting ordinances of the City of Cleveland concerning the control and cutting of weeds, plants, grass and other vegetation, both noxious and beneficial. Owner further agrees to paint over any graffiti which may have occurred during the term of the Dockage.
31. Shipyard has no knowledge of any lead paint upon the premises, and has conducted no investigation of lead paint on the Premises. Owner realizes that any and all paint on the premises may be Lead based and lead from paint, paint chips and dust can pose health hazards if not taken care of properly.
32. Upon vacating the premises, the Owner agrees to deliver the property in a broom clean condition.
33. Upon termination of Dockage, for any reason and at any time, or/and in any action of reentry or detainer, Owner hereby acknowledges that all of Owner's personal property remaining on the premises has been abandoned by Owner, and Shipyard may dispose of same in any manner whatsoever and shall not be liable for any claim of Owner or assignee of Owner. Owner shall hold Shipyard harmless for any disposal of such property.
34. Upon termination of Dockage, for any reason and at any time, or/and in any action of reentry or detainer, Owner hereby acknowledges ownership of any Hazardous Materials brought onto the property during the term of Dockage or during any term the Owner had possession of the Premises. Upon termination of Dockage, Owner agrees to remove such Hazardous Materials from the Premises. If Owner shall fail to remove such Hazardous Materials, Owner hereby waives any equitable defenses to any claim brought by Shipyard to compel Owner to remove such Hazardous Materials, or to sign, as owner or generator, any documentation required for the disposal of such Hazardous Materials.
35. The Owner agrees to pay all reasonable attorney fees accrued upon enforcing any right the Shipyard may have herewith.
36. If Owner shall leave, at the termination of the Dockage or upon vacating the Premises, any substance, whether it be gas, powder, liquid, solid, film, residue or any other form, Shipyard, at Shipyard's sole discretion (and at the sole expense of the Owner) may make such tests on the substance or anything that may have come in contact with the substance to determine its environmental affect.