

# Navis Standard Terms and Conditions



## 1. DEFINITIONS

In these conditions:

- "Navis" means Navis Engineering Oy;
- "Contract" means an Order accepted by Navis in writing;
- "Customer" means the other contracting party;
- "Order" means the order placed by the Customer with Navis for the Products and/or Services;
- "Products" means all the goods supplied by Navis under the Contract, including those that may have been supplied to Navis by third parties;
- "Services" means all the services rendered by Navis under the Contract;
- "Specification" means Navis' specification for the Products;
- "Total Contract Price" means the aggregate price of all the Products and/or Services (excluding VAT) supplied by Navis under the Contract.

## 2. ORDERS AND CONTRACTS

Quotations are subject to withdrawal and alteration at any time before the Contract is made and are automatically withdrawn unless a relevant Order is placed by the Customer no later than 30 days or within the period expressly defined in the quotation. The quotation is not an offer to proceed and Customer is required to place a written Order with Navis using the same reference as on the quotation.

Customer agrees that the Order fully specifies its requirements for Products and/or Services and unless agreed to by Navis in writing shall be deemed to be placed subject to these conditions notwithstanding anything to the contrary contained on or referred to on the Order. The Order shall not be binding on Navis until specifically accepted in writing. If the Services required by Customer are special services (installation, commissioning, training, development or management services) any additional terms applicable to such Services will apply except that in the event of any conflict these conditions shall prevail.

## 3. PRICES

Unless otherwise stated all prices are quoted EX-WORKS (INCOTERMS) Helsinki, Finland and are net of all taxes and duties. The price applicable to each item shall be set forth in the quotation. Prices will be quoted in Euros unless otherwise stated in the Contract.

## 4. PRICE ADJUSTMENT

Navis reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Products pro rata to reflect any increase in the cost to Navis which is due to any change in the delivery dates, or performance times, quantities or specifications for the Products which is requested by the Customer, and accepted by Navis in its discretion, or any delay caused by any instructions of the Customer or failure of the Customer to give Navis adequate information, facilities, instructions or responses as reasonably to be expected of the Customer.

## 5. TERMS OF PAYMENT

5.1 Payment shall be made no later than due date indicated in Navis' invoice. Navis may issue an invoice upon each delivery of the Products or as the case may be upon Navis notifying the Customer that they are ready to be collected.

5.2 Unless otherwise agreed in writing with the Customer, Navis is entitled to allocate payments received to settle (in full or in part) any sums due from the Customer, whether under the Contract or any other Contract, in any order or manner Navis determines, and in particular shall be entitled to apply any part payment to settle outstanding interest on overdue amounts, ahead of principal.

5.3 If the Customer fails to make any payment when due, without affecting any other rights which it may have, Navis shall be entitled to exercise all or any of the following rights:

- (i) suspend or cancel production and/or supply of all or any of the Products;
- (ii) require the Customer to pay any costs of storage (or a reasonable charge for storage) of undelivered Products;
- (iii) be paid compensation and charge interest at the rate of one and one-half percent (1.5%) per month compounded monthly on all amounts overdue until payment thereof;
- (iv) resell to a third party any Products not yet delivered to the Customer; and/or
- (v) retain any sums paid as deposit for the Products.

## 6. SET-OFF

Navis shall have the right at its sole discretion to reduce any outstanding Customer indebtedness which is due and payable to Navis or any outstanding Navis indebtedness which is due and payable to Customer by offsetting such indebtedness against any sums due and payable to Customer or to Navis, as may be applicable.

## 7. DELIVERY

Any dates quoted for dispatch or delivery of the Products are approximate only and time for dispatch or delivery shall not be of the essence unless previously agreed by Navis in writing. The Products may be delivered by Navis in advance of the quoted delivery date upon giving reasonable notice to the Customer.

Where the Products are to be delivered in installments, each delivery shall constitute a separate contract and failure by Navis to deliver any one or more of the installments in accordance with the Contract or any claim by the Customer in respect of any one or more installments shall not entitle the Customer to treat the contract as a whole as repudiated.

If Customer does not accept delivery of a consignment of Products in accordance with the Contract:

- (i) Navis shall be entitled to claim payment in accordance with Section 5 above for the Products refused;
- (ii) the Products refused shall be in all respects at Customer's risk; and the cost of storing the Products shall be borne by Customer.
- (iii) Customer shall inspect the Products immediately upon delivery or collection and Customer shall notify Navis in writing of any matter or thing by reason of which Customer states that the Products are not in accordance with the Contract (e.g. items missing or with damage).

If Customer fails to give such notice within

- 30 days after Products delivered to the Customer or
- 60 days from the date of shipment

whichever is sooner, it shall be conclusively presumed that Customer has accepted the Products and that the Products are in accordance with the Contract and Customer shall have no right to reject the Products.

## 8. SHIPPING AND INSURANCE

All costs of shipping and insurance shall be borne by the Customer. Navis shall have no liability for lost or damaged Products that are shipped in accordance with Customer's instructions.

## 9. RISK AND PROPERTY

9.1 Risk of damage to or loss of the Products shall pass to the Customer:

- 9.1.1 in the case of Products to be delivered at Navis' premises at the time when Navis notifies the Customer that the Products are available for

collection;

9.1.2 in the case of Products to be delivered otherwise than at Navis' premises, at the time of delivery, or, if the Customer wrongfully fails to take delivery of the Products, at a time when Navis has offered delivery of the Products.

9.2 Ownership of the Products shall pass to the Customer on receipt by Navis in full of the price (and VAT where applicable) for those Products under the Contract and all other sums due from the Customer under the Contract and under any other arrangements between the Customer and Navis.

9.3 Until such time as the property in the Products has passed to the Customer under Section 9.2 the Customer shall:

9.3.1 hold such Products as a fiduciary of Navis and shall insure them as Navis property and shall store and mark them in such a way that they are readily identifiable as Navis' property;

9.3.2 not pledge or allow any encumbrance, lien, charge or other interest to arise or be created over the Products or dispose of or deal with the Products except that the Customer may on its own account use and sell the Products in the ordinary course of its business.

9.4 If:

9.4.1 payment becomes overdue; or

9.4.2 the Customer is in breach of any of its obligations under Section 9.3;

9.4.3 Navis exercises any right to terminate the Contract; or

9.4.4 any event referred to in Section 17 (ii) occurs;

the Customer shall immediately cease to be entitled to use or sell the Products and Navis shall be entitled upon demand to the immediate return of all the Products which remain in the ownership of Navis pursuant to Section 9.2 and the Customer irrevocably authorizes, and shall enable Navis to recover such Products, and for that purpose to enter any premises.

The Customer shall take all reasonable steps to help Navis recover the Products. Demand for, or recovery of, the Products shall not of itself discharge the Customer's liability to pay the whole of the price or any other rights of Navis under the Contract.

## 10. SPECIFICATION

10.1. The Products will be supplied generally in accordance with the Specification. Navis policy is one of continuous development and consequently the Specification may vary from time to time. Navis will not accept liability for the Products in respect of variations from the Specification except where any variation from the Specification is materially adverse to Customer.

10.2. Descriptions and illustration contained in Navis catalogues shall not form part of the Contract;

10.3. All specifications, drawings and technical descriptions submitted with or in connection with any quotations or acknowledgement of Navis are Navis' copyrights.

## 11. WARRANTY TERMS

11.1. This warranty covers defects caused by faulty material or bad workmanship or non-conformity with agreed specification in respect of Products or Services discovered during a defined period of time (the "Warranty Period"). Under this warranty the Supplier shall, at its discretion, either repair or replace the affected item or part. Products must be under normal use and service and installed under supervision of Navis' certified service engineer.

11.2. The Warranty Period in respect of Products and Services supplied expires either eighteen (18) months after the date of Installation report signing by the Customer during Sea Trials, or twenty four (24) months from Delivery of the Equipment concerned, whichever occurs earlier.

3<sup>rd</sup> party Equipment produced by company other than Navis, but supplied by Navis has a warranty according to manufacturer Warranty Terms.

11.3. The Customer must give the Navis detailed written notice with the description of any defect and how it manifests itself and the Products or Services affected without delay, but in any event latest within fourteen (14) days after discovery of the respective defects. If such notice is not given within the time required, or at all, the relevant Products or Services shall be deemed to be free of any such defects. On receipt of notice of a defect from the Customer the Navis shall remedy the defect as soon as reasonably possible.

11.4. The Customer must, immediately after discovery of any defect, take all appropriate steps to mitigate any loss or damage and to prevent any defect from becoming more serious. The Customer's failure to do so shall be deemed to constitute a waiver of its rights under this warranty in respect of the relevant defect.

11.5. The Navis's obligations under this warranty shall only become effective, and the Customer can only make warranty claims, if the Navis has received all amounts due under the Contract.

11.6. The Navis shall bear the cost of repairing or replacing the defective item or part of the Product at the Navis plus the costs of transporting the defective, repaired or replaced parts to or from Navis, except Custom clearance fees (outside EC), warehouse fees, Import/export duties.

11.7. Services to be performed under this warranty shall be based on a normal working week and shall be for the account of the Navis. Notwithstanding the preceding sentence, the Customer shall reimburse the Navis for its cost of travel to and from the Vessel and board, lodging, expenses for meals, local taxes, taxis or public transportation. A normal week consists of forty (40) hours spread over five (5) working days not exceeding eight (8) hours per day. Services performed outside the normal working week are charged to the Customer as overtime. Any waiting time, for which the Navis is not responsible, is charged to the Customer as normal working time.

11.8. The warranty set out in this Article shall apply to any items of Product which have been repaired or replaced by the Navis and Services supplied under this warranty. The Warranty Period for repaired or replaced Product, Spare Parts or Services supplied pursuant to this warranty shall commence at the date of the repair or the delivery of the replacement Product or Spare Parts and shall expire six (6) months thereafter, or upon the expiry date of the original Warranty Period in respect of the Product, whichever occurs later. The preceding sentence shall not apply to original parts of the Product which are not repaired or replaced. Under no circumstances shall the Warranty Period in respect of any part of the Product or Spare Parts, whether original or replaced, exceed twenty-four (24) months calculated from the date of Delivery of the respective Product.

11.9. It is the condition of the warranty that the Customer's and its customer's personnel carry out maintenance and repair work to the Product in accordance with the Navis's guidelines and instructions.

11.10. When the Navis carries out any work in connection with this warranty in or on the Vessel, the Customers personnel or crew will assist at no cost to the Navis.

11.11 The following is not covered by this warranty:

- (i) Routine maintenance or replacement of consumable items such as, fuses, lamps, recording papers, cable, protective covers or batteries;
- (ii) A product that has been installed, repaired or altered by anyone other than Navis distributor/subsidiary or its authorized dealers;
- (iii) A product that the serial number has been removed, defaced or changed;
- (iv) Problems relating to accident, negligence, abuse, misuse, improper installation, vandalism, or water ingress;
- (v) Damage that occurs due to force majeure or likewise;
- (vi) Shipping damage;
- (vii) Modifications or software update except operations done by Navis distributor/subsidiary or its authorized dealers
- (viii) Modification or recalibration of other systems interfaced to Navis system (sensors, steering system, thruster, engine, automation and etc).
- (ix) normal wear and tear;
- (x) use of parts, spare parts, materials or consumables not supplied or expressly approved by the Navis;
- (xi) any use, maintenance, service or operation of the Product or the Vessel or any part thereof which is not in conformity with the Contract or the Navis's or Subcontractor's manuals, guidelines or instructions, or which is otherwise not in accordance with normal industry practice.

11.12. During the Warranty Period, or after notice of a warranty claim has been received, the Customer shall arrange for the Navis or his representative to have free access to the Product as well as free access to log books and other records containing operating or maintenance information relating to the Product. The Customer shall allow or procure permission for the Navis to perform simulations and tests on the Vessel, and attached to the Product systems in order to identify the cause of any alleged failure in operation of the Product. The Customer agrees that failure to comply with its obligations herein shall constitute a waiver of any rights under the warranty.

11.13. On expiry of any relevant Warranty Period, the Navis shall inform the Buyer about the expiration of the Warranty Period.

11.14 After the installation and commissioning have been completed and the customer is satisfied with the system operation, the “**Installation Report**” should be completed by the Navis’s service engineer or authorized Service agent and signed by the Customer representative and mailed to NavisNavis. Original registration date will remain as the start of the warranty period.

11.15 All service requests should be addressed to Navis Engineering OY by e-mail or by fax. Only a Navis distributor/subsidiary or its authorized dealer can perform warranty repairs. Warranty repairs performed by any party other than a Navis distributor/subsidiary or its authorized dealer are not covered by this Warranty.

11.16 It is essential that warranty repairs are basically carried out by exchanging P.C.Board for smooth and efficient service. Free replacement of parts is subject to the requirements and guidelines set forth in this warranty policy statement. Customer shall return all replaced defective Products and/or its parts and the returned Products and/or its parts become Navis' property. Customer must assume the risk of damage or loss in transit. If defective part will not be returned to Navis, in this case Navis could invoice to the Customer full amount of the replacement forwarded including freight charges.. Any failure of replacement parts must be reported to Navis as quickly as possible. This warranty covers the replacement of the part only and does not cover reimbursement of any associated labor charges.

11.17. Except as specifically stated in Art. 11, the Navis shall not be liable for and hereby disclaims all other warranties, express or implied including warranties of fitness for purpose and merchantability. The Customer shall

11.18. The Customer warrants that the Navis, Personnel and Subcontractors shall have full and safe access to the Site, Vessel or premises in respect of which or where Product or Services are supplied and that no Personnel or any equipment of the Navis or its Subcontractors are subject to any risk of life, health or risk of loss or damage to property. The Customer shall indemnify the Navis in respect of any liabilities and/or losses incurred in connection with any person, for or to whom the Navis is responsible in any way whatsoever, suffering death or injury or loss of or damage to their equipment or other property as a result of Customer's breach of this warranty.

## **12. SOFTWARE TERMS**

12.1. Use of Navis' software shall be subject to the following:

Navis grants to Customer rights (i) to operate the software, and (ii) to make copies of the software only for the archival purposes. Customer shall not copy, modify, disassemble, reverse-engineer or decompile the software. Customer agrees that it shall not use or attempt to use the software except as authorised in these conditions or the Contract. The software does not include updates or upgrades unless otherwise stated in writing by Navis. Customer shall not have any title or ownership to the software other than ownership of the physical media. Customer acknowledges that the software may have been developed by third party software supplier(s) named in the copyright notice(s) included with the software and agrees that such software suppliers are authorised to hold Customer responsible for any copyright infringement or breach of this Section 12. Navis guarantees that the software shall not contain any material non-conformance with Navis' Specifications for such software for a period of one (1) year after the date of invoice for the copy of such software.

EXCEPT FOR THE EXPRESS GUARANTEE STATED IN SECTION 11 AND 12 ABOVE, Navis DISCLAIMS ALL GUARANTEES ON PRODUCTS HEREUNDER, INCLUDING ALL IMPLIED WARRANTIES OF SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

## **13. THIRD PARTY HARDWARE AND SOFTWARE**

Any hardware or software designed, manufactured or produced by third parties and not bearing Navis' logo shall be subject to the warranty provided by such third parties that Navis may elect to pass on to the Customer, provided such pass through of warranty coverage is permissible under Navis' agreement with its supplier.

## **14. CUSTOMER ACKNOWLEDGEMENT**

Customer acknowledges and agrees that: (a) it is responsible for the operation of the Products and should ensure that they are used safely and that it should use, maintain, store and keep the Products in accordance with any instructions, user handbook or other form of guidance relating to them; and (b) it would be prudent for Customer to insure against all loss or damage Customer may suffer as a result of Navis' acts or omissions whether negligent or not on the basis that Navis' potential liability hereunder might otherwise be disproportionate to the Total Contract Price.

## **15. LIABILITY**

The warranties given in Sections 11 and 12 above are the only warranties given by Navis and otherwise this Section 15 specifies the entire liability of Navis including liability for negligence and in particular but without limitation all statutory or other express implied or collateral terms conditions or warranties are excluded to the fullest extent permitted by the law.

Navis liability whether in contract, tort or otherwise shall not exceed in the aggregate:

- (i) where the Total Contract Price is €150,000 or less, the lesser of (x) the sum of the Total Contract Price or (y) €70,000; or
- (ii) where the Total Contract Price exceeds €150,000, fifty percent of the Total Contract Price.

The exclusions and limitations of liability contained in these terms and in the Contract shall apply regardless of whether the loss or damage was foreseeable or whether the Customer notifies Navis of the possibility of any greater loss or damage but all such exclusions shall only apply so far as permitted by law.

## **16. EXCUSABLE EVENTS**

Navis shall not be liable in any way for loss, damage or expense arising directly or indirectly from any hindrance, failure or delay in performing any obligation under the Contract caused by the actions or omissions of the Customer, its employees, agents, contractors or other third parties providing Products or services to or acquiring them from the Customer or by any circumstance beyond Navis' reasonable control, which shall include Acts of God, labour disputes, civil commotion, war, governmental regulations or controls, inability to obtain necessary material or services, severe weather conditions or extreme traffic congestion. If Navis shall be prevented from performing any provisions under the Contract by causes set forth in this Section Navis will give written notice to Customer and if Navis is unable to perform its obligations for a period of more than six (6) months either party may terminate the Contract by written notice.

## **17. TERMINATION**

Without prejudice to any claim or right it might otherwise make or exercise Navis shall have the right forthwith to terminate the contract by notice and to claim for any losses, costs or expenses thereby incurred

- (i) if Customer commits any serious breach of any of the terms of these conditions or
- (ii) if Customer makes or offers to make any arrangement or composition with creditors or commits any act of bankruptcy, or if any petition or receiving order in bankruptcy is presented or made against Customer, or if any resolution or petition to wind up Customer is passed or

presented otherwise than for reconstruction or amalgamation or if a receiver of Customer's property or assets or any part thereof is appointed or if a third party seizes or threatens to seize the Products before legal ownership has passed to Customer in accordance with Section 9 above.

## 18. OVERSEAS TERMS

Where applicable Navis shall endeavour to obtain an export licence and all other necessary consents to enable the Products to be exported from Finland. If Customer or its agent does not furnish the necessary instructions and/or documents, Navis will make declarations according to its best judgement but will in no case be responsible for any fines or other charges due to errors or incorrect declarations, which shall be the sole responsibility and legal and financial liability of Customer. In the event that Navis is unable to obtain an export licence or visas or consents for personnel required to provide Services outside Finland, Navis shall not be held liable for any damages that Customer may suffer. Customer shall be responsible for complying with any applicable legislation or regulations governing the importation of the Products into the country of destination and for the payment of duties thereon.

## 19. FORWARDING INSTRUCTIONS

Forwarding instructions where required shall be provided by Customer not later than seven (7) days after being advised that the Products are ready for despatch. If no forwarding instructions are received within this period Navis shall have the right thereafter to deliver the Products and to charge Customer in accordance with Section 6 above.

## 20. AMENDMENTS OR CANCELLATIONS

Once accepted by Navis no Order can be amended or cancelled except with Navis prior written approval and upon terms which indemnify Navis against any losses, including without limitation loss of profit or additional costs resulting there from.

## 21. ENTIRE AGREEMENT

These conditions supersede all previous conditions, understandings, commitments, agreements or representations whatsoever whether oral or written relating to the subject matter hereof and shall not be varied except with Navis' written consent.

## 22. TAXES

Unless otherwise stated all prices are quoted excluding VAT, income and local sales, use, excise, or other taxes, and changes in effect at the date of the quotation and directly applicable to the Product covered by the Contract are payable by Customer.

## 23. GOVERNING LAW AND FORUM

These conditions and the Contract shall be governed, construed and shall take effect in accordance with the laws of Finland. Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or validity thereof shall be finally settled by arbitration in accordance with the Arbitration Rules of the Finnish Central Chamber of Commerce.

## 24. MISCELLANEOUS

The headings in these conditions are provided for reference only and shall not be used as a guide to interpretation.

If any of the words or provisions of these conditions shall be deemed to be invalid for any reason, the remaining provisions shall nevertheless continue in full force and effect and will in no way be affected, impaired or invalidated.

Any notice required to be given hereunder shall be in writing, and may either be delivered personally or sent by first class prepaid post, facsimile transmission or email (with a confirmation of receipt) to the address of the recipient set out in the Contract or such other address as the recipient may designate by notice given pursuant to this Section.

Any failure to exercise or delay by a party in exercising a right or remedy arising in connection with the Contract shall not constitute a waiver of such right or remedy or of any other rights or remedies.

## 25. SITE SERVICES

The vessel supervision and commissioning work includes next stages:

- (i) Checking of the installation and cabling of new NAVIS Product at dockside
- (ii) Dockside testing and commissioning of the system
- (iii) Sea Trials and fine tuning of the system. **That includes availability of the ship for maneuvering necessary for adjustments and checks at daylight time and suitable weather conditions for whole period of sea trials.** (Wind not more than 10 m/s, Sea current under 1,5 knots, availability of Differential mode for GPS at all time).
- (iv) On board training for crew

Works are based on 50 hours working week (10 working hours per day, 5 working days per week) and up to maximum two on-board visits.

Installation of the equipment, cable laying and works related to that are NOT part of site services included in this offer. This work is expected to be done by the shipyard.

All specialized installation equipment, services and facilities are not included and must be provided by the shipyard or the customer. These include, but are not limited to, lifting services, welding and cutting.

All costs, travel fare, accommodation, and expenses associated with the NAVIS engineers are included in this fixed price quotation.

For any additional sitework, all fares/traveling time and costs, accommodation of Western European Standard and expenses incurred by Navis Engineers will be paid for, cost plus 8%, by the Customer.

Waiting time will be charged according to Normal hourly rates in accordance with the Navis Service Charges valid for the date of commissioning. The number of charged waiting hours is limited to 10 hours per day.

Commissioning dates to be agreed between Customer and Navis no later than 3 weeks prior the commencement of Commissioning. After the said date has been agreed any delays to the commencement of Services for which Navis is not responsible will result in additional charges to be paid by the Customer.

### Shipyard responsibility:

- (i) Shipyard shall arrange for access to the vessel for NAVIS engineers when required (May include evenings and weekends)
- (ii) Shipyard shall supply 220V AC for tools and portable lights if required.
- (iii) Shipyard shall prepare the vessel for accepting the brackets with mechanical interface as agreed in the drawings supplied by NAVIS
- (iv) Shipyard will prepare mounting foundations for Equipment and operator consoles
- (v) Shipyard will provide cable laying according to the cable diagrams, provided by NAVIS. (Specs of cables will be provided by NAVIS).
- (vi) Shipyard will provide cable connections according to the external wiring diagrams, provided by NAVIS.
- (vii) Shipyard will transport Equipment into position shipped by NAVIS.
- (viii) Shipyard will provide welding team if required for bracket installation
- (ix) Shipyard is responsible for installation of the bracket (under NAVIS supervision)

## **GENERAL CONDITIONS**

### Accommodation:

If the customer or yard provides accommodation or meals on site or onboard, Navis anticipates the following standards:

- A proper single bed with linen in an environment suitable for sleeping.
- Proper facilities for taking care of personal hygiene and washing of clothes.
- A minimum of three meals per day including availability of potable water at all times.

In the event of these requirements not being fulfilled, Navis reserves the right to charge daily allowance and travel costs in accordance with travel regulations.

### Work Conditions:

Navis anticipate the customer or yard to follow internationally accepted standards for industry, shipping and offshore with respect to HSE and Working Conditions.

Helicopter and launch services to be arranged and settled by vessel's local ship agents.

In event of the representative deems the conditions to be unsafe or harmful to health, Navis reserves the right for him/her to discontinue of his/her work until the situation is acceptable.

However, Navis will inform the customer or site representative and work together in order to sort out the situation.

The number of working hours for Navis representative is limited to 18 hours a day.

If these limits are exceeded this will have a detrimental effect on the alertness of our representatives, and an increased possibility for human errors.

If a Navis representative is instructed by the customer or yard to extend these time limits, possible cost due to faults or errors deemed to be the result of extended working hours, has to be covered by the customer or yard.