

GUSTOMSC TERMS AND CONDITIONS

("GUSTOMSC T&C'S")



1. General.

GustoMSC B.V. and GustoMSC US Inc. and their subsidiaries and affiliates (individually and collectively "GustoMSC") provide products and/or services in the offshore industry. These GustoMSC T&C's shall govern the provision of all services and products ("Work") by GustoMSC to the recipient of such Work. Any recipient of such Work is hereby referred to as "Client." GustoMSC and Client are hereby collectively referred to as "Parties."

2. Applicable terms and conditions.

Unless acknowledged and signed by GustoMSC in writing or unless GustoMSC has provided different terms and conditions in writing to a Client in relation to the Work, any other terms and conditions than the GustoMSC T&C's or additions or alterations by Client thereto shall not bind GustoMSC. In case GustoMSC has provided different terms and conditions in writing to a Client in relation to the Work, such specific terms shall supersede these GustoMSC T&C's. GustoMSC's failure to object to any amendments, alterations, additions or proposals contained in any email, purchase order or other form or document from the Client shall not be construed as a waiver of the GustoMSC T&C's or different terms and conditions provided in writing by GustoMSC or an acceptance of any such amendments, alterations, additions or proposals.

3. Client Information

The Client warrants in connection with the Work that, prior to the execution of such Work by GustoMSC, it has provided GustoMSC with all data, calculations, information and records ("Information") it requires to execute the Work fully and to its satisfaction and that all Information provided: a) is factual information, complete, true and accurate in all material respects; 2) and if such Information was a Work related projection or forecast, that this is explicitly identified as such in writing to GustoMSC prior to the Work being performed by GustoMSC and that such a projection or forecast is prepared on the basis of recent historical information and on the basis of reasonable assumptions and was arrived at after careful consideration; c) and if such Information was an opinion or intention, that this is explicitly identified as such in writing to GustoMSC prior to the Work being performed by GustoMSC and is made after careful consideration and was fair and made on reasonable grounds.

4. Work Information

Except as explicitly provided for in these GustoMSC T&C's, the Work provided by GustoMSC to the Client does not create any right, license or entitlement of a Client to GustoMSC's confidential or proprietary information ("Work Information"). In particular, the Client will not by virtue of the possession or use of Work Information acquire any right to or proprietary interest in such Work Information, or any right of prior use regarding patentable inventions comprised in Work Information if GustoMSC, subsequent to the disclosure, applies for intellectual property rights on such inventions. The Client shall not directly or indirectly, claim or assert any legal right to Work Information of GustoMSC, whether by means of patent application or otherwise.

Notwithstanding the above wording of Section 4, any:

- a) intellectual property, knowhow or knowledge substantially derived from Work Information and not existing at the effective date of this Agreement; and
- b) intellectual property rights thereto

will vest in GustoMSC.

Any Work Information disclosed as part of the Work is provided "AS IS". GustoMSC hereby specifically disclaims any warranty, express and implied, as to:

- a) the accuracy, completeness, utility, fitness for any purpose or merchantability of any part of the Work Information disclosed by or on behalf of it; and
- b) the freedom from infringement of any intellectual property right by the Client's use of Work Information of GustoMSC,

regardless of any verbal or written statement made in connection with it.

Any Information provided as part of the Work by GustoMSC can contain trade secrets and confidential proprietary knowhow of GustoMSC.

Any use or disclosure by the client other than the permitted use or disclosure under the GustoMSC T&C's will constitute misappropriation of GustoMSC's intellectual property and may result in civil or criminal liability. Furthermore Work Information provided by GustoMSC is not intended for distribution to, or use by, any person or entity in any jurisdiction or country where such distribution or use would be contrary to law or regulation. Any disclosure of Work Information by the Client to a third party requires GustoMSC's prior written approval.

5. Duty of care

In case services are provided in the course of the Work the following applies. Notwithstanding any legal requirement of any relevant jurisdiction, GustoMSC shall have no liability other than in respect of failure to exercise the reasonable skill, care and diligence to be expected from a professional service provider experienced in the provision of such services comprising the Work for projects of similar size, nature and complexity.

6. LIMIT ON LIABILITY

WITHOUT AFFECTING ANY OTHER PROVISION OF THESE GUSTOMSC T&C'S PROVIDING A LOWER LIMIT FOR OR AN EXCLUSION OF GUSTOMSC'S LIABILITY, GUSTOMSC'S LIABILITY IN CONNECTION WITH THE WORK, INCLUDING WITHOUT LIMITATION LIABILITY IN CONNECTION WITH SECTION 7, 9 AND 10, IS LIMITED TO THE LOWER OF:

- A) 25 PERCENT OF THE FEES/PRICE ACTUALLY RECEIVED BY GUSTOMSC FOR THE WORK, OR
- B) EUR 100,000,

IN THE AGGREGATE. EXCEPT AS STIPULATED OTHERWISE BY MANDATORY LAW, THIS LIMIT APPLIES WITHOUT EXCEPTION AND REGARDLESS OF HOW THAT LIABILITY ARISES, INCLUDING LIABILITY ARISING BY BREACH OF CONTRACT, PURSUANT TO ANY INDEMNITY (EXCEPT WHERE A SPECIFIC INDEMNITY PROVISION EXPLICITLY STATES OTHERWISE), IN TORT (INCLUDING THE TORT OF NEGLIGENCE) OR FOR BREACH OF DUTY, WHETHER STATUTORY OR OTHERWISE.

7. EXCLUSION OF CERTAIN DAMAGES

NOTWITHSTANDING ANY TERM OR CONDITION TO THE CONTRARY IN THE GUSTOMSC T&C'S OR ANY APPLICABLE LEGAL REQUIREMENT OF THE IN ANY RELEVANT JURISDICTION NO PARTY WILL UNDER ANY CIRCUMSTANCES BE LIABLE FOR ANY:

- A) LOSS OR DEFERRAL OF PROFIT OR REVENUE, COST OF CAPITAL, COST OF FINANCING, INTERRUPTION OF BUSINESS, LOSS OF USE, LOSS OF PRODUCT, LOSS OR DEFERRAL OF PRODUCTION, IDLE OR DOWN TIME COSTS, INCREASED OPERATING COSTS, COST OF REPLACEMENT POWER, LOSS OF OPPORTUNITY, LOSS OF CONTRACT, LOSS OF GOODWILL, LOSS OF REPUTATION, RESERVOIR DAMAGE, LOSS OF HOLE OR DAMAGE DUE TO BLOWOUT OR CRATERING, OTHER PURE ECONOMIC LOSS, OR ENVIRONMENTAL DAMAGE, IN EACH CASE WHETHER DIRECT OR INDIRECT AND REGARDLESS OF WHETHER OR NOT FORESEEABLE AT THE TIME OF THE FORMATION OF THIS GUSTOMSC T&C'S; OR
- B) CONSEQUENTIAL OR INDIRECT LOSS OR DAMAGE ("INDIRECTE SCHADE"),

- C) WITHOUT EXCEPTION AND REGARDLESS OF CAUSE, WHETHER IF ARISING BY WAY OF BREACH OF THIS GUSTOMSC T&C'S, PURSUANT TO ANY INDEMNITY (EXCEPT WHERE A SPECIFIC INDEMNITY EXPLICITLY STATES OTHERWISE), IN TORT (INCLUDING THE TORT OF NEGLIGENCE), OR FOR BREACH OF DUTY, WHETHER STATUTORY OR OTHERWISE.

8. TIME BAR

NOTWITHSTANDING ANY TERM OR CONDITION TO THE CONTRARY IN THE GUSTOMSC T&C'S OR ANY APPLICABLE LEGAL REQUIREMENT OF THE IN ANY RELEVANT JURISDICTION, GUSTOMSC SHALL NOT BE CONSIDERED LIABLE FOR ANY LOSS OR DAMAGE RESULTING FROM ANY OCCURRENCE UNLESS A CLAIM IS FORMALLY MADE IN WRITING AND BY REGISTERED POST ON GUSTOMSC BY THE CLIENT BEFORE THE EXPIRY OF 6 MONTHS, SUCH PERIOD TO COMMENCE UPON THE DELIVERY OF THE WORK BY GUSTOMSC TO THE CLIENT. CLIENT AGREES TO WAIVE ALL CLAIMS AGAINST GUSTOMSC IN SO FAR AS SUCH CLAIMS ARE NOT FORMALLY MADE IN WRITING IN ACCORDANCE WITH THIS SECTION 8.

9. INDEMNITY ("VRIJWARING")

THE CLIENT SHALL INDEMNIFY AND HOLD HARMLESS GUSTOMSC, ITS SUBSIDIARIES AND AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS FROM AND AGAINST ANY AND ALL EXPENSES, DAMAGES, COSTS, JUDGMENTS, AND LOSSES ARISING FROM OR ON CONNECTION WITH THE WORK PROVIDED BY GUSTOMSC OR ANY PORTION THEREOF.

10. SPECIFIC REMEDIES IN RELATION TO GOODS

IN CASE GOODS ARE DELIVERED IN THE COURSE OF THE WORK GUSTOMSC'S LIABILITY FOR ANY DEFECTS OR NON-CONFORMITY IS LIMITED TO THE REPAIR, REFURBISHMENT, MODIFICATION, OR REPLACEMENT OF ANY GOODS OR ANY PARTS OF THE GOODS TO WHICH THE DEFECT OR NON-CONFORMITY PERTAINS, SUCH TO BE DETERMINED IN GUSTOMSC'S SOLE DISCRETION. GUSTOMSC'S LIABILITY FOR DEFECTS OR NON-CONFORMITY DOES NOT INCLUDE ANY OBLIGATION OF GUSTOMSC TO REMOVE PARTS FROM THE VESSEL OR THE GOODS, OR TO (RE)INSTALL OR ASSEMBLE REPLACEMENT, REPAIRED, REFURBISHED, OR MODIFIED PARTS INTO THE VESSEL OR THE GOODS. GUSTOMSC IS NOT LIABLE TO PAY FOR ANY COSTS AND EXPENSES INCURRED BY CLIENT IN CONNECTION WITH THE REMOVAL OR (RE)INSTALLATION OR ASSEMBLY, SUCH WITHOUT EXCEPTION. IF INSTALLATION OF REPLACEMENT PARTS PROVIDED BY GUSTOMSC UNDER GUSTOMSC'S OBLIGATION LIABILITY FOR DEFECTS OR NON-CONFORMITY IS CLIENT'S RESPONSIBILITY PURSUANT TO THE ABOVE WORDING IN THIS SECTION 9, IF GUSTOMSC CHOOSES TO DISCHARGE ITS LIABILITY FOR DEFECTS OR NON-CONFORMITY BY REPLACEMENT OF (PARTS OF) THE GOODS, IT HAS FULFILLED ITS OBLIGATIONS, IN RESPECT OF THE DEFECT OR NON-CONFORMITY OF THE GOODS WHEN IT DELIVERS, IN ACCORDANCE WITH THE DELIVERY METHOD AS INCLUDED IN THE WORK, TO CLIENT A REPLACEMENT PART FOR THE GOODS THAT COMPLIES WITH THE WORK. CLIENT SHALL COMMISSION THE REPLACEMENT PARTS FOR THE GOODS. GUSTOMSC SHALL, IF REASONABLY REQUIRED BY CLIENT, AT ITS OWN COST AND EXPENSE, FROM ITS HOME OFFICE SUPPLY INSTRUCTIONS OR ADVISORY SUPPORT IN THE COMMISSIONING. IF GUSTOMSC CHOOSES TO DISCHARGE ITS LIABILITY FOR DEFECTS OR NON-CONFORMITY BY REPAIR OF (PARTS OF) THE GOODS, IT HAS FULFILLED ITS OBLIGATIONS IN RESPECT OF THE DEFECT OR NON-CONFORMITY WHEN IT HAS BROUGHT THE GOODS AFFECTED BY THE DEFECT OR NON-CONFORMITY IN THE CONDITION THAT COMPLIES WITH THE SPECIFICATIONS INCLUDED IN THE WORK. GUSTOMSC SHALL DETERMINE IN ITS SOLE DISCRETION THE METHODS, TECHNIQUES, PROCESSES, MATERIALS, AND PARTS TO BE USED IN, AND THE CHOICE OF ANY SUBCONTRACTORS TO BE ENGAGED FOR ANY REPLACEMENT OR OTHER REMEDIAL WORK.

11. IP rights

All intellectual property rights related to reports, drawings, specifications, bills of quantities, calculations and other similar documents prepared and provided by GustoMSC as part of or in connection with the Work ("Documents") remain vested in GustoMSC. The Client shall have a license to copy and use the Documents for any purpose relating to project or works for which the Work is directly being provided by GustoMSC. GUSTOMSC SHALL NOT BE LIABLE FOR THE USE BY ANY PERSON OF SUCH DOCUMENTS FOR ANY PURPOSE OTHER THAN THAT FOR WHICH THE SAME WERE PREPARED BY OR ON BEHALF OF GUSTOMSC IN EXECUTION OF THE WORK.

12. No implicit warranties for goods

In case goods are provided in the course of the Work the following applies. Other than those warranties explicitly provided in writing by GustoMSC to the Client, the Parties hereby exclude all other warranties, whether implied, statutory, or otherwise existing by operation of law or by usage or trade in connection with the Work, including warranties of merchantability, fitness for a particular purpose, title, non-misappropriation of third party intellectual property, non-infringement of third party intellectual property rights. In particular, nothing in these GustoMSC T&C's constitutes a warranty that the Work is fit for any specific purpose or intended use and the exercise by the Client of rights explicitly granted under these GustoMSC T&C's, if any, do not infringe the rights of any person.

13. Law and forum choice

These GUSTOMSC T&C's and any dispute arising out of or in connection with GustoMSC T&C's or the Work, including any question regarding its existence, validity or termination, including non-contractual disputes (a "Dispute") are governed by and must be construed in accordance with Dutch law. If a Dispute occurs, either Party may notify the other Party that it wishes to rely on the provisions of this Section 13 for the resolution of that Dispute, specifying the nature of the Dispute, its position in the Dispute, and the arguments supporting its position, including a statement of the legal grounds thereof. The Parties shall endeavor to reach a timely, amicable settlement of any Dispute. Either Party may refer any Dispute that cannot be settled by the Parties in accordance with the provisions of this Section 13 within 80 calendar days after the notification referred to above in this Section 13 to final resolution by arbitration under the rules of Netherlands Arbitration Institute (the NAI), which Rules are deemed to be incorporated by reference into this Section 13. The number of arbitrators will be one. The seat or legal place of arbitration will be Rotterdam, Netherlands. The language to be used in the arbitral proceedings will be Dutch.