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BULGARIAN ACADEMY OF SCIENCES

**BSHC**

**BULGARIAN SHIP HYDRODYNAMICS CENTRE**

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## GENERAL TERMS AND CONDITIONS

The Bulgarian Ship Hydrodynamics Center (BSHC) has specialized in development and execution of fundamental and applied research in the fields of ship and offshore hydrodynamics, coastal hydraulics, aerodynamics and ecology, with direct contribution to optimal and safe operation of ships and structures at sea, environmental protection and other missions for the benefit of the society.

### 1. DEFINITIONS:

In these General Terms and Conditions, the following terms are defined as set forth below:

**BSHC:** the Bulgarian Ship Hydro-dynamics Center, having its registered office at: No. 1 William Froude Str., Asparuhovo distr., PO Box 58, 9003 Varna, Bulgaria;

**Customer:** any person or legal entity who purchases Products from BSHC or enters into a Contract with BSHC or who is in negotiation with BSHC on the conclusion of a Contract;

**Contract:** any agreement formed between BSHC and the Customer, any alteration or addition to such an agreement, and all legal acts and other transactions carried out in preparation or in performance of that agreement;

**Purchase Order:** means a Purchase Order, duly authorized by BSHC, setting out BSHC's requirements for the Contract, or Purchase Order assigned by a Customer to BSHC, having these General Conditions of Contract on its reverse or attached to it or referring to these General Conditions of Contract on its face;

### 2. APPLICABILITY OF THE GENERAL TERMS AND CONDITIONS

**2.1.** These General Terms and Conditions are applicable to all offers and Purchase Orders and/or Contracts (and/or changes or additions thereto) by virtue of which BSHC undertakes research and/or development work, or undertakes other works including delivery of goods or renting of experimental facilities. Conditions of purchase, tender or other general terms and conditions of the Customer are not applicable, if and to the extent they are not included in the order confirmation in accordance with Article 3.2.

**2.2.** If any provision of this General Terms and Conditions or the Purchase Order and/or Contract proves to be void for whatever reason, this does not affect the validity of the other provisions.

### 3. CLOSING OF AGREEMENTS

**3.1** All offers and quotations made by BSHC are subject to alteration and are without commitment, unless stated otherwise. A binding offer is valid for the period as stated therein.

**3.2.** BSHC is only bound to a Purchase Order after the Purchase Order and/or later changes or additions to it have been confirmed explicitly in writing by BSHC. Similarly, additions by telegraph, phone, fax or oral additions, modifications or additional agreements, including general terms and conditions of the Customer, come into effect only with a written acknowledgement of BSHC.

### 4. SUBJECT MATTER AND TERMS

**4.1.** The subject matter of each quotation, Purchase Order and/or Contract (and/or of their

Amendments) is specified therein. The scope of the activities to be performed by the BSHC and the schedule are given in Appendixes, usually referred to as *Work Specification* and *Time Schedule* respectively, unless otherwise agreed.

**4.2.** Unless otherwise agreed the Contract implementation term is counted in workweeks having structure and duration of hours per week/day.

**4.3.** Unless otherwise agreed the period of contract implementation commences on whichever is the latest of the dates listed below:

**a)** the date the Customer Purchase Order is confirmed in writing by BSHC and/or the date the Contract of sale is concluded;

**b)** the provision by the Customer of all information, technical documentation, materials and/or objects necessary for the execution of the Purchase Order and/or Contract is confirmed by BSHC;

**c)** the receipt of the advance payment of the Customer as per Art. 6.3. is confirmed by BSHC.

## **5. EXECUTION OF PURCHASE ORDERS AND CONTRACTS**

**5.1.** BSHC may require the Customer to appoint a contact person available during the execution of the Purchase Order and/or contract, with whom BSHC can maintain all contacts in relation to the agreement on behalf of the Customer.

**5.2.** BSHC is not obliged to start and/or continue with the work for as long as the Customer has not provided BSHC with all documents, goods, data or information that BSHC requires for the execution of the work.

**5.3.** If it has been agreed that the work is to be undertaken by stages they are indications only and may not be deemed as ultimate dates or deadlines. As soon as it is expected that an implementation period will be exceeded, BSHC will inform the Customer accordingly. In that case BSHC is entitled to fulfill its obligations on a date to be agreed upon with the Customer.

**5.4.** The shipment of all necessary technical documentations, drawings, data and/or objects to BSHC is on the Customer's account.

**5.5.** Should the Customer fails to deliver on time all necessary technical documentations, data and/or objects of whatever nature which it deems necessary for execution of the Purchase Order and/or Contract and if the project is delayed as a result thereof or if the time lost can

be made up entirely or in part in overtime or by hiring extra personnel or equipment, the extra costs will be charged to the Customer and the Contract delivery time shall be extended at least by the same time period of delay. For these extra charges and the new delivery date the Customer will be notified in writing upon receipt of the late technical documentations and/or objects.

**5.6.** If the Customer does not or cannot adequately comply with any obligation or on time towards BSHC, and also if the Customer has applied for a moratorium on payments (regardless of whether or not this is granted and whether or not followed by involuntary liquidation) or loses the free control over its assets in any other way, BSHC will be entitled to suspend the execution of the agreement or to dissolve it completely or in part without judicial intervention being required, without being obliged itself to pay any compensation and without prejudice to other rights of BSHC in such a case.

**5.7.** If, while executing the Purchase Order and/or Contract, BSHC finds that due to technical or methodological reasons, a coordination of whatever of parameters or some repairs would be necessary, then the Customer will be notified in writing and the term of the Purchase Order and/or Contract will be extended by the time period reckoned from the date of this notification till the day of BSHC confirmation of the receipt of the Customer's agreement or confirmation to bridge over the technical difficulties.

**5.8.** BSHC shall permit the Customer and/or its authorized representatives to make any inspections which may reasonably be required for the Contract and/or Purchase Order. The visit of the Customer's representatives will be on their account.

**5.9.** The study/test program shall be described in the *Work Specification* to the Contract and the respective technical report shall be delivered to the Customer as indicated in the corresponding *Time Schedule*.

**5.10.** Unless otherwise agreed, BSHC delivers to the Customer technical reports in English in two (2) hardcopies each and CDs or DVDs containing video materials illustrating the tests, by express delivery service (UPS or similar), after completion of the program.

**5.11.** If tests or any other activities additional to these specified in the respective *Work Specification* are required by the Customer, they

will be a subject to additional agreement to the Contract, provided by as an Amendment hereof, at extra price. This clause does not refer to the activities, which are to be repeated due to unsatisfactory implementation of Contract activities, as stated under Art.7.3 hereafter.

**5.12.** In case of renting experimental facilities for tests, the parties sign a bilateral statement, after the accomplishment of each kind of test, with specification of the effective working hours of tests and other possible activities wherein with calculation of the prices pursuant to the respective Purchase Order/Contract. The payments will be made in accordance with these statements.

**5.13.** Prior to the commencement of the rental works the Customer supplies to BSHC a list specifying ship models, propellers, possible appendages and equipment and other objects necessary for the model tests, which should be delivered by the Customer. The BSHC obligations to provide or manufacture ship models, propellers, appendages, equipment or other objects shall be reflected in the respective Contract/Purchase Order.

## **6. INVOICING AND PAYMENT**

**6.1** Invoicing will take place at the rates and prices as agreed upon in the Contract and/or the Purchase Order.

**6.2** The amounts as referred to in the offer or agreement are excluding of VAT and are calculated on the basis of the rates, calculation methods and prices applicable on the date of the quotation.

**6.3.** Unless stated otherwise in the quotation, the Purchase Order and the Contract, the total sum owed by the Customer will be invoiced to the Customer in the following installments and at the following times:

- 40% (forty per cent) of the total price advance payment, payable by bank transfer against BSHC invoice within five (5) days after a firm order or upon signing of the Contract;
- 60% balance payment, payable by bank transfer against BSHC invoice within ten (10) days upon completion of the Contract and/or delivery of the contracted goods and/or technical reports.

Additional work agreed upon during the agreement will be paid for in the same installments.

**6.4.** Unless otherwise agreed, the overtime works requested by the Customer or in

connection with Art. 5.5. hereinbefore, will be calculated at rates as per additional agreement.

**6.5.** Unless otherwise agreed, BSHC issues the invoice in one (1) paper copy for the Customer. A scanned copy of the invoice is sent beforehand to the Customer by e-mail.

**6.6.** The contract prices are firm and fixed and are not subject to any corrections. Any additional activities, not covered by the Purchase Order and/or the Contract are subject to additional agreement in accordance with Art 5.11.

**6.7.** The prices do not include the costs of BSHC staff contractual works conducted outside Bulgaria. If additional expenses would be incurred, a prior written consent of the Customer shall be obtained before commencement of BSHC staff works outside Bulgaria.

**6.8.** Unless stated otherwise, the price is understood CIP (INCOTERMS 2000) and includes all taxes, duties and other costs payable at BSHC's territory as well as packing and express mail expenses for delivery of the contract reports.

**6.9.** All taxes, bank charges and other costs payable at Customer's territory are on the account of the Customer.

**6.10.** The Customer requires all funds, paid according to the Purchase Order and/or Contract, to be used by BSHC only and explicitly for the purposes of the respective project.

**6.11.** All payments shall be made in Euro against respective BSHC invoices by bank transfers in favor of the Bulgarian Ship Hydrodynamics Centre at bank and bank account number specified in the invoice or in the Purchase Order and/or Contract clauses.

**6.12.** In case, due to a fault of BSHC, the delivery is delayed with more than two weeks, BSHC pays penalty amounting to 0.5% (zero point five per cent) of the Contract or Purchase Order price, for each commenced week of delay thereafter, but not more than 5% (five per cent) of the whole price.

**6.13.** In case, due to a fault of the Customer any of the payments, specified in the respective Purchase Order and/or Contract (and/or their amendments) is delayed with more than two weeks, the Customer pays penalty amounting to 0.5% (zero point five per cent) of the corresponding installment sum for each commenced week of delay thereafter but not

more than 5% (five per cent) of the whole corresponding installment amount.

**6.14.** If the Customer cancels a Contract or Purchase Order which implementation has already started, the Customer will pay to BSHC either 40% (forty per cent) of the value of the whole contract or the cost of the work performed till the moment of cancellation, whichever is larger.

**6.15.** If the Customer temporally suspends a Contract/Purchase Order after its coming into force, the Customer pays to BSHC a penalty amounting to 0.5% (zero point five per cent) of the installment sum for each commenced week of suspension but not more than 5% (five per cent) of the whole installment amount.

**6.16.** If BSHC cancels the Purchase Order and/or Contract (and/or their amendments) which implementation has already started, BSHC will return all payments made up to that time plus the statutory interest on that amount.

## **7. GUARANTEES AND LIABILITIES**

**7.1.** BSHC will undertake the work with due care and to the best of its ability, and in doing so will strive to achieve the best results possible. BSHC gives no guarantee whatsoever in respect of the practicability of the results obtained and the effective use of them by the Customer.

**7.2.** No liability is accepted by BSHC if the results of the Purchase Order and/or Contract fall short of the Customer's expectations or are not significant so long as all activities have been performed as defined in the Purchase Order and/or Contract.

**7.3.** If during one month period, reckoned from the date of acceptance or receiving of the deliveries or upon completion of the Contract/Purchase Order work, the Customer ascertains shortcomings in the results that are due to errors, incompleteness or lack of due care that can be attributed only to BSHC and which are repairable according to the reasonable standards, the necessary additional activities shall be fixed in a written statement, signed by both the Customer and BSHC, and performed by BSHC with due care in the shortest possible time, with a highest priority.

**7.4.** BSHC is not liable at any time for damages as a consequence if the use of the results of the work under the Contract or Purchase order, or deliveries, or exceeding of deadlines, nor for

consequential or indirect loss or damage including lost profits or savings.

**7.5.** BSHC accepts no liability for loss or damage that is the consequence of defects to the items supplied to BSHC and which have been delivered by BSHC to the Customer, unless and so far as BSHC can claim such loss or damage from its supplier.

**7.6.** The Customer indemnifies BSHC against all claims of third parties relating to the use or the application of the results, data, knowledge, information, designs, software or delivered items originating from BSHC.

**7.7.** Any obligation under guarantees expires after six months period has elapsed reckoned from the date of acceptance or receiving of the deliveries or upon the full completion of the works of the Contract/Purchase Order. Claims by the Customer will lapse if they are not submitted to BSHC within this period.

**7.8.** If the Client and/or its personnel are on the premises of or in, on or near BSHC buildings or systems, they are obliged to follow the safety and health instructions and other legal provisions that are in force on the BSHC territory.

**7.9.** BSHC is not liable in any manner whatsoever for personal injury or damage to property that the Client, its personnel and/or their belongings may suffer while they are on the premises or in, on or near BSHC buildings or systems. The Customer indemnifies BSHC against claims from its personnel in this respect.

**7.10.** The Customer is liable for personal injury and/or damage to the property that BSHC and/or its staff engaged for the execution of the Purchase Order and/or Contract suffer during that execution, unless this can be blamed on gross negligence or the lack of due care and attentions on the part of the members of BSHC's personnel related to the corresponding situation.

## **8. INTELLECTUAL PROPERTY AND CONFIDENTIALITY**

**8.1.** All reports, data, technical documentations or equipment, provided by the Customer to support the execution of the Contract and/or Purchase Order, remain a sole property of the Customer. BSHC keeps these data and documentation confidential and does not make it known or give it in use to any third party.

**8.2.** No third party observation is permitted during the testing and no third party access to

the model or components is permitted, without prior written consent of the Customer.

**8.3.** In addition, upon a Customer request a Confidentiality Agreement could be concluded between BSHC and the Customer.

**8.4.** All data and reports, provided under the Contract and/or Purchase Order, will be property of the Customer and will not be released to any third party by BSHC without the written permission of the Customer. Also no technical paper, publication or reference to the performed Purchase Order and/or Contract is to be issued by BSHC without the written permission of the Customer.

**8.5.** All technical documentation for manufacture of the ship model hull, stock propellers, linkage and components/supplementary devices, also all models and these devices, produced under the Purchase Order and/or Contract will remain property of the Customer. BSHC will store the model hull, linkage and components/supplemental devices free of charge for twelve months. After expiration of this period BSHC will inform in writing the Customer for the charge of further storage of these objects. If the Customer is not interested in their storage after the twelve months period BSHC has the right, after a written notification sent to the Customer, to dispose of the fore-mentioned objects including but not limited to donation or destruction or selling.

**8.6.** It is acknowledged by BSHC that the model and vessel concept being tested are protected by numerous patents and proprietary rights. All rights resulting from inventions made by BSHC that relate to the performance of the Purchase Order and/or Contract with the Customer will become equal intellectual and industrial property of BSHC and the Customer. The Customer will have equal rights for usage of the inventions as it pertains to the model and vessel concept being evaluated. Other uses of the inventions will be as the two parties additionally agree with an official agreement after review by appropriate patent authorities. In absence of another agreement, all costs associated with this intellectual property review by attorneys and the appropriate patent authorities will be on the account of BSHC.

## **9. FORCE-MAJEUR**

**9.1.** Neither party is responsible for non-observance of its obligations with respect to the

Purchase Order and/or contract only in case of Force-Majeur such as but not limited to war, revolution, civil unrest, riots, nation-wide strikes, acts of God, plague, embargoes, earthquakes, fire, flood and other cases beyond the control of the parties.

**9.2.** The Force-Majeur cases are to be verified by the Chamber of Commerce of the country involved.

**9.3.** In case of Force-Majeur, both parties will consider the consequences thereof by suggestion of the interested party, and will agree whether the Purchase Order and/or Contract should be terminated or new terms should be stipulated for its execution.

## **10. DISPUTES**

**10.1.** The Parties shall use their best efforts to settle amicably any dispute, controversy or claim arising out of this Contract and/or Purchase Order, or the breach, termination or invalidity thereof. If, however, agreement cannot be reached, the dispute will be referred to the competent Bulgarian Court and will be treated under the rules and procedures of the Bulgarian law.

**10.2.** The competency of the Bulgarian Court will commence at the moment of entering into force the Purchase Order and/or Contract by the parties. The awards of the court will be final and binding upon both parties.

## **11. CONCLUDING PROVISIONS**

**11.1.** Neither of the parties is entitled to transfer his rights and obligations under the Purchase Order and/or Contract to a third party without prior written consent of the other party.

**11.2.** An exception or amendment to this General Terms and Conditions is permitted only in writing by BSHC.

**11.3.** The present General Terms and Conditions come into force on March 1<sup>st</sup>, 2008.