GENERAL TERMS AND CONDITIONS

Article 1. Applicability

1. These General Terms and Conditions are applicable to the entire legal relation between ORCA and Principal, on all our offers, correspondence and on all agreements, under whichever name, concluded by “ORCA Crew Services B.V., hereinafter referred to as “ORCA”. Especially, these terms and conditions are also applicable to agreements concluded by us concerning the making available of crew members, hereinafter referred to as the “Temporary workers” for the benefit of the shipping industry to principals, hereinafter referred to as the “Principal”.
2. Principal is deemed to have tacitly agreed with the applicability of these General Terms and Conditions as soon as the commission has been concluded.
3. Where, in these General Terms and Conditions, it is spoken about the “Principal”, it must hereunder be understood as each natural or legal person who stands in a contractual relation with us on the basis of a contract of hire concluded with us or wishes to conclude an agreement of another kind. Under “Principal” shall also be understood the person whose commission and for whose account the goods will be delivered. Under “Principal” shall also be understood as all ships and enterprises that he or she represents.
4. The stipulations in these General Terms and Conditions can solely and only be deviated from it and insofar as such is explicitly agreed in writing.
5. If the Principal also refers to (his) general terms and conditions, then the terms and conditions of the Principal are not applicable. This is only different if and insofar as the applicability of the terms and conditions of the Principal are not in conflict with our General Terms and Conditions: then only the stipulations in our terms and conditions shall be applicable. Any stipulation to the contrary in the terms and conditions of the Principal does not affect the previous. The general terms and conditions used by the Principal apply only and only when these have been explicitly accepted in writing by ORCA.
6. Where, in these General Terms and Conditions, it is spoken about "Temporary workers and Employees" it shall thereunder be understood as the execution of services and activities on board ships by the personnel of ORCA.

Article 2. Designated offers

1. All of our designated offers must be regarded as invitations to the potential Principal for making an offer. They bind us, therefore, in no manner whatsoever, unless in the designated offer self explicitly and unequivocally (in writing) the contrary has been stipulated. The order given to us is regarded as an offer, which firstly after written confirmation from our side (the so-called order confirmation) is deemed to have been accepted by us.

Article 3. Conclusion agreement

1. An agreement with us is firstly concluded when we have accepted an order given to us in writing. An agreement is deemed to have been concluded at the moment in which we send the order confirmation.
2. The Principal is bound to his order, given in whichever form to us, during a period of 8 days after the date of the order or (if it concerns an order provided verbally) after the giving of the order. A declaration of the Principal that he wishes to cancel or to change his order issued during this period of 8 days can, therefore, not prevent that an agreement on basis of the (original) order will be concluded, if we after all accept/confirm the order within this period of 8 days.
3. The order confirmation sent by us to the buyer is deemed to represent the content of the concluded agreement fully and correctly. The buyer is deemed to agree with the content of our order confirmation, unless he within 8 days after the date of our order confirmation informs us in writing that he cannot agree with the content.
4. Possible additional agreements and/or promises made and/or done by our employees, or made and/or done on our behalf by other persons, who act as representatives, only bind us if these agreements and/or promises have been confirmed in writing by our director(s) authorised to representation.

Article 4. Selection of employees

1. ORCA is free to choose the employee who it makes available on the basis of a commission.
2. ORCA warrants that the employee has the documents and qualifications designated with the Principal before the commission.
3. Requirements that are irrelevant to the function cannot be made by the Principal. These shall not be honoured by ORCA.
4. When the employee has not worked at least once previously for the Principal and he proves not to have the mentioned competencies and qualifications, then the Principal shall make such known no later than at the end of the first working day of the employee in writing, stating the reasons, to ORCA. ORCA shall then make an effort to arrange a replacement as soon as possible.

Article 5. Working hours and terms and conditions

1. The employee shall be made available for a defined time or for the duration of the project.
2. Under the duration of the employment agreement, the commuting from the town of residence or stay of the employee to or from the place of start or termination of the activities is included.
3. The Principal shall not deviate in a negative manner, towards the employee, from the working hours and breaks that are also applied for own personnel.
4. Should a collective regulation be applicable at the concerned Principal, then ORCA shall apply this. The Principal is obliged to mention at the conclusion of the agreement the full content of the mentioned regulation and pay any increase of rate deriving therefrom to ORCA.
5. If a car or any other vehicle is made available by the Principal to the employee, then the Principal is obliged to inform ORCA about this. If the Principal omits to do so, then he is required to compensate all damage, costs and (fiscal) consequences possibly deriving therefrom that ORCA and/or the employee suffers because of it.

Article 6. Onward loaning and offering direct employment relation:

1. The Principal is not at liberty to make the employee available to a third party to work under his management and supervision.
2. The Principal is not at liberty to conclude directly, or via a third party, an employment agreement with the employee during the duration of the commission and not before the duration of the commission(s) has been at least six months (180 days).
   If the Principal wishes to proceed to a direct employment relation within the worked term of six months, then the Principal shall be liable to pay to ORCA a compensation for the remaining days up to a maximum of 180 times the day rate.
3. If ORCA acquires the commission for only recruitment and selection, then ORCA shall charge a fee of three gross monthly salaries of the hired employee or 25% of the total annual wages inclusive of emoluments. This fee shall have to be paid as soon as the employee signs his contract.

Article 7. Rates

1. Our rates are exclusive of turnover tax and unless explicitly and in writing agreed otherwise.
2. Our prices are exclusive of costs for travel, stay, accommodation, food, vaccination, visa, COC specific flag, clothing (PPE) and a work permit for the Seafarers.
3. The agreed daily rate for the employee starts upon leaving the home of the employee up to the day of return to home of the employee unless agreed otherwise in writing.
4. The labour, rest and working times of the Temp Worker shall be in accordance with the times that are applied at the Principal. Upon exceeding the agreed working hours (these are standard 12 hours per workday), we shall bring 10% of the daily rate or 125% of the hourly rate per extra hour into account.
5. Unless ORCA has given its written permission, the Principal is forbidden to place the employee in a function or rank other than previously agreed.
6. In case the Temp Worker is deployed in a lower function on board during the contract period, then the present rate shall be maintained.
7. In case the Temp Worker shall be deployed in a higher function on board during the contract, a new rate shall be agreed.
8. We reserve the right to, if after the date on which the agreement has been concluded, but before the day of delivery, increases in one or more of the cost factors emerge, to bring these increases into account to the Principal.
   Furthermore, we have the right to declare in such a case the agreement to be dissolved in whole or in part, without the intervention of the courts being required. This latter right also belongs to the buyer, but only if we take the standpoint within three months after the conclusion of the agreement that from the changes in the costs, an increase of the price mentioned in the confirmation of commission is derived. If the Principal makes use of this right, then he must invoke the dissolution within five days after receipt of the concerned notification by us, by registered letter.
9. Should rate changes occur on the basis of legislation, CAO-obligations or any other regulation, then ORCA will charge these onwards with effect when a notification to the Principal is received.
10. The Principal has declared to agree with PDF invoicing.
11. The parent company of the Principal warrants that all payment obligations towards ORCA shall be honoured and is as such financially liable as the parent company.

Article 8. Liability

1. ORCA is also never liable for consequential or enterprise damage, direct, indirect damage or any other form of damage, under whichever name, loss of profit and stagnation damage therein included, suffered by the Principal, his subordinates and emerged for persons put who work at or by him or third parties.
2. The complete exclusion mentioned under section 1, will suffer exception when the Principal provides evidence that the damage has emerged by wilful intent or gross fault at the side of ORCA. In this case, ORCA limits its liability to 50% of the amount invoiced to the Principal for making the employee available that is in the closest connection of the realisation of the damage. ORCA has the right to take measures to undo the damage, insofar as is possible.
3. The Principal shall insure the personnel delivered by ORCA on his "Hull & Machinery" and "P&I" policy of the ship.
4. ORCA bears no responsibility for damage that is caused by personnel made available by ORCA, to the Principal, other personnel or third parties. The Principal safeguards ORCA and its employees for possible claims of third parties for damage and/or losses which would have been caused by personnel made available by ORCA, during the execution of his activities.

Article 9. Employment relation personnel, management and supervision, duration availability

1. The Personnel who are made available to the Principal are in the employment of ORCA. During the period that the personnel have been made available to the Principal, the latter is, however, required for management and supervision.
2. The Principal is not permitted to put the employee to work at a place or area where danger is present for the health of the employee or where the safety of the employee is or can be in danger.
3. If, after the start of the activities, the health or safety of the employee comes or has come in danger, then the Principal is obliged to immediately repatriate the employee at his costs.
4. The Principal is fully liable for all damage that the employee has suffered by or as a consequence of his affected health or the threat to his safety.
5. The Principal shall safeguard ORCA at all times from claims instigated towards ORCA because of the non-compliance by the Principal with the obligations mentioned in this article and grants ORCA the authority to assign its claims to the direct interested party/parties, or to make these valid also on behalf of ORCA against the Principal.
6. The responsibility for the execution of and compliance with the employer obligations as imposed by the law with regard to safety and further labour conditions, as well as all further locally applicable laws and/or regulations rests on the Principal.
7. On the basis of the Dutch Law "Arbowet" and the general safety on the works, the Principal must ensure that the employee uses no alcohol or drugs during work. And is not under the influence of alcohol or drugs during the work. No drugs or excess alcohol outside of working time must also be ensured if the employee is in the employment of ORCA and as such has been put to work on a project. After the consumption of alcohol, the employee should observe an alcohol free period of a minimum of 8 hours before the activities are resumed again.

Article 10. Payment

1. Payment must take place in euros, unless agreed otherwise, by transfer into a bank account designated by us and no later than within 30 days after the date of the invoice, all of this unless explicitly agreed otherwise in writing. In case of payment per bank, the day of crediting of our bank account is regarded as the day of payment.
2. If the Principal does not proceed to (complete) payment in a timely manner, then he is in default without a further notification of default being required. Then we have the right, if and insofar as sufficient relation exists with the non-compliance by the Principal, to suspend the compliance with all our legal obligations towards the Principal, without being required because of it to any compensation of damages towards the Principal, notwithstanding all of our rights deriving from the general law.
3. Furthermore, we then are authorised to dissolve the agreement without the intervention of the courts, or to undo the obligation of the performance executed by us otherwise, notwithstanding our right to compensation of damages. Should the Principal remain in default regarding timely payment, then he will forfeit to us, or the credit insurer of the seller, without that a further summation from our side is required, from the due date up to the day of the altogether payment an interest, equal to the lawful interest plus 4% per year, calculated over the amount not paid, which interest is immediately payable upon demand without further notification of default.
   All the costs related to the collection of invoiced amounts (including the out-of-court collection costs) will be for the account of the debtor. The out-of-court collection costs amount to a minimum of 15% of the principal sum with a minimum of €250 all of which is exclusive of turnover tax.
   Furthermore, all the detrimental consequences of currency rate loss or otherwise deriving from the late payment or non-payment, will be for the account of the buyer, even if the buyer would, according to the stipulations existing in his countries, have complied with his payment obligations in a timely manner, but circumstances or measures outside his control have let the transfer take place in a manner detrimental to us.
4. In case of bankruptcy, suspension of payment, liquidation, and cessation of activities or attachment, ORCA is authorised to dissolve the commission out-of-court by means of a registered letter, without that notification of default being required.
5. Payments serve in accordance with article 6:44 Dutch Civil Code, firstly for the reduction of the costs referred to in section 3, subsequently for the reduction of the appeared interest and finally for the reduction of the principal amount and the current interest.
6. If in the financial position of the Principal after the conclusion of the agreement, but before the delivery of the goods, a considerable deterioration occurs, then we are authorised to reject in whole or in part the further execution of the agreement, or to demand a change of the payment conditions.
7. Payments by the Principal to the employee take place each time for the risk of the Principal. Advances paid by the Principal to the employee must be submitted before salary payment and invoicing of the concerned month in writing to ORCA. ORCA shall also firstly have to approve this application to advance, before the Principal can proceed to payment. Without written approval of the advance, the risk of a possible negative salary balance shall be for the account of the Principal.
8. All travel and board costs shall, unless agreed otherwise in writing, not be included in the agreed daily rates and must be compensated by the Principal.
9. Costs deriving from the timely making available of replacement in cases of illness will be for the account of the Principal.
10. The invoices of ORCA are based in part on the hour lists approved by the Principal. After approval, errors in the hours' lists are for the account of the Principal. The signature of the captain constitutes the approval of the Principal of the hours' list.

11. Objections, further to a received invoice by the Principal, must be made known within 14 days after date of the invoice to ORCA. The payment obligation of the Principal is not suspended by notification of the objection.

Article 11. Force Majeure

Each circumstance outside our control that is of such a nature that compliance with the agreement in reasonableness cannot be required from us must be understood as Force Majeure (non-imputable shortcomings in the compliance). Under Force Majeure will also be understood, but not limited to; war, riots and animosities of whichever nature, blockade, strike, boycott, disasters of nature, epidemics, shortage in raw materials, impediment or interruption of the transport options, disruptions in our enterprise, import and export limitations or bans, caused by measures, laws or resolutions of international, national and regional (government) entities. If by Force Majeure we cannot, not properly or not timely comply with our duty to deliver, then we are authorised to regard the agreement or the not yet executed part as dissolved, or to suspend if for a defined or undefined period of time, so at our discretion. In case of Force Majeure, the Principal cannot hold us liable for compensation of damages; also obligations on the basis of the commission shall be suspended with regard to ORCA. The possible applicable daily rate shall be maintained during the Force Majeure.
If the Force Majeure exceeds a period of three months, then each of the parties has the right to terminate the agreement by means of a written notification to the other party, without that notification of default is required.

Article 12. Applicable law

Solely, the laws of the Netherlands are applicable to the designated offers issued by us and to all agreements concluded by us.

Article 13. Dispute resolution

All disputes of whichever nature related with/deriving from agreements concluded by us and deliveries executed by us shall be resolved by the competent court in Middelburg, the Netherlands.

If any stipulations from these terms and conditions are declared invalid, then the other stipulations of these terms and conditions shall nevertheless remain in force. The Parties shall enter into consultation in order to agree upon new stipulations for the replacement of the stipulations declared invalid, whereby as much as possible the purpose and intent of the invalid or invalidated stipulations shall be observed.

ORCA reserves the right to change these General Terms and Conditions. Changes come into force as soon as the Principal has been notified thereof by ORCA.

Date: 01 September 2017

ORCA Crew Services B.V.