

# CONDITIONS OF SERVICE FOR CLASSIFICATION OF SHIPS AND REGISTRATION OF INSTALLATIONS

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# CONDITIONS OF SERVICE FOR CLASSIFICATION OF SHIPS AND REGISTRATION OF INSTALLATIONS

## Chapter 1 SERVICE OF THE SOCIETY

### 1.1 NIPPON KAIJI KYOKAI

NIPPON KAIJI KYOKAI is a Classification Society (hereafter referred to as “the Society”), established for the purpose of promoting the improvement and development of various matters relating to ships, floating equipment and fixed or floating structures (hereinafter collectively referred to as “ships”) so as to ensure the safety of life and property at sea, whose main activity is the provision of services relating to classification of ships and the registration of installations.

### 1.2 Classification of Ships

1 Classification of ships is to be regarded as the development and worldwide implementation of published Rules and Regulations of the Society which will provide for:

- (1) The structural strength and watertight integrity of all essential parts of the hull and its appendages
- (2) The safety and reliability of the propulsion and steering systems, and those other features and auxiliary systems which have been built into the ship in order to establish and maintain basic conditions on board, thereby enabling the ship to operate in its intended service.

2 The achievement of these goals is conditional upon continued compliance with the Rules and Regulations and proper care and conduct on the part of the ship owner.

The compliance with the Rules and Regulations is evidenced by a classification character published in the Register of Ships of the Society.

### 1.3 Registration of Installations

Apart from classification of ships, the Society maintains a registration of installations with the same concept, procedures and conditions as those for classification of ships. The registration of installations applies to installations which are on board ships classed with the Society and are deemed by the Society to be appropriate for registration.

### 1.4 Notes for Classification of Ships and Registration of Installations

1 A ship built and/or installations manufactured and fixed on board the classed ship in accordance with the Rules and Regulations of the Society will be assigned a class and/or character in the Classification Register and/or in the Installations Register of the Society respectively. For ships in service and/or for installations of ships, the Society maintains the provisions of class and/or of installations by way of periodical visits by its Surveyors to the ship as defined in its Rules in order to ascertain that the ship and/or the installations currently comply (complies) with those Rules. Should significant defects become apparent or damages be sustained between the relevant visits by the Surveyors, the ship owners are required to inform the Society without delay. Similarly, any modification which would affect Class and/or Registration must receive prior approval by the Society.

2 A ship and/or installations is (are) said to be in Class and/or in the Register when the Rules and Regulations which pertain to it have, in the opinion of the Society, been complied with.

3 Notwithstanding the provisions of paragraph 1 and 2, the Society may refuse or revoke the classification of ships and the registration of installations in cases where in the reasonable judgement of the Society a particular circumstance will expose the Society or ships classed with the Society to loss of social credibility or other adverse effects, or that the classification of such ships or the registration of such installations is considered not appropriate for other reasons. For instance, the following circumstances are included:

- (1) the Society decides the classification of such ships and the registration of such installations may expose the Society to sanction, prohibition or restriction imposed by a State, Supranational or International Governmental Organization or may conflict with applicable laws or regulations; or
- (2) the Society suspects the ship or the installations of not being in continued compliance with its Rules and Regulations or not being properly maintained and operated by the shipowner, and subsequently verifies its suspicions through surveys conducted to detect any non-compliance with its Rules and Regulations.

## Chapter 2 CONDITIONS OF SERVICE

### 2.1 General

#### 2.1.1

The conditions of services specified hereunder shall apply to the provision by the Society of services, information or advice of whatever nature relating to the classification of ships and to the registration of installations and shall be deemed to be, and treated as being, incorporated into all and any contracts and/or other arrangements entered into by the Society with any party.

#### 2.1.2

The Society shall exercise due care and skill and act in a professional and workmanlike manner in performing the services.

#### 2.1.3

In addition to the provisions contained in the Rules and Regulations of the Society, such services, information or advice are provided on the strict basis that:

- (1) The ship and/or the installations shall be properly maintained and operated under the sole responsibility of the ship owner at all times between the surveys generally and conforming with the Rules and Regulations of the Society.
- (2) It is the responsibility of the ship owner to report to the Society any incident or event which may affect the classification of a ship and/or the registration of an installation.
- (3) Any classification and/or registration documents issued pursuant to surveys carried out by the Society's surveyors reflect the condition of the ship and/or the installations as at the time of the survey.
- (4) The classification of a ship and/or the registration of an installation and/or any document, information or advice issued or provided by the Society relating thereto shall not constitute a representation, statement or warranty of seaworthiness, structural integrity or quality or fitness for a particular purpose or service beyond any representation set forth in the Rules of the Society and shall be for the sole use of the Society and its clients or other duly authorised entities and no other party.

#### 2.1.4

Nothing contained herein, or in any document, information or advice issued or provided in connection with or pursuant to the performance by the Society of its services, shall be deemed to relieve any designer, naval architect or engineer, builder, manufacturer, shipyard, seller, supplier, contractor or sub-contractor, repairer, or ship owner, operator or other entity from any warranty or any other contractual obligations expressed or implied or from any fault whatsoever, nor to create any right, claim or benefit in any third party.

#### 2.1.5

All fees and expenses incurred for the services of the Society are due and payable within 30 *days* of the date of the invoice. Interest shall be charged at the rate of 5% per year on any amount(s) outstanding. Those fees and expenses are due and payable whether or not a classification or a registration has been assigned, maintained or withdrawn.

### 2.2 Practices and Procedures

The Society will in its sole and absolute discretion determine the practices and procedures to be adopted for the tests, inspections and surveys to be carried out by its surveyors.

### 2.3 Independence

The Society acts independently in the performance of its services and neither the Society nor any of its officers, directors,

employees, agents or sub-contractors shall be considered as an employee, or agent of any other party, including but not limited to a shipyard, ship owner, operator, charterer or insurer.

## **2.4 Confidentiality**

**1** All documents and information provided to the Society are treated as confidential by the Society and shall not, without the prior consent of the party providing such documents or information, be disclosed for any purpose other than that for which they are provided. The results of surveys conducted by the surveyors of the Society are treated in the same manner as the above documents. The contents and/or copies of the documents, information and/or the survey results may be disclosed as required by applicable legislation, court order, legal proceedings or adherence to the requests of a flag state or port state. Further, the following information is considered public information and available to any interested party.

- (1) Information published in the *Register of Ships* of the Society including due dates of periodical surveys
- (2) Information on transfers, changes, suspensions and withdrawals of class
- (3) Information related to **(2)** above, including those on all overdue surveys, overdue recommendations, condition of class, operating conditions or operating restrictions

**2** Notwithstanding the general duty of confidentiality stipulated in **-1** above, the party concerned hereby accepts that the Society will participate in Early Warning Scheme which requires each IACS Member and other classification society that is involved in the failures described later (hereinafter referred to as “involved Classification Societies”) to provide involved Classification Societies with relevant technical information on serious hull structural and engineering systems failures, as defined in the Early Warning Scheme (but not including any drawings relating to the ship which may be the specific property of another party), to enable such useful information to be shared and utilized to facilitate the proper working of Early Warning Scheme. The Society will provide the party concerned with written details of such information upon sending the same to involved Classification Societies.

## **2.5 Interpretation**

The validity, applicability and interpretation of these conditions, of the Rules and Regulations of the Society, and of any document, information or advice issued or provided by the Society shall be determined by the Society in its sole and absolute discretion.

## Chapter 3 RESPONSIBILITY AND LIABILITY

### 3.1 Liability

**1** Neither the Society nor any of its officers, directors, employees, agents or sub-contractors shall be liable for any loss, damage or expense of whatever nature sustained by any person, in tort or in contract or otherwise, due to any act or omission or error of whatever nature whether or not negligent howsoever caused in the provision of services, information or advice given in any way whatsoever by or on behalf of the Society. In providing services, information or advice, neither the Society nor any of its officers, directors, employees, agents or subcontractors warrant the accuracy of any information or advice provided.

**2** For the avoidance of doubt, the services provided by the Society do not include any surveys and tests whatsoever to ascertain whether any computer hardware, software, embedded microchips, data storage, electronics information equipment or system has the capacity to process changes in date and/or time data or information without loss of performance or functionality. The Society does not in any way warrant when providing services in relation to the classification, certification, registration, surveying or maintenance of ships, installation, machinery, materials or equipment that any computer hardware, software, embedded microchips, data storage, electronics information equipment or system has the capacity to process changes in date and/or time data or information without loss of performance or functionality. The Society hereby expressly excludes any liability of whatsoever nature and however caused in respect of any loss, damage or expense whatever arising out of or in connection with the loss of performance or functionality of any of the aforesaid items in respect of processing changes in date and/or time data or information.

**3** The construction of ships or the manufacture of installations in compliance with the Rules and Regulations of the Society may involve the use of patents and other intellectual property rights (hereinafter referred to as “Intellectual Property Rights”) held by third parties. When providing services in relation to the classification, certification, registration, surveying or maintenance of ships, installation, machinery, materials or equipment, the Society does not in any way warrant that said ships, installation, machinery, materials or equipment do not infringe upon the Intellectual Property Rights held by third parties. The Society shall not be liable for any loss, damage and expense of whatever nature sustained by any person, in tort, contract or otherwise, due to any use of Intellectual Property Rights held by third parties.

### 3.2 Compensation

Notwithstanding clause **3.1-1**, if any ship owner or any client of the Society suffers loss, damage or expense arising from the provision by the Society of services, information or advice which is proved to have been due to any negligent act, omission or error of the Society or any of its officers, directors, employees, agents or sub-contractors, or from any inaccuracy in the information or advice given by or on behalf of the Society, the Society will pay compensation for any proved loss, damage or expense up to but not exceeding the amount of any fee charged and collected by the Society for the particular service, information or advice.

### 3.3 Claim for Loss, Damage or Expense

Any claim for loss, damage or expense as referred to in clause **3.2** shall be made in writing to the Society within 6 *months* of the date when the service, information or advice was first provided, failing which any such claim shall be deemed to have been waived and shall be time-barred absolutely.

## **Chapter 4      PROPER LAW AND JURISDICTION**

These Conditions shall be governed by and construed in accordance with Japanese law and all and any disputes of whatever nature shall be submitted to the exclusive jurisdiction of the Tokyo District Court and Japanese law shall apply.

## **Chapter 5 MISCELLANEOUS**

### **5.1 Audits of the Quality System of the Society**

Implementation of the Quality System of the Society is sometimes audited at ships and premises of shipbuilders or manufacturers. In such cases, the shipowners, shipbuilders or manufacturers will be advised of an auditor's visit to their premises so that their permission may be obtained.