

# Muehlhan A/S

## PERFORMANCE GUARANTEE CONTRACT

between

(in the following called „Muehlhan” or „the Guarantor(s)” )  
and

(„the Owner”)

Muehlhan offers the Owner    months Guarantee on the terms specified below covering the Performance of the Coating System, the product and the good execution to be applied to the following cargo tanks (number, size, type):

of

(„the Vessel”) to be blasted and coated for the Owner by Muehlhan.  
The Guarantor(s)’ obligations are covered by an insurance with

(„the Insurer”).

For and on behalf of the Guarantor(s)

Company name:

Signature(s):

Name(s) typed:

Position(s) held:

Date:

This Guarantee and all other conditions, exclusions and provisions contained therein are confirmed, agreed and accepted in full.

For and on behalf of the Owner

Company name:

Signature(s):

Name(s) typed:

Position(s) held:

Date

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1. Framework and Purpose of this Contract

The Owner has contracted with the Yard Muehlhan about work to be carried out on the Vessel. Part of their contract covers surface preparation and application of coatings. The Owner/Yard/Guarantor delivers necessary paints and solvents. This Contract defines what constitutes a defect in the Coating System and what are the rights, obligations and liabilities of the parties in case of defect. In this respect, this Contract, and Appendices 1,2,3 and 4 constitute the entire agreement between Muehlhan and the Owner. Alterations and modifications are invalid unless made in writing and duly signed by both parties.

- Appendix 1: The Specification(s)
Appendix 2: Product data Sheet(s)
Appendix 3: Resistance List
Appendix 4: Muehlhan's General Conditions of sale, Delivery and Service

Muehlhan's General Conditions of sale, Delivery and Service (Appendix 4) shall apply in so far as they have not been changed by this Contract and/or the Contract has become null and void.

2. Definitions and Extent

2.1. Definitions

The Guarantor(s) guarantee(s) the Performance of the Coating System (as defined below) during the Guarantee Period.

"Performance" means that there will be no Defective Areas of the Coating System during the Guarantee Period, unless otherwise specified herein.

"Coating System" means the Coating System(s) specified in Appendix 1.

"Guarantee Period" begins on the date the completed Coating System has been applied and accepted or on the date the Vessel is delivered to the Owner, which ever shall first occur. It expires months after the date of its commencement and shall not be extended by any repairs or repaintings made under this Guarantee or otherwise.

"Defective Areas" means an area or areas exceeding during

- 1st year of the Guarantee Period 3% (three per cent)
2nd year of the Guarantee Period 4% (four per cent)

of the total guaranteed surface of any tank (see Section 4.2 (e)) where spontaneous visible corrosion has broken the paint film down to a degree exceeding Ri2 (as defined in ISO 4628/3-1982 (E)). The guaranteed surface area is any area of the Vessel coated with the Coating System except areas excluded in Section 3 or areas defective because corrosion has spread from such excluded areas. Included are the areas where due to a corrosion activity the coating film is completely absent, peels off, exhibits blistering or cracking, resulting in a corrosion degree exceeding Ri 2 as covered within the given time frames of this Guarantee. Irrespective of the conditions of the paint film in other respect, such as but not limited to, blistering, fading, steining, discolouration, loss of gloss or exhibiting of mudcracking, an area is not considered defective when the corrosion degree is Ri 2 or less.

2.2. Extent

This Guarantee covers the coating material necessary for repainting of Defective Areas and the cost surface preparation and application of the coating materials as may be necessary to repair Defective Areas in accordance with Section 4.5 and be subject to the following:

- (a) The Guarantor(s) shall only bear the following percentages of the said repair costs necessary for repainting of Defective Areas (as defined above) per tank:

Table with 2 columns: Year of Guarantee Period, Percentage. Row 1: 1st year of the Guarantee Period, 100% (one hundred per cent). Row 2: 2nd year of the Guarantee Period, 80% (eighty per cent).

- (b) The condition of the surface, according to in ISO 4628/3-1982 (E) is found to be inferior to Ri 2 or the existence of Defective Areas where due to a corrosion activity the coating film is completely absent, peels off or exhibits blistering or cracking, resulting in a corrosion degree exceeding Ri 2 as covered within the given time frames of this Guarantee.

- (c) The maximum payable by the Guarantor(s) including the price of coating material shall be as follows:

Table with 2 columns: Item, Price. Row 1: Surface preparation and application: per sqm. Row 2: Staging: per sqm. Row 3: Coating material: per sqm. Row 4: TOTAL: per sqm.

However, not more than a total of ... for the Vessel as accumulated aggregate throughout the guarantee period.

- (d) The Guarantor(s) maximum liability under this Contract is also limited to what the Insurer is

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obliged to and does indemnify under the insurance which the Guarantor(s) buy(s) to cover its liability hereunder.

- (e) This Contract with Appendices 1-4 constitutes the entire agreement relating to the rights, obligations and liabilities of the parties as regards Performance of the Coating System. It is expressly to the exclusion of and the Guarantor(s) disclaims all other warranties and liabilities with respect to the products being subject of this Contract, and related advice and services, whether express or implied and including but not limited to quality, performance, merchantability or fitness for any purpose be it know to Muehlhan or not, and whether or not due to negligence of Muehlhan.
- (f) The Guarantor(s) shall not be liable for any consequential damage, losses and expenses including, but not limited to, demurrage, drydocking costs, harbour dues, staging costs (exceeding the above mentioned amount per sqm), shipyard services and the like associated with coating repair work, loss of time, expenses due to Owner's employees, agents, operators of charterers; damage to surfaces beneath the Coating System or to any other parts of the Vessel or its equipment or accessories; loss of or damage to cargo, loss of profits, and all claims by third parties against the Owner of whatsoever nature and, however, so arising.
- (g) If the Vessel is sold, transferred or chartered out by the Owner (other than to a person or body of persons controlled by him) this Guarantee shall terminate immediately unless the Guarantor(s)' written agreement is obtained on the transfer of this Guarantee.

### 3. Exclusions, Force Majeure, Limitations

#### 3.1. Exclusions

The Guarantor(s) shall have no liability under this Contract or otherwise for the following:

- (a) Areas not treated and coated in accordance with the Specification(s) and data Sheet(s) (appendices 1 and 2)
- (b) Deterioration of and damage to the Coating System not caused by ordinary wear and tear, but by welding or other heating, fairing, pollution, bacterial attack, improper cleaning/handling/maintenance/use, neglect, fire explosion, radiation, friction or other mechanical action/damage, exposure to acids/alkalis/solvents or other chemicals unless explicitly approved according to Appendix 3, unusual action of the elements or any other occurrence outside the Guarantor(s)' control and loss or damage which is a consequence of

the aforementioned excluded causes and occurrences.

- (c) Surface areas which – because of their physical shape, characteristics or configurations – present unreasonable difficulties in effecting specified preparation and coating including, but not limited to, cargotank suction bellmouths, ladders, handrails ladder platforms, heating coils, reach rods, rivets, serew units, contract surfaces between profiles, and all other small area equipment and attachments. Small area equipment and attachment and attachments shall be deemed to be such that have a surface area less than 5 sqm per item.
- (d) Deterioration of steel or the Coating System caused by electrochemical action arising from the presence of metals within the tank which are cathodie to the metal of the tanks
- (e) Areas on which steel repair or other work has been executed after the commencement of the Guarantee Period, except when recoating has been carried out strictly in accordance with Appendices 1 and 2 by Muehlhan.

#### 3.2. Force Majeure

The Guarantor(s)' obligations are automatically waived and void to the extent that it becomes unreasonably difficult or impossible to carry out the claims procedure or repairs as a consequence of strike, war, invasion vandalism, acts of terrorists or foreign enemies or other malicious damage, hostilities (whether war be declared or not) civil war, rebellion, revolution, insurrection, military or usurped power, confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or authority, and to the extent that loss or damage is directly or indirectly caused by such circumstances.

#### 3.3. Limitations

In the event of failure of the Coating System for which the Guarantor(s) are liable under the terms of this Guarantee the costs to be borne by the Guarantor(s) for:

- (a) Surface preparation including removal of coating and application of the coating necessary to effect those repairs shall not exceed the initial average costs per tank of the Defective Area. The total contract liability of the Guarantor(s) is limited to the total contract value of the initial job.
- (b) The coating materials necessary to effect those repairs shall not exceed the initial costs of the material originally applied for that Defective Area. All services and facilities rendered by the shipyard at the time of the initial treatment,

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which were not included in the scope of supply of the Guarantor(s) for the initial job, will not be provided by the Guarantor(s) under the terms of Guarantee as far as they are not explicitly included in the initial total costs per ship.

The Guarantor(s) will have no further liability to the shipowner hereunder except as provided in section 4.4 (b).

- (c) In the event of repairs being carried out in a country other than the country where the Coating System was originally applied, the Guarantor(s) shall in no circumstances be obliged to refund to the shipowner a greater sum than is calculated in accordance with section 5.1 hereof.

The costs to be borne by the Guarantor(s) in respect of the repairs in such other country shall be calculated on the basis of the costs which would have been incurred in repairing the coating in the original country of application or on the basis of the costs actually incurred whichever shall be for the Guarantor(s) the lesser amount.

Muehlhan -in any case of recoating - will get from the owner the right of first refusal for any kind of coating remains for locations where a Muehlhan company has a steady basis and experience in the respective Coating System.

### 4. Conditions

The Guarantor(s) shall have no liability under this Guarantee Contract or otherwise for the Coating System or paints or services relating to it, unless the following conditions are strictly complied with:

#### 4.1. Conditions Relating to the Application of the Coating System

- (a) All surfaces and coatings damaged during construction are to be repaired without costs to Muehlhan, so that they may meet the Specifications.

#### 4.2. Conditions relating to Use and Maintenance

- (a) Surface treating, cleaning and washing procedures of the areas coated and covered by the Guarantee shall be compatible with the Coating System and not cause damage to same.
- (b) The Coating System must be inspected and maintained approximately every 12 (max.14) months of the Guarantee Period and the Owner shall at 14 days notice invite the Guarantor(s) to join in the inspections. If the Guarantor(s) do not join the inspection, the

Owner shall submit a condition report to the Guarantor(s).

- (c) Damage and imperfections detected at the annual inspection, and amounting to the relevant percentage stipulated under Section 2.1. or less, Defective Areas are to be repaired at the Owner's expenses with the same coating materials as constitute the Coating System, or other products approved by Muehlhan, and such repair as well as other maintenance must be made in accordance with Appendices 1 and 2 or other particular written recommendations of Muehlhan.

In the event that Owner's engagements do not allow time for such repair, the said detected percentage of defective surface shall in the following year(s) be added to the areas repairable at the Owner's expense and excluded in advance before Defective Areas are calculated according to Section 2.1.

- (d) Damages or imperfections in excess of those described in Sub-Section (c) above may constitute Defective Areas which the Owner must report and make available for repair in accordance with Section 4.3 – 4.5

#### 4.3. Conditions Relating to Claims procedure

- (a) The Owner shall notify the Guarantor(s) and the Insurer in writing giving sufficient details of the nature of the defect and the circumstances in which it was discovered including the date of detection. Such notice shall be sent immediately, and unless it reaches the Guarantor(s) within 30 days of the date of detection, all claims shall be waived and time barred thereafter. If the Guarantor(s) and/or the Insurer decide that they wish to inspect the area upon which a claim is being made, the Owner shall make the Vessel available within 30 days of the receipt of a request to that effect. Ample time must be allowed and the tanks must be gas free and clean for such inspection. Neither the Guarantor(s) nor the Insurer shall be liable for delay in, or caused by such inspection.
- (b) The expenses for an inspection made by or for the Guarantor(s) according to Section 4.3 (a) shall be paid by the Owner but reimbursed to the Owner by the Guarantor(s) if the claim is accepted. Inspection by or for the Insurer shall be for his own account.

#### 4.4. Conditions Relating to Repairs

- (a) Repairs covered by this Contract may be carried out only after the claim has been accepted in accordance with Section 4.3. Such repairs are subject to the same conditions as applied to the original application of the Coating System, see Section 4.1. above.

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Repairs not complying herewith automatically void any and all liability of the Guarantor(s) towards the Owner relating to the Coatings System.

- (b) The Owner must arrange for repairs under this Contract to start not later than 6 months after a claim has been accepted, and the repair time must not be unreasonably prolonged. The Guarantor(s) will arrange supply of coating materials, but shall not be liable for any delay in this respect.
- (c) The Guarantor(s) is entitled to control at any time the repair work. When the work is supervised by the Guarantor(s)' representative(s) not resident in the area where the repair is carried out, the Owner shall provide the representative(s) with board and lodgings on board the Vessel.

### 4.5. Conditions Relating to Miscellaneous Matters