



Terms & Conditions

1. The Company

- 1.1 "The Company" shall mean the Company and/or its agents, associated companies and/or concessionaires and assignees for the operation (if any) of any of its services, premises, repair yards, brokerage or other facilities.
- 1.2 "The Customer" shall mean the person, persons or Company to whom the Company's order form is addressed or any other person or company purchasing goods from the Company and (where the context permits) the servants or agent of such persons or companies.
- 1.3 "The Goods" shall mean all goods supplied by or on behalf of the Company.
- 1.4 "The Services" shall mean all services supplied by or on behalf of the Company.
- 1.5 "The Shipyard" shall mean a yacht harbour, marina, moorings or any other facility for berthing a vessel (other than swinging chain moorings).
- 1.6 "Owner" shall include an agent or other person for the time being lawfully in charge (other than the Company) of the vehicle, vessel or other property of the Customer.

2. Terms & Conditions

- 2.1 Unless expressly agreed by all parties in writing any contract relating to the supply of goods and/or services by the Company shall be subject to these conditions. If the Customer wishes to vary or object to any of these conditions they must do so expressly in writing and such variation or objection must be confirmed by the Company in writing.
- 2.2 The only term for the sale of goods or supply of services shall be those contained expressly by or reference in this contract and any statement or representation written or oral made by or given prior to the date of this contract is excluded unless expressly incorporated herein.
- 2.3 Any general conditions of order or other terms of business offered on behalf of the Customer shall, if inconsistent with these conditions be deemed to have been rejected by the Company unless expressly accepted by the Company in writing.
- 2.4 In cases where an order acknowledgement is despatched to the Customer then unless expressly agreed by the parties in writing, the Company's order acknowledgment shall be deemed in respect of each order to constitute the entire bargain between the parties. No servant or agents of the Company has authority to vary or waive any of these conditions on behalf of the Company other than a Director doing so in writing.
- 2.5 The Company reserves the right to change or amend these Terms & Conditions at any time and may provide the Customer with 1 (one) calendar months written notice of such change or amendment.

3. Delivery

- 3.1 The Customer will take delivery of the goods within 7 days of the Company giving it notice that the goods are ready for delivery.
- 3.2 If carriage is required the goods shall be delivered by such means as the Company thinks fit unless the Customer has specified in its order the details of the contract with a carrier which it reasonably requires having regard to the nature of the goods and other circumstances of the case.
- 3.3 Delivery of the goods shall be accepted at any time of the day.
- 3.4 Any date specified by the Company for delivery of the goods are approximate only and may not be made of the essence by notice. If no dates are specified, delivery will be made within a reasonable time.

- 3.5 The Company will use reasonable endeavours to deliver the goods in accordance with this Clause. If, despite those endeavours, the Company is unable for any reason to fulfil any delivery of the goods on the specified date, the Company will be deemed not to be in breach of the contract, nor (for the avoidance of doubt) will the Company have any liability to the Customer for direct, indirect, consequential loss, loss of profits (all of which terms include, without limitation, pure economic loss, loss of business, depletion of goodwill and like loss) howsoever caused (included as a result of negligence) by any delay or failure in delivering except as set out in this clause. Any delay in delivery will not entitle the Customer to cancel the order unless and until the Customer has given 90 days written notice to the Company requiring the delivery to be made and the Company has not fulfilled the delivery within that period.
- 3.6 If the Customer fails to take delivery of any of the goods in accordance with this Clause or to provide any instructions, documents, licences or authorisation required to enable the goods to be delivered on time (except because of the Company's fault) the goods will be deemed to have been delivered and (without prejudice to its other rights) the Company may:
- 3.6.1 store or arrange for storage of the goods until actual delivery or sale and charge the Customer for all related costs and expenses (including, without limitation, storage and insurance); and/or
- 3.6.2 following written notice to the Customer to sell any of the goods at the best price reasonably obtainable in the circumstances and charge the Customer for any shortfall below the price under the contract.
- 3.7 The Customer will provide at its expense at the delivery point adequate and appropriate equipment and manual labour for offloading the goods (whether or not the offloading is supervised by or on behalf of the Customer) and ensure that it has adequate insurance to cover for:
- 3.7.1 any personal injury or death of any of the Company's employees, agents or subcontracts or any third party; and
- 3.7.2 any damage to or loss of any property of the Company, its employees, agents or subcontractors or any third party.
- 3.8 The quantity of any consignment of goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.

4. Acceptance

- 4.1 If goods are not returned to the Company at the Customer's expense within 7 days of delivery, then the Company will deem acceptance of the delivery.
- 4.2 Acceptance of delivery of the goods shall be deemed to be conclusive evidence of the Customer's acceptance of these Terms & Conditions.

5. Risk

- 5.1 The goods shall be at the Customer's risk from the time they are delivered or deemed delivered to the Customer's premises or at the time they come into the custody, possession or control of the Customer (whichever is the earlier).

6. Description

- 6.1 Description of the goods shall be as set out in the Company's quotation, or as amended by an authorised representative of the Company.
- 6.2 All drawings, descriptive matter, specifications and advertising issued by the Company or the manufacturer of the goods and any description or illustrations contained in the Company's or manufacturer's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the goods described in them. They will not form part of the contract.
- 6.3 No variation in the specification or design of any goods which, in the Company's reasonable opinion, does not adversely affect the suitability of the goods for the particular purpose for which they are supplied by the Company will constitute a breach of contract or impose any liability upon the Company.
- 6.4 An application approval is given against the written specification supplied by the Customer. No warranty is given by the Company as to the suitability of the products supplied should the specification change howsoever.

7. **Price**

- 7.1 The price payable shall (if not expressly stated in the Company's order) be that stated in the Company's price list or written quotation in force at the date of delivery of goods. If the price is stated in the order then prior to the delivery the Company shall be entitled to notify the Customer of an increase in the price of the goods which increase the Customer shall be obliged to accept unless within 7 days of receiving such notification the Customer gives notice in writing to the Company terminating that part of the contract of sale relating to the goods which has been increased.

8. **Taxes**

- 8.1 Any contract unless otherwise stated excludes customs and imports duties and other taxes. The Customer shall be responsible for all import duties and other taxes imposed up to and including the actual date of delivery of the goods. Unless otherwise stated all quotations exclude VAT which shall be paid by the Customer at settlement of the rate current at the tax point, if applicable.

9. **Payment**

- 9.1 The Company will invoice Customers on receipt of order.
- 9.2 Unless otherwise agreed in writing, payment of the full invoice price for goods shall be made by the Customer in the currency invoiced prior to despatch or at 30 days from the date of invoice if a credit account has been agreed.
- 9.3 The Company shall be entitled to charge interest on all overdue payments at the rate of 4% per annum above Barclays Bank Plc base rate then enforced, calculated monthly (any partially completed calendar month being deemed for this purpose a complete month).

10. **Ownership of the Goods**

- 10.1 In the instance of a supply of goods, the Company reserve its property in the goods until full payment has been received.

11 **Force Majeure**

- 11.1 The Company shall not in any way be liable for inability to perform all or part of its obligations hereunder (whether permanently or temporarily) whether by reason of strikes, lockouts or other industrial dispute or disruption, riot or civil communication, hostilities (whether war is declared or not), fire, act of god, storm, failure or breakdown regulation or byelaw or any other unforeseen circumstances or cause beyond its control. Where the cause of the Company's inability to perform is temporary then the time for performance by the Company of its obligations will be suspended until such temporary cause is removed and extended thereafter for a corresponding period to enable the Company to complete and the Customer to accept performance thereof.

12. **Cancellation**

- 12.1 Cancellation of orders once placed with and accepted by the Company can only be made with the Company's written consent. The following further conditions apply:
- 12.1.1 the Customer is to pay in full the purchase price in effect at the day of cancellation for all articles completed and ready for delivery.
 - 12.1.2 the Customer will pay in full such charges, included, but not limited to sales and administrative overheads, at the day of cancellation for all articles not completed.
 - 12.1.3 invoices covering the said costs will be due and payable immediately upon the Company's acceptance of cancellation.
 - 12.1.4 the Company may, at its sole discretion accept any cancellation on a no charge basis, retaining in its possession anything required for the processing of the cancelled order.

13. Warranty

- 13.1 Where the Company is not the manufacturer of the goods, it will endeavour to transfer to the Customer the benefit of any warranty or guarantee given by the Manufacturer.
- 13.2 Subject to the above, and on the condition that the product is located within the United Kingdom or Ireland, if within the warranty period a defect in any product shall become apparent, the Company will then, subject to the terms of this warranty either repair the component part or (as it shall in its sole discretion determine) supply a replacement part, subject to 13.3 below.
- 13.3 The warranty period shall be (subject to the manufacturers' warranty):
- 13.3.1 in the case of a new product such warranty or guarantee given to the Company by the manufacturer of the goods.
 - 13.3.2 in the case of new spare parts 6 months from the date of first installation or 12 months from the date of despatch from the Company, whichever first expires on the component part supplied only.
 - 13.3.3 in the case of a product which has been reconditioned or supplied as a service replacement unit, 6 months from the date of despatch.
- 13.4 The obligation of the Company under this warranty is subject to the following terms and conditions:
- 13.4.1 the product must have been operated and maintained in compliance with the appropriate instruction manual, except where the owner proves that any failure to operate or maintain was not a contributory cause of the defect.
 - 13.4.2 the defect must not be the result directly or indirectly of fair wear and tear, dirt, misuse, negligence of anyone other than the Company and only lubricating oils and operating fluids recommended by the Company/Manufacturer shall have been used.
 - 13.4.3 no part shall have been fitted other than the part supplied by the Company or through a source approved by the Company/Manufacturer.
 - 13.4.4 adequate records of operation of the product shall be maintained and furnished to the Company on request.
 - 13.4.5 any claim under this warranty shall be made in writing immediately on the discovery of the defect to the Company. The serial number of the product and full details of the circumstances of the defect shall be given and upon request any defective product must be returned promptly, carriage paid to the Company..
 - 13.4.6 the products have been properly installed or connected.
 - 13.4.7 the products have not been improperly altered or subject to misuse or unauthorised repair.
- 13.5 If the product is located outside the United Kingdom and Ireland then the following shall apply:
- 13.5.1 the Company shall rely on the manufacturers warranty so far as the law permits and the Customer should direct all claims in the first instant to the manufacturer of the product whereby the manufacturer shall determine acceptance or rejection of the warranty claim either directly or through their local agent or distributor.
 - 13.5.2 in the event that the Company is liable for the replacement / repair then Clause 13.4 above applies as though the product was located in the United Kingdom and Ireland.
- 13.6 The Company shall not be liable for any consequential or resultant loss or damage howsoever occurring, nor for labour involved in the removal or replacement of product / parts. The Company will endeavour to confer upon the Customer any assignable rights which it may have against a manufacturer or supplier of such parts or assemblies.
- 13.7 No person except an authorised Company representative may assume any liability or expense in the replacement of parts, servicing of units within the warranty period, except where such expenses are authorised in advance and in writing by the Company. The warranty hereby given is not assignable. All warranties and conditions implied by common law statute or trade uses, are hereby excluded.
- 13.8 Any warranty is void unless the Customer provides adequate care and storage of complete units from the date of shipment to date placed in service and unless units are properly installed within rates and capacities, with installation properly engineered in accordance with the practices as approved by the Company.

- 13.9 If failure occurs to a component part of the unit within the warranty period, then it will be at the discretion of the Company whether the component part is replaced or the complete unit is replaced.
- 13.9.1 if the component part is replaced then such part will be covered by the remainder of the manufacturers unexpired warranty which remains in effect on the complete unit.
- 13.9.2 If the complete unit is replaced, then such unit will be covered by a new manufacturers' warranty.

14. **Liability**

- 14.1 In the event of the breach of any of the Company's express obligations the remedies of the Customer will be limited to damages.
- 14.2 The Company does not exclude its liability (if any) to the Customer:
- 14.2.1 for breach of the Company's obligations arising under Section 12 of the Sale of Goods Act 1979 or Section 2 of the Sale and Supply of Goods Act 1982.
- 14.2.2 for personal injury or death resulting from the Company's negligence.
- 14.2.3 under Section 2(3) Consumer Protection Act 1987.
- 14.2.4 for any matter which it would not be legal for the Company to exclude or to attempt to exclude its liability; or
- 14.2.5 for fraud
- 14.3 Except as provided above, the Company will be under no liability to the Customer whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any injury, death, damage, or direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of business, depletion of goodwill and like loss) howsoever caused arising out of or in connection with:
- 14.3.1 any of the goods, performance of the services, or the manufacturer or sale or supply, or failure or delay in supply of performance, of the goods and/or services by the Company or on the part of the Company's employees, agents or subcontractors.
- 14.3.2 any breach by the Company of any of the express or implied terms of the contract.
- 14.3.3 any use made or resale by the Customer of any goods, or of any products incorporating any of the goods or;
- 14.3.4 any statement made or not made, or advice given or not given, by or on behalf of the Company or otherwise under the contract
- 14.4 Except as set out in the above Clauses, the Company hereby excludes to the fullest extent permissible in law, all conditions, warranties and stipulations, express (other than those set out in the contract) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Customer.
- 14.5 Subject to the above, the Company's aggregate liability under the contract whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) and howsoever arising to the Customer will be limited to the price.
- 14.6 Each of the Company's employees, agents and sub-contractors may rely upon and enforce the exclusions and restrictions of liability in the above Clauses in that person's own name and for that person's own benefit, as if the words "its employees, agents and sub-contractors" followed the word Company wherever it appears in those Clause.
- 14.7 The Customer acknowledges that the above provisions in these terms and conditions are reasonable.

15. Termination

- 15.1 The contract will terminate immediately upon the happening of any one or more of the following events:
- 15.1.1 the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal) or enters into liquidation (whether voluntary or compulsory), except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver, manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Customer or for the granting of an administration order in respect of the Customer or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer.
- 15.2 The contract will terminate immediately upon service of written notice of termination by the Company on the Customer on the happening of any one or more of the following:
- 15.2.1 the Customer suffers or allows any execution whether legal or equitable to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations or duties under the contract or any other contract between the Company and the Customer or is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or the Customer ceases to trade.
 - 15.2.2 the Company's rights contained in these conditions (but not the Customer's rights) shall continue beyond the discharge of the Customer and the Company's primary obligations under the contract consequent upon its termination.
 - 15.2.3 the termination of the contract howsoever arising shall be without prejudice to rights and duties of either the Customer or the Company accrued prior to termination.

16. General

- 16.1 Time for performance of all obligations of the Customer is of the essence.
- 16.2 Each right or remedy of the Company under the contract is without prejudice to any other right or remedy of the Company whether under contract or not.
- 16.3 Any provision of the contract which is held by any competent authority to be invalid, void, voidable, unenforceable or unreasonable (in whole or in part) shall to the extent of such invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the other provisions of the contract and the remainder of such provision shall not be affected.
- 16.4 Failure by the Company to enforce or partially enforce any provision of the contract will not be construed as a waiver of any of its rights under the contract.
- 16.5 The Company may assign, licence or sub-contract all or any part of its rights or obligations under the contract without the Customer's consent.
- 16.6 The contract is personal to the Customer who may not assign, licence or sub-contract all or any of its rights or obligations under the contract without the Company's prior written consent.
- 16.7 Except as set out above the parties to the contract do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
- 16.8 The formation, construction, performance, validity and all aspects of the contract are governed by English law and the parties submit to the exclusive jurisdiction of the English Courts.
- 16.9 Any matter arising from the supplies of goods hereunder including interpretation and legal effect of these general conditions of sale and the terms of the warranty hereto shall be determined in accordance with English law and the English Courts shall have jurisdiction with regard to any dispute, claim or action of whatsoever nature arising at any time therefrom and placement from the Customer of the order with the Company for such goods or services shall constitute submission by the Customer his successors and assignees of the jurisdiction of the English Court in respect of any such dispute, claim or action and the generality hereof shall in no way be limited because the goods in question are supplied anywhere in the world:
- 16.9.1 to a vessel (the term "Vessel" to include any production or drilling rig or barge) flying a flag other than the flag of the United Kingdom; or
 - 16.9.2 other than to an individual resident in the United Kingdom or other than a company resident or residence of the United Kingdom; or

16.9.3 to a government, government department or agency or government or state owned corporation other than United Kingdom governments or departments or agencies thereof or corporation in the ownership of the United Kingdom government; or

16.9.4 to an international agency or organisation.

17. **Communication**

17.1 All communications between parties about the contract must be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile transmission:-

17.1.1 (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Customer by the Company; or

17.1.2 (in the case of communications to the Customer), to the registered office of the addressee (if it is a Company) or (in any other case) to any address of the Customer set out in any documentation which forms part of the contract or such other address as shall be notified to the Company by the Customer.

17.2 Communications shall be deemed to have been received:

17.2.1 if sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank holidays) after posting (exclusive of the day of posting);

17.2.2 if delivered by hand on the day of delivery;

17.2.3 if sent by facsimile transmission, or a valid Company email address, on a working day prior to 4:00p.m. at the time of transmission and otherwise on the next working day.

17.3 Communications addressed to the Company shall be marked for the attention of the person agreeing the contract on behalf of the Company.

Peter M Fenton
Group Financial Director &
Company Secretary

July 2020