

# Terms and Conditions for Sale of Goods

Domestic and Export and the Supply of Services

BT Marine Propellers Ltd. (Company number 04782255)  
Propulsion Technology Centre  
DAWLISH, DEVON  
EX7 0GF  
Tel : 01626 864378

E-mail : [info@btmarinepropellers.co.uk](mailto:info@btmarinepropellers.co.uk)

## Terms and Conditions

**THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO CLAUSES 2.2 (TIME OF PAYMENT OF THE ESSENCE), 2.12 (CUSTOMER RIGHT TO CANCEL AN ORDER), 2.18 (NON-REFUNDABLE DEPOSIT), CLAUSE 7 (LIABILITY), CLAUSE 10 (CUSTOMER'S OBLIGATIONS), AND CLAUSE 12 (EVENTS OUTSIDE THE SUPPLIER'S CONTROL).**

### 1. TERMS AND INTERPRETATION AND BASIS OF CONTRACT

1.1. In these terms:

- 1.1.1. 'Affiliate' means in relation to a body corporate, any subsidiary, subsidiary undertaking or holding company of such body corporate and any subsidiary undertaking of any such holding company for the time being and in each case including their employees, officers, agents and consultants.
- 1.1.2. 'Agreement' the contract between the Supplier and the Customer for the supply of Goods and/or Services by the Supplier to the Customer in accordance with these terms and conditions (as amended from time to time in accordance with clause 14.9).
- 1.1.3. 'Bespoke Goods' means Goods or parts of Goods specifically made or customised for the Customer.
- 1.1.4. 'Business Day' means a day (other than a Saturday, Sunday or a public holiday) when banks in London, England are open for business.
- 1.1.5. 'Customer' means the customer buying the Goods and/or to whom the Supplier will provide the Services who is named as such on the Order.
- 1.1.6. 'Force Majeure Event' has the meaning in clause 12.1.
- 1.1.7. 'Goods' means the products to be sold by the Supplier to the Customer named on the Order Confirmation and includes where relevant Bespoke Goods.
- 1.1.8. 'Incoterms' has the meaning in clause 3.2.
- 1.1.9. 'Intellectual Property Rights' means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
- 1.1.10. 'Order' means the Customer's purchase order for the supply of Goods and/or Services or, if none, described in the Order Confirmation of the Supplier or otherwise agreed in writing by the parties.
- 1.1.11. 'Order Confirmation' has the meaning set out in clause 1.5.
- 1.1.12. 'Price' means the charge to be paid by the Customer to the Supplier for the Goods and/or Services as set out in the Supplier's Order Confirmation.
- 1.1.13. 'Services' means the services to be supplied by the Supplier to the Customer as set out in the Specification and the Order Confirmation or as otherwise agreed in writing between the Supplier and the Customer.
- 1.1.14. 'Specification' means in relation to Goods, the specification for the Goods (including all information, data, specifications, relevant plans or drawings) provided by the Customer to the Supplier in order to produce the Customer's Bespoke Goods and in relation to the Services, the description or specification for Services to be provided by the Supplier to the Customer.
- 1.1.15. 'Supplier' means BT Marine Propellers Ltd (company number : 04782255) whose registered office is at Units 10 & 11 Swift Industrial Estate, Newton Abbot, Devon TQ12 3SH.
- 1.1.16. 'Supplier Materials' has the meaning in clause 10.1.8.

- 1.1.17. 'UK' means United Kingdom.
- 1.1.18. 'VAT' means United Kingdom value added tax chargeable from time to time.
- 1.2. Words or phrases defined in the Companies Act 2006 shall have the same meaning herein unless the context otherwise requires or the term is defined herein.
- 1.3. A reference to a person includes natural person, corporate or unincorporated body (whether or not having a separate legal personality). A reference to a party includes its personal representatives, successors or permitted assigns.
- 1.4. The Order constitutes an offer by the Customer to purchase Goods and/or Services from the Supplier in accordance with this Agreement. The Customer shall ensure that the terms of the Order Confirmation and any relevant Specification are complete and accurate.
- 1.5. The Order shall only be deemed to be accepted when the Supplier issues written acceptance/acknowledgement of the Order (an "**Order Confirmation**") at which point and on which date this Agreement shall come into existence and be binding on the Supplier and the Customer. The Supplier shall assign an order number to the Order and notify the Customer of it in the Order Confirmation. Please quote the order number in all correspondence with us relating to the Order.
- 1.6. If any terms of this Agreement are inconsistent with the Order Confirmation provided by the Supplier to the Customer, the terms of the Order Confirmation shall prevail unless the Supplier otherwise directs.
- 1.7. These terms and conditions apply to this Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. These terms and conditions apply to all supplies of Goods and/or Services by the Supplier to Customers. They prevail over any terms supplied by the Customer.
- 1.8. No prior statements or correspondence (other than as set out in this Agreement) forms part of this Agreement and the Customer accepts it has not relied on any statement, promise or representations made or given by or on behalf of the Supplier which is not set out in this Agreement (including any Order Confirmation) in entering into this Agreement.
- 1.9. Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of this Agreement or any other contract between the Supplier and the Customer for the supply of the Goods and/or Services.
- 1.10. Any quotation for Goods and/or Services provided by the Supplier is given on the basis that a binding contract shall only come into existence in accordance with clause 1.5. A quotation shall be valid for a period of 14 calendar days (unless the estimate expressly states otherwise) from its date of issue, unless the Supplier notifies the Customer in writing that the Supplier has withdrawn it during this period.
- 1.11. The Supplier has the right to revise and amend these terms and conditions from time to time to reflect changes in market conditions affecting the Supplier's business, changes in technology, changes in payment methods, changes in relevant laws and regulatory requirements and changes in the Supplier's system's capabilities. The Customer will be subject to the policies and terms in force at the time that the Customer orders the Goods and/or Services from the Supplier, unless any change to those policies or these terms and conditions is required by law or government or regulatory authority (in which case, it will apply to orders previously placed that the Supplier has not yet fulfilled).
- 1.12. A reference to a statute or statutory provision is a reference to such a statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- 1.13. All these terms and conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

## 2. **SUPPLY AND PAYMENT**

- 2.1. The Supplier sells the Goods and/or supplies the Services to the Customer on the terms of this Agreement in consideration of the payment by the Customer of the Price.
- 2.2. Payment terms are strictly prior to despatch of the Goods and/or provision of the Services, as set out in the Order Confirmation or as agreed between the Customer and the Supplier in writing. Where credit has been agreed in writing between the parties, all invoices shall be paid by the Customer within 30 days of the date of invoice, otherwise payment by the Customer for Goods (including all packaging and delivery charges) and/or Services must be made immediately on receipt of the Order Confirmation from the Supplier. **Time for payment by the Customer shall be of the essence of this Agreement.**
- 2.3. In respect of Goods, the Supplier shall invoice the Customer on or at any time after the date of the Order Confirmation (unless otherwise agreed with the Customer in writing). In respect of Services, the Supplier shall invoice the Customer prior to commencement of the Services based on an initial estimate set out in the Order Confirmation (or as otherwise agreed between the Supplier and the Customer in writing) with any balancing invoice being raised on completion of the Services.

- 2.4. Unless the Supplier and the Customer otherwise agree in writing, including in the Order Confirmation, payment for the Goods and/or Services shall be in UK pounds sterling and shall be made by either confirmed, transferable, irrevocable without recourse letter of credit providing for payment at sight allowing partial deliveries and collections and issued by a reputable first class bank acceptable to the Supplier or in cash in UK pounds sterling by telegraphic transfer to such bank account as the Supplier shall notify the Customer in the Order Confirmation or otherwise, as the Supplier shall direct in the Order Confirmation. The Customer shall also pay any packaging (unless otherwise agreed in the Order Confirmation), carriage, handling and shipping or other incidental costs and expenses the Supplier has incurred or will incur in relation to the Goods and/or Services at the same time as the payment for the Goods and/or Services.
- 2.5. The Supplier shall be under no obligation to supply or deliver any Goods and/or to provide any Services until payment in full in cleared funds as provided in clause 2.4 has been received by the Supplier, or, if payment has been agreed to be by way of letter of credit, until such letter of credit has been agreed and received properly executed, to the satisfaction of the Supplier.
- 2.6. Prices are exclusive of VAT or other sale taxes (unless otherwise agreed in writing between the Supplier and the Customer) which are payable in addition by the Customer and are to be paid in full without deduction of taxes, charges or duties imposed. The Customer shall pay the Supplier such amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Goods and/or Services.
- 2.7. Where there is an error on the letter of credit, or for whatever reason the Supplier's bank rejects the letter of credit, the Customer shall pay all the bank charges and other costs of the Supplier in relation to such error and ensure that a correct letter of credit is issued forthwith.
- 2.8. The Price for Goods includes standard packaging charges (see clause 10) if so provided in the Order Confirmation, otherwise all packaging charges will be at the cost and expense of the Customer. Any non-standard packaging charges will be charged as provided in the Order Confirmation. The Customer shall be responsible for obtaining and paying for all import and export clearances required in connection with the supply and/or delivery and/or transport of the Goods and/or in relation to the provision of any Services unless the Incoterm under which such Goods are to be supplied or the Order Confirmation provides otherwise.
- 2.9. Delivery charges shall be paid where so specified in clause 3 below. In addition, the Customer shall promptly pay the Supplier for all classification costs (and any adjustments thereto) incurred by the Supplier on behalf of the Customer in relation to any Goods on the first written demand of the Supplier.
- 2.10. Subject to clause 2.9 (and in particular in relation to classification costs which may vary depending on the circumstances), clauses 2.16 and 2.17 (variation to price) and as otherwise expressly provided in this Agreement, the Price shall remain fixed for the Order unless otherwise agreed in writing by the parties.
- 2.11. The Supplier may charge interest at 3% above base rate from time to time of National Westminster Bank plc on all late payment of invoices and/or other amounts due to the Supplier from the Customer under this Agreement from time to time which has not been paid by the due date for payment. Any such interest will accrue on a daily basis from the due date of the relevant payment until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 2.12. **Due to the bespoke nature of the Goods, once an Order is placed and an Order Confirmation issued by the Supplier the Customer may not cancel or alter such Order without the prior written consent of the Supplier.** The Customer may cancel or alter an Order at anytime before the Supplier issues an Order Confirmation for such Order by notice in writing to the Supplier.
- 2.13. The Customer shall pay all amounts due under this Agreement in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The provisions of this clause will not apply where the Customer is a consumer and if its effect would be to prevent the Customer exercising a right of set off, abatement, discount, or deduction in relation to a breach by the Supplier of any statutory implied conditions under English law.
- 2.14. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 2.15. The Customer shall not withhold payment under any performance bond issued by or on behalf of the Customer, or otherwise, in relation to the performance of any Goods following their installation due to poor or incorrect installation of the Goods by or on behalf of the Customer.
- 2.16. Unless otherwise provided in the Order Confirmation, the charges for Services shall be on a time and materials basis:
- 2.16.1. the charges shall be calculated in accordance with the Supplier's standard daily fee rates, as set out in the Order Confirmation;
- 2.16.2. the Supplier's standard daily fee rates for each individual person are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days;

- 2.16.3. the Supplier shall be entitled to charge an overtime rate of one hundred and fifty per cent of the standard daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 2.16.2; and
- 2.16.4. the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.
- 2.17. The Supplier reserves the right to:
  - 2.17.1. increase its standard daily fee rates for the charges for the Services, provided that such charges cannot be increased more than once in any 12 month period. The Supplier will give the Customer written notice of any such increase one month before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify the Supplier in writing within two weeks of the date of the Supplier's notice and the Supplier shall have the right without limiting its other rights or remedies to terminate provision of the Services by the Supplier to the Customer or terminate this Agreement (as the Supplier shall decide) by giving four weeks' written notice to the Customer; and
  - 2.17.2. increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:
    - 2.17.2.1 any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs and increases in classification costs);
    - 2.17.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification in respect of the Goods; or
    - 2.17.2.3 any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.
- 2.18. **Any deposit, pre-payment or the like paid by the Customer to the Supplier in relation to Goods and/or Services to be provided under the terms of this Agreement shall be non-refundable (unless the Supplier otherwise agrees in writing) in light of the fact that the Supplier will, due to the bespoke nature of the Goods and/or Services, incur considerable time and material costs once an Order Confirmation has been issued. The Customer should take out such insurance or otherwise to cover any such potential loss.**

### 3. DELIVERY CHARGES AND SUPPLY

- 3.1. Delivery charges shall, where supply is specified in the Order Confirmation as on the basis that the Supplier shall deliver to the Customer, be stated on the Order Confirmation and are payable by the Customer.
- 3.2. Supply shall be on the Incoterms 2010 ("**Incoterms**") specified on the Order Confirmation – DDP, CIF, Ex works, etc., which relevant terms shall, to the extent not inconsistent with these terms and conditions, be incorporated herein.

### 4. DELIVERY

- 4.1. The Supplier shall deliver the Goods to the address specified on the Order Confirmation, unless otherwise agreed in writing in accordance with the relevant Incoterm under which the Goods are supplied.
- 4.2. Time for delivery specified on the Order Confirmation, if any, is an estimate only and time shall not be of the essence.
- 4.3. Where a carrier delivers Goods which the Customer believes are not the quantity or kind ordered or which are damaged, the Customer must notify the Supplier by telephone immediately on receipt and confirm this in writing within seven (7) days of delivery otherwise the Supplier accepts no liability for this. Where on investigation the Supplier agrees the incorrect quantity was delivered or the Goods were damaged, the Supplier shall ensure the correct quantity is supplied and the Customer will return any over supply and/or the Supplier shall replace the damaged Goods with undamaged Goods and this shall be the Customer's only remedy in such a case. The Customer shall return any damaged Goods at its own expense to the Supplier. Where the Supplier, after inspection, agrees the Goods were damaged it shall refund to the Customer the carriage costs of such return, but not otherwise. This clause shall not apply to a Customer who is a consumer and instead such Customer will within six months of the date of delivery of the Goods be entitled to advise the Supplier in writing of any defect in the Goods and return the Goods to the Supplier (at the Supplier's cost) and once the Supplier has checked the Goods are faulty, the Supplier will replace or repair the Goods or provide such Customer with a full or partial refund.
- 4.4. If the Customer fails to accept or take delivery of or collect any Goods which are supplied "Ex Works (TQ12 3SH)" (or such other "Ex Works" address provided in the Order Confirmation) under the Incoterms within seven Business Days (or such other period as the Supplier shall agree with the Customer) of the Supplier notifying the Customer that the Goods are ready then :
  - 4.4.1. delivery of the Goods will be deemed to have been completed at 9.00 am on the eighth Business Day following the day on which the Supplier notified the Customer the Goods were ready; and
  - 4.4.2. the Supplier shall store the Goods until physical delivery or collection takes place and charge the Customer such reasonable amount as the Supplier shall decide for storage (which will be the Supplier's standard daily storage rate, which is 1% of the Price of the Goods stored), and such other related costs and expenses (including insurance); and

- 4.4.3. the Supplier shall have no liability to the Customer for late delivery.
- 4.5. If fourteen Business Days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted, or taken delivery of or collected them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs and other out of pocket expenses, account to the Customer for any excess over the price for the Goods paid to the Supplier by the Customer, or charge the Customer for any shortfall below the price of the Goods, the storage and sale costs and other out of pocket expenses, and the Customer shall pay for such shortfall on the first demand of the Supplier.
- 4.6. If the Supplier is not able to deliver the whole of the Order at one time due to operational reasons or shortage of stock, the Supplier will deliver the Order in instalments. The Supplier will not charge the Customer extra delivery costs for this. If the Customer asks the Supplier to deliver the Order in instalments, the Supplier may charge the Customer extra delivery costs. Each instalment shall constitute a separate contract. If the Supplier is late delivering an instalment or one instalment is faulty, that will not entitle the Customer to cancel any other instalment.
- 4.7. The Customer shall not be entitled to reject the Goods if the Supplier delivers up to and including 5 per cent more or less than the quantity of Goods ordered but a pro rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.
- 4.8. The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.9. If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event, the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 4.10. If the Supplier agrees with the Customer to store the Goods following delivery, the Supplier will use reasonable endeavours to securely store the Goods and will charge the Customer at the rate agreed with the Customer, but risk in the Goods shall have passed to the Customer, who shall be responsible for insuring the Goods as it sees fit and except in the case of the Supplier's gross negligence, the Supplier shall not be liable for any loss, liability, cost or expense suffered by the Customer if the Goods are stolen or damaged, or destroyed whilst the Goods are stored by the Supplier.
- 4.11. Unless the Incoterm under which the Goods are to be provided under this Agreement provides otherwise (or a variation to the relevant Incoterm is provided for in the Order Confirmation), the Customer shall, unless agreed otherwise in writing with the Supplier or expressly provided for in the Order, be solely responsible for and shall pay for all costs and expenses and shall assume and be liable for all liability, loss, cost, expense and risk in relation to the carriage, loading and unloading of all or any Goods. The Customer will co-operate and procure any third party engaged to carry out services for it co-operates, with all reasonable instructions of the Supplier in relation to such loading and unloading. The Customer shall indemnify and keep indemnified the Supplier in full and on demand from and against all and any liabilities, losses, claims, demands, costs and expenses suffered or incurred by the Supplier arising directly or indirectly out of or in connection with any damage caused (directly or indirectly) to any property owned or occupied by the Supplier, by the Customer (or any of its Affiliates) or any person engaged (whether or not for value) by the Customer to transport all or any of the Goods, including without limitation in relation to the loading or unloading of any Goods, or otherwise to load or unload any Goods.

## 5. **PASSING OF TITLE AND RISK**

- 5.1. Title to the Goods shall pass to the Customer, unless otherwise required by the Incoterm under which the parties have agreed the Goods will be supplied, or, if no such agreement exists, when payment is made to the Supplier for those Goods in full in cleared funds in UK pounds sterling (including all delivery and packaging charges and classification costs).
- 5.2. Until payment is made to the Supplier in full in cleared funds in UK pounds sterling (including all delivery and packaging charges and classification costs) for the Goods, the Customer:
- 5.2.1. shall not resell the Goods or combine them with other goods or annex or attach them to anything; and
- 5.2.2. shall ensure they are kept separately from other goods and are clearly marked as the Supplier's property; and
- 5.2.3. shall hold the Goods on a fiduciary basis as the Supplier's bailee; and
- 5.2.4. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery (or deemed delivery, as appropriate).
- 5.3. The Customer shall notify the Supplier immediately if it becomes subject to any of the events listed in clauses 11.1.2 to 11.1.12 and the Customer shall give the Supplier such information relating to the Goods as the Supplier may require from time to time.

- 5.4. The Supplier may, until such time as payment is made in full in cleared funds in UK pounds sterling to the Supplier (including all delivery and packaging charges and classification costs), require the Customer to deliver up the Goods and/or enter the Customer's premises to retrieve its Goods.
- 5.5. The Customer shall procure that the Supplier is granted access to any third party's premises to retrieve its Goods.
- 5.6. Risk in the Goods shall pass to the Customer on delivery (or deemed delivery) unless otherwise required by the Incoterm under which the parties have agreed the Goods will be supplied.
- 5.7. Unless the Incoterm under which the Goods are supplied or the Order Confirmation (or other agreement in writing between the Supplier and the Customer) provides to the contrary, the Customer shall be responsible for all loss or damage to Goods once risk has passed to the Customer and the Customer shall insure the Goods with a reputable insurer for their full replacement value on behalf of and for the benefit of the Supplier until title in the Goods passes to the Customer and shall on request provide details of such insurance and proof that all premiums payable in relation to such insurance have been paid in full and that any such policy of insurance is in full force and effect and the interest of the Supplier is noted on such policy in relation to Goods where title has not passed to the Customer.

## 6. **INTELLECTUAL PROPERTY RIGHTS**

- 6.1. The Supplier owns all Intellectual Property Rights in the Goods and in Bespoke Goods and/or arising out of or in connection with the Services.
- 6.2. The Customer shall not register any Intellectual Property Right or claim any such right in the Goods or the Bespoke Goods and shall keep any rights notice of the Supplier's on the Goods or Bespoke Goods and notify the Supplier if it discovers any infringement of the Supplier's such rights by a third party. In particular, the Customer acknowledges that it has no right or licence by virtue of having purchased the Goods or Bespoke Goods or otherwise itself to manufacture the Goods or Bespoke Goods. It shall ensure its employees, agents, customers and contractors are aware of the Supplier's Intellectual Property Rights.
- 6.3. Where the Customer requests specific modifications or additions the Customer shall ensure the Supplier is given all information it requires to make such modifications and the Customer shall fully indemnify the Supplier against any loss, liability, cost or expense arising from the Supplier following the Customer's instructions and/or performing such services or making Bespoke Goods.
- 6.4. Any manufacturing data, product or other confidential or commercial information supplied by the Supplier to the Customer, whether marked as confidential or not, shall be held in strict confidence by the Customer and only used for the purposes for which it was supplied.
- 6.5. The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to licence such rights to the Customer.
- 6.6. All Supplier Materials are the exclusive property of the Supplier.

## 7. **LIABILITY (THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE)**

- 7.1. Nothing in this Agreement shall limit or exclude the Supplier's liability for:
  - 7.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - 7.1.2. fraud or fraudulent misrepresentation;
  - 7.1.3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) and sections 8 to 11 of the Supply of Goods (Implied Terms) Act 1973 where the Customer is a consumer;
  - 7.1.4. breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession) and sections 13 to 15 of the Sale of Goods Act 1979 where the Customer is a consumer; or
  - 7.1.5. defective products under the Consumer Protection Act 1987 where the Customer is a consumer; or
  - 7.1.6. any other matter for which it would be illegal or unlawful for the Supplier to attempt to exclude or limit the Supplier's liability.
- 7.2. Subject to the above provisions as to the exclusion of liability:
  - 7.2.1. the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), misrepresentation, breach of statutory duty, or otherwise, for any:
    - 7.2.1.1 loss of profit, or
    - 7.2.1.2 for any indirect or consequential loss; or
    - 7.2.1.3 loss of income or revenue; or
    - 7.2.1.4 loss of business; or

- 7.2.1.5 loss of anticipated savings; or
  - 7.2.1.6 loss of data; or
  - 7.2.1.7 any waste of time;
- arising under or in connection with this Agreement. Nothing in this clause 7.2.1 shall prevent claims for foreseeable loss of, or damage to, the Customer's physical property which has not been caused directly or indirectly by the Customer or its contractors, agents, installers or the like; and
- 7.2.2. the Supplier's total liability to the Customer in respect of all losses arising under or in connection with this Agreement, whether in contract, tort (including negligence), misrepresentation, breach of statutory duty, or otherwise, shall not exceed the aggregate amount of the payments actually received by the Supplier in cleared funds for the provision of the Goods (including for the avoidance of doubt any Bespoke Goods) and/or Services (as appropriate) under this Agreement.
  - 7.3. The Customer is advised to insure against any loss it may suffer in excess of the limit provided for under clause 7.2.2.
  - 7.4. Except as set out in these terms and conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.
  - 7.5. Where a Customer's modification to the Goods or combination of the Goods with other Goods or other Customer (or any third parties) action, including without limitation, installation, results in a loss to, or liability of the Supplier or any of its Affiliates or any of its contractors or sub-contractors, the Customer shall fully indemnify and hold harmless the Supplier, its Affiliates, contractors and sub-contractors against all such loss, liability, costs and expenses and shall pay any amount due under this indemnity on the first demand of the Supplier.
  - 7.6. The Supplier shall not be liable for any cost, expense, loss or liability suffered by the Customer or any customer of the Customer for any defect in the Goods (including any Bespoke Goods) arising directly or indirectly out of any specification for Goods (including without limitation any data, plant, drawings and dimensions) provided by the Customer to the Supplier in order to produce or modify any Goods or Bespoke Goods, and any costs of rectification of any Goods or Bespoke Goods by the Supplier (including all transportation costs) as a direct or indirect result of any such incorrect information, shall be the sole responsibility and liability of the Customer.
  - 7.7. The Customer shall be solely responsible for the installation of any Goods on any vessel and the Supplier shall have no liability arising out of or in connection with such installation.
  - 7.8. This clause 7 shall survive termination of this Agreement.

8. **QUALITY OF GOODS**

- 8.1. The Supplier warrants that on delivery, and for a period of 12 months from the date of delivery ("**Warranty Period**"), the Goods shall:
  - 8.1.1. conform in all material respects with their description and any applicable Specification;
  - 8.1.2. be free from material defects in design, material and workmanship;
  - 8.1.3. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
  - 8.1.4. be fit for any purpose held out by the Supplier in so far as they are installed in the correct manner.
- 8.2. Subject to clause 8.3, if:
  - 8.2.1. the Customer gives notice in writing during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 8;
  - 8.2.2. the Supplier is given a reasonable opportunity of examining such Goods; and
  - 8.2.3. the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost;
 

the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 8.3. The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 8.1 if:
  - 8.3.1. the Customer makes any further use of such Goods after giving a notice in accordance with clause 8.2;
  - 8.3.2. the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
  - 8.3.3. the defect arises directly or indirectly due to incorrect installation of the Goods;
  - 8.3.4. the defect arises as a direct or indirect result of the Supplier following any drawing, design, Specification or information supplied by or on behalf of the Customer;
  - 8.3.5. the Customer alters or repairs such Goods without the written consent of the Supplier; or

- 8.3.6. the defect arises as a result of fair wear and tear, wilful damage, negligence, abnormal working conditions or exposure to galvanic corrosion.
- 8.4. Except as provided in this clause 8, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 8.1.
- 8.5. The terms of these conditions shall apply to any repaired or replacement Goods supplied by the Supplier under clause 8.2.

## 9. CONFIDENTIALITY

- 9.1. A party ("**Receiving Party**") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party ("**Disclosing Party**"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its or any of its Affiliates' employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under this Agreement, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party.
- 9.2. This clause 9 shall survive termination of this Agreement.

## 10. CUSTOMER'S OBLIGATIONS

- 10.1. The Customer shall:
  - 10.1.1. ensure that the terms of the Order and the Order Confirmation and the information it provides in the Specification are complete and accurate in all respects and the Supplier will have no liability for any defects in the Goods that result directly or indirectly from the Supplier relying on the Customer's Specification;
  - 10.1.2. provide express written instructions of any specific packaging requirements for the Goods (including without limitation in connection with their transport), and in the absence of any such instructions the Supplier shall only be required to provide such packaging as the Supplier shall deem reasonably necessary to transport such Goods by road using a competent carrier experienced in and equipped for transporting goods of the nature of the Goods;
  - 10.1.3. provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Goods and Services and ensure that such information is accurate in all material respects;
  - 10.1.4. co-operate with the Supplier in all matters relating to the Services;
  - 10.1.5. provide the Supplier, its employees, agents, consultants and sub-contractors with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
  - 10.1.6. prepare the Customer's premises for the supply of the Services;
  - 10.1.7. obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
  - 10.1.8. keep and maintain all materials, equipment, documents and other property of the Supplier ("**Supplier Materials**") at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.
- 10.2. If the Supplier's performance of any of its obligations in respect of the Goods and/or Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"):
  - 10.2.1. the Supplier shall without limiting its other rights or remedies have the right to suspend the provision of the Goods and/or Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
  - 10.2.2. the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 10.2; and
  - 10.2.3. the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

## 11. TERMINATION

- 11.1. Without limiting its other rights or remedies, each party may terminate this Agreement with immediate effect by giving written notice to the other party if:
  - 11.1.1. the other party commits a material breach of its obligations under this Agreement and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing of the breach;
  - 11.1.2. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as

having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

- 11.1.3. the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party with the Supplier's prior written consent;
- 11.1.4. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
- 11.1.5. the other party (being an individual) is the subject of a bankruptcy petition or order;
- 11.1.6. a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 11.1.7. an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- 11.1.8. a floating charge holder over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 11.1.9. a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 11.1.10. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.1.2 to clause 11.1.9 (inclusive);
- 11.1.11. the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
- 11.1.12. the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 11.2. Without limiting its other rights or remedies, the Supplier may terminate this Agreement:
  - 11.2.1. by giving the Customer one month's written notice;
  - 11.2.2. with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Agreement on the due date for payment.
- 11.3. It is acknowledged by the parties that the Customer has, without prejudice to its rights under clause 11.1, no right to terminate this Agreement due to the bespoke nature of the Goods to be provided by the Supplier for the Customer.
- 11.4. Without limiting its other rights or remedies, the Supplier shall have the right to suspend all further deliveries of Goods and/or the provision of the Services under this Agreement or any other contract between the Customer and the Supplier if:
  - 11.4.1. the Customer fails to pay any amount due under this Agreement on the due date for payment; or
  - 11.4.2. the Customer becomes subject to any of the events listed in clause 11.1.1 to clause 11.1.9, or the Supplier reasonably believes that the Customer is about to become subject to any of them.
- 11.5. If the Supplier agrees in writing to the cancellation of the Order, or if this Agreement otherwise terminates then on termination of this Agreement for any reason or the cancellation of an Order as appropriate:
  - 11.5.1. the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest;
  - 11.5.2. the Customer shall return all Supplier's Materials and the Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping (including insuring them for their full replacement value) and will not use them for any purpose not connected with this Agreement;
  - 11.5.3. the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination or expiry; and
  - 11.5.4. clauses which expressly or by implication have effect after termination shall continue in full force and effect.
- 11.6. This clause 11 shall survive termination of this Agreement

## 12. EVENTS OUTSIDE THE SUPPLIER'S CONTROL

- 12.1. The Supplier will not be liable or responsible for any failure to perform, or delay in performance of, any of the Supplier's obligations under these terms and conditions that is caused by events outside the Supplier's reasonable control ('**Force Majeure Event**').
- 12.2. A Force Majeure Event includes any act, event, non-occurrence, omission or accident beyond the Supplier's reasonable control and includes, in particular (without limitation), the following :

- 12.2.1. strikes, lock-outs or other industrial action;
- 12.2.2. civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war;
- 12.2.3. fire, explosion, storm, flood, snow, bad weather, earthquake, subsidence, epidemic or other natural disaster;
- 12.2.4. ash clouds or power cuts;
- 12.2.5. impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport;
- 12.2.6. impossibility of the use of public or private telecommunications networks; or
- 12.2.7. pandemic or epidemic.
- 12.3. The Supplier's obligations under these terms and conditions are suspended for the period that the Force Majeure Event continues, and the Supplier will have an extension of time to perform these obligations for the duration of that period. The Supplier will take reasonable steps to bring the Force Majeure Event to a close or to find a solution by which the Supplier's obligations under these terms and conditions can be performed despite the Force Majeure Event.
- 12.4. If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Goods for more than two weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Agreement immediately by giving written notice to the Customer. If the Agreement is terminated by the Supplier as a result of a Force Majeure Event, any payment made by the Customer to the Supplier under this Agreement for Goods and/or Services not provided by the Supplier shall, after deduction by the Supplier of all of its out of pocket expenses, be reimbursed to the Customer.

### 13. **SERVICES**

- 13.1. The Supplier shall provide the Services to the Customer in accordance with the Specification and Order Confirmation in all material respects.
- 13.2. The Supplier shall use all reasonable endeavours to meet an agreed performance date with the Customer for the Services set out in the Order Confirmation, but any such date shall be an estimate only and time shall not be of the essence for the performance of the Services. There may be delays due to circumstances beyond our control. In this case we will complete the Services as soon as reasonably possible.
- 13.3. The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 13.4. The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

### 14. **GENERAL**

- 14.1. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law and the Supplier and the Customer irrevocably submit to the exclusive jurisdiction of the courts of England and Wales in relation to any dispute or claim.
- 14.2. Notices shall be served on the Supplier at the address above and the Customer at the address on the Order.
- 14.3. Any notice or other communication required to be given to a party under or in connection with this Agreement shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number or, if the parties agree, by e-mail to such e-mail address as the parties agree or, if there is no such formal agreement, to the e-mail address of the parties used to communicate on any Order or Order Confirmation.
- 14.4. Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such addressor, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax or other electronic means, on the next Business Day after transmission.
- 14.5. A waiver of any right under this Agreement is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy. Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.
- 14.6. Where any provision of this Agreement (or part of any provision thereof) is held to be invalid, illegal, unenforceable or void, that provision or part provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of this Agreement shall continue notwithstanding to apply and be unaffected.

- 14.7. The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights (or any interest therein) or obligations (or agree to do any of the above) under this Agreement.
- 14.8. The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under this Agreement and may subcontract or delegate in any manner any or all of its obligations under this Agreement to any third party.
- 14.9. Any variation, including the introduction of any additional terms and conditions, to this Agreement shall only be binding when agreed in writing and signed by the Supplier.
- 14.10. Nothing in this Agreement is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 14.11. The Customer acknowledges and agrees that details of the Customer's name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of the Supplier. The Customer agrees that the Supplier may access, store and use information about the Customer and/or its directors, officers, employees, members, principals and/or shareholders and/or partners.
- 14.12. A person who is not a party to this Agreement shall not have any rights under or in connection with it.
- 14.13. This clause 14 shall survive termination of this Agreement.