

## **1. INTRODUCTION**

These General Terms and Conditions of Contract (“Conditions”) apply, to the exclusion of any other general terms and conditions, to any contract (“Contract”) for the supply of goods and services between any authorised company, distributor/agent or service station of Winterthur Gas & Diesel Ltd. (“Supplier”) and any customer (“Buyer”). Supplier and Buyer are singularly referred to as the “Party” and together referred to as the “Parties”.

## **2. CONTRACT PRICE**

2.1 Unless otherwise agreed the contract price (“Contract Price”) means the total of the amounts due from the Buyer to the Supplier under this Contract) does not include, and the Buyer shall bear or reimburse the Supplier for any taxes, duties or other official charges, including, but not limited to value added tax and any taxes raised on the equipment (“Equipment”) or services (“Services”), custom and import duties or any other charges on the Contract Price or any part thereof.

2.2 The Contract Price only includes the Supplier’s standard transport packing materials, unless otherwise agreed.

2.3 If any payment due from the Buyer under this Contract is not received by the Supplier, or if any payment security agreed to be provided is not provided or opened as required by this Contract, without prejudice to the Supplier’s rights under this Contract, the Buyer shall pay interest on any amounts due or to be covered by the payment security at a rate of three (3) percent per annum/pro rata from the date payment or provision of payment security is due until the payment is received in full or until the security is provided or opened.

## **3. DELIVERY AND RETENTION OF TITLE**

3.1 Equipment shall be delivered at the place named and on terms as set out in the Contract in accordance with Incoterms® 2010 (“Delivery”).

3.2 On Delivery, the Buyer, its representative or an internationally recognised inspection service shall, at the cost of the Buyer, inspect the Equipment. The Buyer shall, within a reasonable period after the Delivery, give immediately a written notice to the Supplier of any relevant matter the Buyer considers not to be in conformity with the Contract. If the Buyer fails to give such notice the Equipment shall be deemed to have been delivered fully in conformity with the Contract.

3.3 Having been notified of non-conformities in accordance with Clause 3.2 the Supplier shall as soon as possible remedy them and the Buyer shall give the supplier the possibility of doing so.

3.4 The Supplier shall retain title and ownership of the Equipment and spare parts (“Spare Parts”) which shall automatically pass to the Buyer only on receipt of the Contract Price in full. Despite of retention of title, risk shall pass to the Buyer at Delivery.

3.5 Deficiencies of any kind in supplies or services shall not entitle the customer to any rights and claims other than those expressly stipulated in this Clause 3 and in Clause 10.

## **4. DELAYS CAUSED BY SUPPLIER OR BUYER**

4.1 If the supply of Equipment or Services is delayed due to reasons attributable to the Supplier and the Buyer has suffered a loss as a consequence, the Buyer shall be entitled to liquidated damages calculated from (fourteen) 14 days after the date on which Delivery should have taken place (“grace period”) at zero point twenty-five percent (0.25%) of the value of the delayed part of the Equipment or Services supplied per each full week of delay. The total amount of liquidated damages under Clause 4.1 to be paid by the Supplier in consequence of the Supplier’s delay shall in no case exceed five percent (5%) of the part of the Contract Price which is payable for Equipment or Services supplied in respect of the vessel (“Vessel” means the individual vessel, construction or structure in respect of which any Equipment or Services are supplied under this Contract) affected by the delay. These liquidated damages shall be the Buyer’s sole and exclusive remedy for delay.

4.2 If performance of any obligations under this Contract is delayed for any reasons attributable to the Buyer, or at his request without prejudice to the Supplier’s rights under the Contract,

i) the Contract Price is increased by zero point six percent (0.6%) for each month of delay up to and including the month of actual Delivery; and

ii) the Supplier may adjust the test schedule and the date, mode or schedule of Delivery and charge the Buyer for all costs resulting to the Supplier from such delay, including but not limited to storage, transportation, insurance and maintenance of the Equipment.

## **5. SUBCONTRACTORS AND ASSIGNMENT**

5.1 The Supplier is entitled to subcontract all or part of its obligations.

5.2 The Supplier shall not be responsible or liable for subcontractors selected or appointed by the Buyer.

5.3 Neither Party shall be entitled to transfer or assign rights, benefits, obligations or liabilities under this Contract to any third person without prior written approval from the other Party.

## **6. BUYER’S SUPPLIES**

6.1 Any defect or delay in the supply of information, documentation, goods or services to be made by the Buyer (“Buyer’s Supplies”) shall be considered as a delay attributed to the Buyer and the consequences set out in Clauses 4.2 shall follow.

6.2 In the event of delays or defects in respect of Buyer’s Supplies, the Supplier may, at its discretion, proceed with any tests to be carried out prior to or in the context of Delivery. The Buyer shall accept the results of such tests and accept the Equipment as having been delivered in conformity with this Contract.

6.3 The Supplier’s warranty in respect of Equipment or Services supplied shall not cover any defects in the Buyer’s Supplies and the Supplier shall not be liable for any damage or losses that could have been caused by the Buyer’s Supplies. The Buyer will indemnify the Supplier in respect of any losses, liabilities or expenses incurred by the Supplier or any third party in connection with any Buyer’s Supplies including liabilities and expenses suffered as a result of the infringement of patents or other intellectual property rights of third parties.

## **7. INSTALLATION AND COMMISSIONING**

7.1 The Buyer shall be responsible for the installation of the Equipment. The installation shall be performed by the Buyer in accordance with the guidelines and procedures of the Supplier.

7.2 Following installation, the Equipment shall be checked and started up in accordance with the Supplier’s guidelines and procedures (“Commissioning”). Commissioning shall not construe responsibility to the Supplier for the defects of the installation performed by the Buyer. The Supplier reserves the right to stop, re-start and re-perform the Commissioning. In no case shall the Buyer commence or carry out the Commissioning without the involvement of the Supplier as contractually agreed.

7.3 The Buyer shall, at no charge, provide the Supplier with all assistance required, including, but not limited to, provision of suitable labour, tools, other implements required, adequate hoisting gear, including operating staff, scaffolding, as well as cleaning, packing and lubricant materials, health and safety equipment and any consumables required. This also applies to any work carried out in connection with any modifications or technical changes during Delivery, installation or Commissioning of the Equipment. Furthermore, the Buyer shall, at no charge, supply heating, lighting, water and electricity connections in sufficient capacity and quantity as well as welding gas and other working requirements. The equipment made available by the Buyer shall be in full working order and in compliance with relevant health and safety regulations.

7.4 On completion of Commissioning, the Supplier shall issue a Completion of Commissioning Certificate (“Commissioning Certificate”). The Commissioning Certificate, which shall be executed by both Parties, constitutes evidence that the Equipment is in conformity with the Contract. Under no

circumstances shall the issuance of the Commissioning Certificate be delayed or refused due to minor deficiencies not materially affecting the use of the Equipment. If the Buyer takes, or allows a third party to take the Equipment into use prior to the issuance of the Commissioning Certificate or completion of Commissioning the Buyer is deemed to have waived any warranty claims and the Equipment or Services shall be deemed accepted by the Buyer, as having been delivered in all respects free of any defects and fully in conformity with this Contract.

## 8. TESTS

8.1 If applicable, the Buyer or its representative and, if required, an internationally recognised inspection service shall witness tests and conduct an inspection of the Equipment following its assembly. The place, date and time of the inspection and tests shall be notified to the Buyer one week prior. Inspection and testing shall be performed in accordance with the Supplier's procedures at the factory of the Supplier or other place designated by the Supplier during normal working hours. The Supplier shall bear the costs and expenses of tests carried out at its factory, but excluding any costs and expenses of the Buyer. If the Buyer is not represented at the tests after having been duly notified, the test report shall be deemed to be accepted as being accurate by the Buyer.

8.2 If the test shows any defect or non-conformity in the Equipment, the Supplier shall remedy it at its costs as soon as is reasonably possible either before or after delivery.

## 9. INTELLECTUAL PROPERTY RIGHTS

9.1 The Supplier shall retain all patent rights and intellectual property and trademark rights relating to any Equipment or Services supplied under this Contract and the Buyer undertakes not to disclose any information or data relating to such Equipment and Services to any third parties without the prior written consent of the Supplier. The Supplier hereby grants to the Buyer a royalty-free, non-exclusive and non-transferable right to use the Equipment.

9.2 The Supplier shall indemnify and hold the Buyer harmless from and against claims made against the Buyer by any third party unrelated to the Buyer for infringement of a patent or similar registered intellectual property right in respect of supplies made, provided that the Buyer gives prompt written notice and provides, at the Supplier's expense, all necessary assistance. In respect of such claims made against the Buyer, the Supplier's sole obligation will be, at its discretion, to either procure the right for the Buyer to continue use of the Equipment or Spare Parts, or to modify the Equipment or Spare Parts avoiding any such infringements.

## 10. LIABILITY FOR DEFECTS

10.1 Supplier warrants that, during the period defined below ("Warranty Period"), the Equipment will be free of defects in material and workmanship, and in conformity with the agreed specifications. The Supplier also warrants it will use reasonable skill and care in performing any Services under this Contract.

10.2 The Warranty Period in respect of Equipment and Services supplied starts at Delivery and expires either

i) twelve (12) months after the date on which the Vessel is handed over to the Buyer's customer or the Equipment has been taken into use, including use of the Equipment for power production, or

ii) eighteen (18) months from Delivery of the Equipment concerned, whichever occurs earlier. The Buyer must notify the Supplier in writing of the handing over of the Vessel or taking the Equipment into use.

10.3 In case the Equipment is ready for Delivery but the Supplier is not able to deliver the Equipment due to reason attributable to the Buyer, the Warranty Period of eighteen (18) months described in clause 10.2 ii) shall commence from date the Delivery should have taken place according to the Contract.

10.4 Under this warranty, and subject always to the terms of this Clause, the Supplier shall, at its discretion, either repair or replace any defects in the Equipment discovered during the Warranty Period. This will be the only remedy available to the Buyer for breach of such warranty.

10.5 The Buyer must give the Supplier detailed written notice of any defect and the Equipment or Services affected without delay, but in any event latest within fourteen (14) days after

discovery of the respective defects. If such notice is not given within the time required, or at all, the relevant Equipment or Services shall be deemed to be free of any such defects.

10.6 The Buyer must, immediately after discovery of any defect, take all appropriate steps to mitigate any loss or damage and to prevent any defect from becoming more serious.

10.7 The Supplier's obligations under this warranty shall only become effective upon all amounts due under the Contract being received.

10.8 Unless Supplier's special knowledge is required, the Buyer shall at his own expense arrange for any dismantling and reassembly of other components than Equipment, to the extent that is necessary to remedy the defect.

10.9 The Supplier's warranty pursuant to and in connection with this Contract does not cover defects that are connected with or caused by a) normal wear and tear; or b) use of parts, spare parts, materials or consumables not supplied or approved by the Supplier; or c) any use, maintenance, service or operation of the Equipment or the Vessel which is not in conformity with the Contract or the Supplier's or its subcontractor's manuals or instructions, or which is otherwise not in accordance with normal industry practice; or d) negligence or other improper acts or omissions or breach of contract on the part of the Buyer, or other third parties; or e) the improper installation or modifications of Equipment carried out without the Supplier's prior written consent; or f) Equipment or Services not being compatible or not functioning with other equipment or systems not supplied by the Supplier.

10.10 The Warranty Period for repaired or replaced Equipment, Spare Parts or Services supplied pursuant to this warranty shall commence at the date of the repair or of the delivery of the replacement Equipment or Spare Parts and shall expire twelve (12) months thereafter, or upon the expiry date of the original Warranty Period in respect of the Equipment, whichever occurs later. The preceding sentence shall not apply to original parts of the Equipment which are not repaired or replaced. Under no circumstances shall the Warranty Period in respect of any part of the Equipment or Spare Parts, whether original or replaced, exceed thirty (30) months calculated from the date of Delivery of the respective Equipment.

10.11 During the Warranty Period, or after notice of a warranty claim has been received, the Buyer shall arrange for the Supplier or his representative to have free access to the Vessel to take samples of fuels, lube oils, cooling liquids and other chemicals and materials used for the operation of the Equipment and the Vessel, as well as free access to log books and other records containing operating or maintenance information relating to the Equipment.

10.12 The warranty set out in these Conditions is the only warranty applicable to the Equipment and Services supplied pursuant to this Contract. This warranty replaces and excludes, to the extent permissible by law, any other guarantee, warranty and/or condition imposed or implied by law, custom, statute or otherwise and/or resulting liabilities, including fitness for purpose or liability for latent defects.

## 11. LIMITATIONS AND EXCLUSIONS OF LIABILITY

11.1 All cases of breach of this Contract and the relevant consequences as well as all rights and remedies available to the Buyer are exhaustively defined and covered by the express terms of this Contract.

11.2 Except where expressly provided otherwise in the Contract, the Supplier shall not be liable under any circumstances, and irrespective of the cause of action, for indirect or consequential losses, such as – but not limited to – commercial or economic losses, loss of production, loss of use, loss of revenue, loss of profit, delay and business interruption and other similar causes or losses, whether direct or indirect. Further, the Supplier is not liable for loss of time, loss of employment or opportunity to utilize the Equipment or Services supplied, loss or damage caused by incompatibility between the Equipment and other equipment, costs of substituted equipment, towage charges, pollution clean up costs, docking or diving costs, damage to the Vessel or other assets, demounting or mounting costs or/and costs of sea trials or other tests and inspections.

11.3 The limitations of liability contained in this Clause 11 do not apply where such losses are caused by a breach of duty on

the part of the statutory representatives or directors of the Supplier constituting unlawful intent, wilful misconduct or gross negligence.

11.4 In any event, and whatever the cause of action, the Supplier's maximum total liability to the Buyer pursuant to and in connection with this Contract – including the obligation to pay penalties, liquidated damages and regardless of cause, degree of fault, negligence, breach of contract or otherwise – shall be limited (i) in case of Equipment sold by Supplier directly to Buyer ("Traded Engine") to one third (1/3) of that part of the Contract Price which relates exclusively to the individual Vessel in respect of which the cause of the Supplier's liability has arisen or (ii) one hundred percent (100%) of the net royalty fee received by Supplier from the engine builder for the respective engine in all other cases.

#### **12. IMPORT AND EXPORT RESTRICTIONS**

The Parties agree that the Equipment shall be delivered subject to all applicable export controls or restrictions imposed on technology and products by any country or organisation or nation, including the United Nations, European Union and United States, which are enforceable in the jurisdiction of the Supplier. On the Supplier's request the Buyer shall furnish the Supplier with all relevant certificates relating to export control laws, regulations and restrictions, such as, but not limited to, end-user certificates, in form and content specified by the Supplier.

#### **13. DATA PROTECTION**

The Supplier is entitled to process the personal data of the Buyer in order to perform the Contract. Furthermore, the Buyer consents in particular to the Supplier transmitting such data to third parties in Switzerland and abroad for the purpose of performing and maintaining the business relationships between the Parties.

#### **14. SOFTWARE**

If the Equipment and Services delivered by the Supplier include software, the Buyer is granted a non-exclusive right of use of the software together with the delivery item, unless otherwise agreed. The Buyer is not entitled to copy (except for archival purposes, troubleshooting or to replace faulty data carriers) or to edit the software. In particular, the Buyer may not disassemble, decompile, decrypt or reverse engineer the software without the prior written consent of the Supplier. In case of infringement, the Supplier may withdraw the right of use. For third-party software, the conditions of use of the licensor apply, and the licensor, as well as the Supplier, may also assert a claim in the event of infringement.

#### **15. FORCE MAJEURE**

Neither Party shall be considered to be in default or otherwise liable for any delay or default in the performance of the Contract, where this is caused by an event or circumstances constituting Force Majeure. Force Majeure means any events or circumstances which are beyond the reasonable control of the Party affected, and includes, without limitation, the following: wars whether declared or not, any events involving armaments of war, civil wars and riots, hostilities, public disorder, acts of terrorism and threat of terrorism, any measures taken by public authorities in connection with the threat of terrorism, strikes, lockouts or other industrial disputes, epidemics, fires, explosions, acts of God, embargos, any lawful or unlawful restrictions and actions of any public authority or government, abnormally adverse weather conditions, natural disasters, destruction of machines, equipment or factories, or failure of a subcontractor due to reasons stated above to supply materials, goods or services in time or at all and shortage of transport or loss of workmen.

#### **16. TERMINATION**

16.1 Either Party may terminate this Contract with immediate effect by giving termination notice in writing to the other Party in the following circumstances, i) the other Party has commenced insolvency or winding up; ii) any Party has been prevented from performance of the Contract by Force Majeure event lasting for more than six (6) months.

16.2 The Supplier may terminate this Contract with immediate effect by giving notice in writing to the Buyer, if the Buyer has been in breach of its payment obligations or any other of its material obligations for thirty (30) days or more.

#### **17. SUSPENSION OF PERFORMANCE**

Without prejudice to any other rights or remedies available, the Supplier shall have the right to suspend performance of its obligations under this Contract in case of any actual or anticipatory breach of contract by the Buyer.

#### **18. MISCELLANEOUS PROVISIONS**

18.1 Any modifications, documentation or approvals relating to Equipment or Services supplied under this Contract which are required by changes in law, international regulations, or class rules after the date of the Supplier's offer shall be the responsibility of and arranged and paid for exclusively by the Buyer.

18.2 The Buyer shall be solely responsible for compliance with any environmental, health, and safety rules and regulations applicable to its worksite and the use of delivered Equipment and Spare Parts.

#### **19. CONFIDENTIALITY AND PUBLICITY**

This Contract or documentation supplied in its context may contain confidential and commercially sensitive information. No Party may allow any document or information relating to the subject matter, or any other information that may be commercially sensitive, to be disseminated or otherwise published or used, except as required by law or stock market rules, without the express prior consent in writing from the other Party.

#### **20. ENTIRE AGREEMENT AND AMENDMENTS**

20.1 This is the entire agreement between the Parties. There are no other or prior oral and written agreements, obligations, representations and warranties and correspondence with respect to the subject matter of the Contract upon which the parties have relied except those contained in the Contract.

20.2 The Contract may be amended or varied only if such amendment or variation has expressly been agreed in writing by the authorised representatives of the Parties.

#### **21. APPLICABLE LAW, ARBITRATION AND JURISDICTION**

21.1 The Contract shall be governed by the substantive laws of Switzerland with exclusion of the conflict of law provisions in there.

21.2 Any dispute arising out of or in connection with this Contract shall be finally settled under the Rules of the International Chamber of Commerce by three (3) arbitrators appointed in accordance with the said Rules. The arbitration shall be in the English language and the place of arbitration shall be Zürich, Switzerland.

21.3 Nothing contained in this Clause shall preclude the Supplier from bringing any legal suit, action or proceedings against the Buyer in the courts of any jurisdiction where the Buyer or any of its property or assets may be found or located, and the Buyer hereby irrevocably submits to the jurisdiction of any such court.