

## CC Marine and Industrial Supply Limited Terms and Conditions

### 1. DEFINITIONS

In these terms and conditions, unless the context otherwise requires, the following words have the following meanings:  
"Contract" means the agreement between CC Marine and Industrial Supply Ltd and the Customer formed when CC Marine and Industrial Supply Ltd accepts the Order orally or in writing or when CC Marine and Industrial Supply Ltd delivers the Goods or Services, whichever occurs first subject to these terms and conditions;

"Customer" means the person, firm or Company with whom the Contract subject to these terms and conditions is made whether directly or indirectly through an agent;

"Estimate" means a non-binding indication of products or services and the prices at which goods and/or services may be supplied to the Customer provided the Customer places an Order within the deadline;

"Goods" means those goods which CC Marine and Industrial Supply Ltd has agreed to sell to the Customer and the Customer has agreed to purchase;

"Order" means the order which the Customer places on CC Marine and Industrial Supply Ltd detailing the Goods and/or Services it wishes to purchase;

"Service Fees" means those fees for the Services set out in an Order;

"Services" means the services to be provided by CC Marine and Industrial Supply Ltd to the Customer under the terms of the Contract;

"Site" means any agreed location set out in an Order;

### 2. ORDERS AND ESTIMATES

2.1 CC Marine and Industrial Supply Ltd shall sell and the Customer shall purchase the Goods and/or Services in accordance with an Order once accepted by CC Marine and Industrial Supply Ltd.

2.2 The Customer shall be responsible to CC Marine and Industrial Supply Ltd for ensuring the accuracy of the terms of the Order and for giving CC Marine and Industrial Supply Ltd all necessary information relating to the Goods and/or Services within a sufficient time to enable CC Marine and Industrial Supply Ltd to perform the Contract.

2.3 The quantity, quality and description of, and/or any specification for, the Goods and/or Services shall be those set out in the Order (if accepted by CC Marine and Industrial Supply Ltd).

2.4 No Order accepted by CC Marine and Industrial Supply Ltd may be cancelled by the Customer except with CC Marine and Industrial Supply Ltd's agreement in writing and the Customer shall fully and effectively indemnify CC Marine and Industrial Supply Ltd against all loss (including loss of profit), costs, damages, charges and expenses incurred by CC Marine and Industrial Supply Ltd as a result of cancellation or variation of an Order.

2.5 Unless previously withdrawn, Estimates remain open for the Customer to place an Order for the period stated in the Estimate or if no period is stated, within 30 days from the date of the Estimate.

2.6 All Orders shall be unconditional as to the acceptance of CC Marine and Industrial Supply Ltd's Terms and Conditions for the supply of Goods and Services and will be treated by CC Marine and Industrial Supply Ltd as the Customer's warranty that these terms and conditions of supply are reasonable for the purposes of the Unfair Contract Terms act 1977 as amended.

2.7 Estimates issued to the Customer by CC Marine and Industrial Supply Ltd are not contractual offers but merely an indication of offers to purchase which if made by the Customer CC Marine and Industrial Supply Ltd may accept. CC Marine and Industrial Supply Ltd may therefore withdraw or vary an Estimate at any time.

2.8 Each Order on acceptance will be deemed a separate severable contract.

2.9 Some part numbers quoted are used for reference purposes only & we do not imply that we only sell products manufactured or caused to be manufactured by these Companies. Any ordering of parts from CC Marine and Industrial Supply Ltd is in acceptance of our terms & conditions.

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### 3. DELIVERY AND STORAGE OF THE GOODS/COMPLETION OF THE SERVICES

- 3.1. The time for delivery and/or performance shall run from the Customer meeting any condition precedent and the date on which sufficient information is received from the Customer to enable CC Marine and Industrial Supply Ltd to proceed with the Contract.
- 3.2. CC Marine and Industrial Supply Ltd shall endeavour to deliver the Goods and/or performance of the Services by the date quoted for delivery and/or completion but such date is not guaranteed nor shall the time for delivery and/or performance of Services be of the essence.
- 3.3. The date quoted for delivery of the Goods and/or the performance of the Services shall be extended by a reasonable period if there is any delay caused by any cause beyond CC Marine and Industrial Supply Ltd's reasonable control.
- 3.4. If forwarding instructions are not received within seven days after the date of notification that the Goods are ready for despatch, the Customer shall take delivery or arrange for storage.
- 3.5. If CC Marine and Industrial Supply Ltd agrees to store the Goods it will be on the strict understanding that the Goods are held at the Customer's risk, that a charge will be made until the Goods are despatched and that the Goods shall be paid for as if these had been despatched.
- 3.6. CC Marine and Industrial Supply Ltd accepts no responsibility whatsoever for any loss or damage resulting directly or indirectly from failure to supply, or delay in supplying the Goods and/or completing the Services howsoever arising.
- 3.7. The risk in the Goods passes to the Customer upon delivery notwithstanding any subsequent return to or retaking of possession, therefore the Customer should insure accordingly.
- 3.8. Any charges for storage or demurrage after despatch must also be paid by the Customer.
- 3.9. Where any subsequent deviation from these terms is made at the request of the Customer, any additional cost incurred will be charged to the Customer.
- 3.10. Each delivery of the Goods and/or performance of the Services shall be subject to CC Marine and Industrial Supply Ltd's terms and conditions and failure to make any one delivery and/or performance of the Services shall not make the Contract or any other Contracts ineffective.

### 4. PRICES

- 4.1 CC Marine and Industrial Supply Ltd reserves the right to alter its prices to reflect any increase in the cost to CC Marine and Industrial Supply Ltd due to any factor beyond the control of CC Marine and Industrial Supply Ltd (such as, without limitation, any significant increase in the costs of labour, materials or other costs of manufacture) any change in foreign exchange, import surcharge or other costs between the date of Estimate or Order (whichever the later) and the date of delivery of the Goods to the Site or into storage and/or performance of the Services. Such alteration in price shall be charged to the Customer.
- 4.2 CC Marine and Industrial Supply Ltd reserves the right to make a charge for inspection and testing of any returned materials in addition to any allowances which CC Marine and Industrial Supply Ltd may make in its sole discretion.
- 4.1.1 Unless otherwise agreed in writing between the Customer and CC Marine and Industrial Supply Ltd, all prices are given by CC Marine and Industrial Supply Ltd on an ex-works basis and where CC Marine and Industrial Supply Ltd agrees to deliver the Goods otherwise than at the Site, the Customer shall be liable to pay CC Marine and Industrial Supply Ltd's charges for freight, packaging and insurance.

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## 5 TERMS OF PAYMENT

- 5.1 Subject to any special terms agreed in writing between the Customer and CC Marine and Industrial Supply Ltd, CC Marine and Industrial Supply Ltd shall be entitled to invoice the Customer for the price of the Goods and/or Services on or at any time after delivery of the Goods and/or on completion the Services. If the Goods are to be collected by the Customer or the Customer wrongfully fails to take delivery of the Goods, or where the Goods have been made, assembled or acquired by CC Marine and Industrial Supply Ltd to meet the Customer's specific delivery requirements and delivery or performance cannot be effected because of causes not attributable to CC Marine and Industrial Supply Ltd, CC Marine and Industrial Supply Ltd shall be entitled to invoice the Customer at any time after CC Marine and Industrial Supply Ltd has notified the Customer in a Contract for Goods that the Goods are ready for collection or (as the case may be) CC Marine and Industrial Supply Ltd has tendered delivery of the Goods or in the event of Services, CC Marine and Industrial Supply Ltd is ready to perform the Services.
- 5.2 All payments are to be made in the invoiced currency unless otherwise agreed in writing within thirty days from the date of the invoice ("the Due Date").
- 5.3 Bank shall become due on overdue amounts until the date of payment. Such interest to accrue from day to day and to run after as well as before any judgment. Payment of interest shall not prejudice CC Marine and Industrial Supply Ltd's rights under any Contract.  
No right of set-off shall be afforded to the Customer in any event.
- 5.4 If the Customer fails to make any payment by the Due Date then without prejudice to any other right or remedy available to CC Marine and Industrial Supply Ltd, CC Marine and Industrial Supply Ltd shall be entitled to:
- 5.4.1 cancel the Contract or suspend any further deliveries of Goods and/or Services to the Customer under the particular Contract or any other Contracts then in force between the Customer and CC Marine and Industrial Supply Ltd ;
- 5.4.2 appropriate any payment made by the Customer to such of the Goods and/or Services (or the Goods and/or Services supplied under any other contract between the Customer and CC Marine and Industrial Supply Ltd ) as CC Marine and Industrial Supply Ltd may think fit; and
- 5.4.3 Charge the Customer interest as set out in clause 5.3 above.
- 5.4.4 Charge the Customer for all costs (including without limitation, all legal costs) incurred in recovering payment pursuant to these conditions.

## 6 TITLE TO THE GOODS

- 6.1 Risk of damage to or loss of the Goods shall pass to the Customer:
- 6.1.1 In the case of Goods to be delivered at CC Marine and Industrial Supply Ltd 's premises, at the time when CC Marine and Industrial Supply Ltd notifies the Customer that the Goods are available for collection; or
- 6.1.2 In the case of Goods to be delivered otherwise than at CC Marine and Industrial Supply Ltd 's premises, at the time of delivery or, if the Customer wrongfully fails to take delivery of the Goods, the time when CC Marine and Industrial Supply Ltd has tendered delivery of the Goods.
- 6.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these conditions, the property in Goods shall not pass to the Customer until CC Marine and Industrial Supply Ltd has received in cash or cleared funds payment in full of the price of all Goods or Services then due.
- 6.3 Until such time as the property in the Goods passes to the Customer, the Customer shall hold the Goods as CC Marine and Industrial Supply Ltd's fiduciary agent and bailee, and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected, insured and identified as CC Marine and Industrial Supply Ltd's property.
- 6.4 The Customer may [with CC Marine and Industrial Supply Ltd's written consent] agree to sell CC Marine and Industrial Supply Ltd 's Goods either as such or incorporated with others, subject to the following express and fundamental conditions:-

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- 6.4.1 the Customer shall expressly account to CC Marine and Industrial Supply Ltd for all proceeds, including any insurance proceeds, from any sub-sale of CC Marine and Industrial Supply Ltd 's Goods and shall hold on trust for CC Marine and Industrial Supply Ltd's part, or all, of the proceeds of the sub-sale equal to the amount due by the Customer to CC Marine and Industrial Supply Ltd for all Goods which CC Marine and Industrial Supply Ltd has sold to the Customer, this amount always being held separate from other monies, identifiable at all times as CC Marine and Industrial Supply Ltd 's monies until CC Marine and Industrial Supply Ltd has been paid in full and not paid into any overdrawn bank account.;
- 6.4.2 in each such sub-sale the Customer shall notify the sub-Customer that CC Marine and Industrial Supply Ltd remains the legal owner of the Goods until it receives payment in full for the Goods and CC Marine and Industrial Supply Ltd reserves the right to label the Goods accordingly and the Customer warrants that in such event it shall ensure that the Goods are labelled with a legible notice that the sub-Customer shall seek written confirmation from CC Marine and Industrial Supply Ltd of CC Marine and Industrial Supply Ltd 's receipt of payment in full for the Goods before the sub-Customer shall assume legal ownership and that such confirmation by CC Marine and Industrial Supply Ltd must be obtained as a condition precedent prior to the sub-Customer commences to install the goods; and
- 6.4.3 if the Customer's debt to CC Marine and Industrial Supply Ltd has not been fully discharged by the Customer then, if required by CC Marine and Industrial Supply Ltd, the Customer shall at the Customer's costs promptly assign to CC Marine and Industrial Supply Ltd by way of charge the claims held by the Customer against the sub-Customer arising from the sub-sale.
- 6.5 In the event of insolvency of the Customer, CC Marine and Industrial Supply Ltd's consent to the Customer's possession of the Goods is automatically withdrawn and neither the Customer nor any sub-Customer shall use or install the Goods until payment in full is received forthwith by CC Marine and Industrial Supply Ltd.
- 6.6 Until such time as the property in the Goods passes to the Customer (and provided that the Goods are still in existence and have not been resold) CC Marine and Industrial Supply Ltd shall be entitled at any time to require the Customer to deliver up the Goods to CC Marine and Industrial Supply Ltd and, if the Customer fails to do so immediately, to enter any premises of the Customer or any third party where the Goods are stored and repossess the Goods.

## 7 INSTALLATION AND COMMISSIONING OF GOODS

- 7.1 Where installation and commissioning are included in an Order, unless otherwise specified by CC Marine and Industrial Supply Ltd the price and time of completion are given on the understanding that suitable facilities including but not limited to suitable buildings, foundations, scaffolding, lifting tackle, power supply, lighting facilities and water are ready and free for CC Marine and Industrial Supply Ltd 's use in good time and that continues and satisfactory means of access to the site is provided by the Customer with adequate protection for all materials from time of delivery on the site.
- 7.2 CC Marine and Industrial Supply Ltd supplies the requisite skilled supervision for those purposes set out in clause 7.1; all other necessary labour is to be supplied by the Customer in sufficient quantity for installation, commissioning and unloading so as to enable the work to be carried out expeditiously under CC Marine and Industrial Supply Ltd's supervision.
- 7.3 Any Estimate or Order shall not include work by masons, smiths, bricklayers, carpenters, electricians, plumbers or other outside work or material which may be required during installation and commissioning. Any extra cost resulting from suspension of work under the Customer's instructions, delays, interruptions, overtime, unusual working hours or mistakes or any other causes over which CC Marine and Industrial Supply Ltd has no control or work for which CC Marine and Industrial Supply Ltd is not responsible shall be added to CC Marine and Industrial Supply Ltd's quoted price and paid by the Customer to CC Marine and Industrial Supply Ltd on demand.

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7.4 The right to use sub-contractors under CC Marine and Industrial Supply Ltd's supervision is also reserved.

7.5 **SPECIFICATIONS, DRAWINGS, TEST, ETC.**

7.6 Except where Estimates are given in reliance upon the Customer's detailed drawings, statements of weight and dimensions submitted along with CC Marine and Industrial Supply Ltd's Estimate, any descriptions and illustrations in any of CC Marine and Industrial Supply Ltd's catalogues, price lists or other advertising matter are intended to present a general idea only of the goods and/or services described and none of these shall form a part of any Contract.

7.7 All quotations, drawings and descriptive matter produced or supplied by CC Marine and Industrial Supply Ltd remain the property of CC Marine and Industrial Supply Ltd and are returnable on request. These must be treated as confidential and must in no circumstances be communicated to other persons or companies unless the written consent of CC Marine and Industrial Supply Ltd has first been obtained, nor must they be otherwise used in any way contrary to the interests of CC Marine and Industrial Supply Ltd .

7.8 CC Marine and Industrial Supply Ltd does not accept responsibility for any drawings, designs or specifications not prepared by it and submission of an Estimate does not constitute any warranty, guarantee, representation or opinion of the practicability of construction or the efficiency or safety or otherwise of materials to be supplied or work to be executed by CC Marine and Industrial Supply Ltd accordingly. Additional work caused by defects in any such drawings, designs or specifications shall be charged as an extra cost to the Customer pursuant to clause 2.2.

7.9 Unless otherwise agreed between the parties, the Customer will be charged for any tests required either in the presence of the Customer or the Customer's representative. In the event of delay on the Customer's part in attending such tests after receiving prior notification of seven days, the tests will proceed in the absence of the Customer and shall be deemed to have been made in the Customer's presence.

**8 DAMAGE/LOSS TO THE GOODS IN TRANSIT AND DISCREPANCIES**

8.1 Where the Goods are damaged or lost in transit CC Marine and Industrial Supply Ltd will at its sole discretion repair or replace these free of charge provided that:-

8.1.2 in the case of damage, loss or non-delivery of any separate part of a consignment, if the Customer does not examine the Goods on delivery, the Customer has 7 days from the date of delivery to report any damage/loss or non-delivery in the Goods to CC Marine and Industrial Supply Ltd and

8.1.3 in the case of non-delivery of the whole consignment the Customer must inform CC Marine and Industrial Supply Ltd of the non-delivery within 10 days of the date of despatch as shown on the relative advice note.

8.2 Errors and shortages must be notified immediately on receipt of the Goods quoting any reference and delivery note numbers. Any Goods supplied in accordance with an Order may not be returned without written consent of CC Marine and Industrial Supply Ltd. Requests to return Goods will only be considered within ten days of the date of invoice and must state the date and number of the invoice and reasons for requested return. Duly authorised returns must be sent paid carriage and the Customer must advise CC Marine and Industrial Supply Ltd by letter giving authorisation reference. Where CC Marine and Industrial Supply Ltd has agreed to supply goods not specified in its price lists or catalogues current at the date of the Order the return of such goods cannot be accepted.

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## 9 MAINTENANCE SERVICES

- 9.1 CC Marine and Industrial Supply Ltd may provide three different levels of maintenance service to the Customer as stipulated in the Order these may include:
- 9.1.2 Inspection Service ("IS")
- 9.1.2.1 under the IS CC Marine and Industrial Supply Ltd will perform preventative maintenance by the inspection of machinery at the Site;
- 9.1.2.2 CC Marine and Industrial Supply Ltd will provide the Customer with a report detailing the work and parts required to correct any fault to the machinery if a correction is possible. This report is to be signed by CC Marine and Industrial Supply Ltd and acknowledged by the Customer within seven (7) days of delivery; and
- 9.1.2.3 if the Customer wishes CC Marine and Industrial Supply Ltd to correct any fault of the machinery, any parts, materials, labour and expenses necessary to repair and/or replace the faulty machinery will be charged to the Customer on a time and materials basis in addition to the Service Fees.
- 9.1.3 Inspection Plus Services ("IPS")
- 9.1.4 Under the IPS, CC Marine and Industrial Supply Ltd will provide the IS set out at sub-clause 10.1.1.
- 9.1.4.1 For the avoidance of doubt, any labour and/or travelling costs to the Site which are necessary to correct any fault to the machinery are included in the Service Fees for the IPS.
- 9.1.5 Total Maintenance Service ("TMS")
- 9.1.5.1 Under the TMS, CC Marine and Industrial Supply Ltd will provide the Customer with full maintenance for the machinery as detailed below:
- pro-active maintenance by inspection of machinery at the Site; and
  - repair of defective machinery [subject to clause 11] excluding the replacement of coolers and condensers.
- 9.1.5.2 The Customer must inform CC Marine and Industrial Supply Ltd in writing or by e-mail as soon as reasonably practicable of any fault in the machinery and detail that fault.
- 9.1.5.3 CC Marine and Industrial Supply Ltd will provide the Customer with a report detailing the work required to correct any fault of the machinery if on Site correction is possible together with a reasonable time frame. This report is to be signed by CC Marine and Industrial Supply Ltd and the Customer.
- 9.2 The Customer will be responsible for providing any necessary access and facilities to enable CC Marine and Industrial Supply Ltd to perform the Services, including but not limited to those items listed in sub-clause 7.1 above, at Customer's expense.
- 9.3 If CC Marine and Industrial Supply Ltd replaces any part or materials of the machinery, the Customer agrees that CC Marine and Industrial Supply Ltd will obtain title to the defective parts or materials once removed from the machinery.

## 10 MAINTENANCE EXCEPTIONS

- 10.1 The maintenance services shall not include:
- 10.1.2 the provision of Services in respect of any equipment not listed in the Order;
- 10.1.3 the correction of any fault due to:
- 10.1.3.1 the Customer's failure to maintain a suitable environment for the machinery at the Site in accordance with the manufacturers' written specifications;
- 10.1.3.2 the Customer's neglect or misuse of the machinery or failure to operate the machinery in accordance with the manufacturers' instruction manuals or to use the machinery for purposes other than those for which it was designed;
- 10.1.3.3 the alteration or modification of the machinery other than by the manufacturer and/or maintenance of the machinery by any party other than CC Marine and Industrial Supply Ltd without CC Marine and Industrial Supply Ltd's prior written consent;
- 10.1.3.4 the transportation or relocation of the machinery both on Site or to another location save where the same has been performed with CC Marine and Industrial Supply Ltd's prior written consent;
- 10.1.3.5 the use of defective or inappropriate supplies including without limitation consumables with the machinery;
- 10.1.3.6 operator error or omission;

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- 10.1.3.7 failure or damage caused by the malicious or negligent activities of the Customer, its employees or any third parties and/or alternatively caused by an act of God, strikes, wars, revolutions, act of violence, fires, floods, explosions, earthquakes, adverse weather conditions, power surge, government regulations, or orders or other causes of a like nature beyond its control;
- 10.1.3.8 attendance to faults caused by operating the machinery outside design specifications or otherwise than in accordance with the published requirements supplied by the manufacturers' of the machinery; or
- 10.1.3.9 the Customer's failure, inability or refusal to afford CC Marine and Industrial Supply Ltd 's personnel proper access to the machinery;
- 10.1.4 the relocation or transportation of the machinery from the Site;
- 10.1.5 electrical or other environmental work external to the machinery; or
- 10.1.6 any modification or alteration of or attachment to the machinery or removal of the same without CC Marine and Industrial Supply Ltd 's written permission;
- 11.2 CC Marine and Industrial Supply Ltd shall upon written agreement with the Customer provide Excepted Services referred to in clause 11 but shall be entitled to charge for the same by levying additional fees.

## 11 CC MARINE AND INDUSTRIAL SUPPLY LTD 'S WARRANTIES

- 11.1 CC Marine and Industrial Supply Ltd warrants that:
  - 11.1.2 the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 3 months from the date of delivery; and
  - 11.1.3 that it will perform the Services in a professional manner using reasonable skill and care.
- 11.2 The above warranty is given by CC Marine and Industrial Supply Ltd subject to the following conditions:
  - 11.2.2 CC Marine and Industrial Supply Ltd shall be under no liability in respect of any defect in the Goods and/or Services arising from any drawing, design or specification supplied by the Customer;
  - 11.2.3 CC Marine and Industrial Supply Ltd shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, failure to follow CC Marine and Industrial Supply Ltd 's instructions (whether oral or in writing), misuse, alteration, or repair of the Goods without CC Marine and Industrial Supply Ltd 's approval;
  - 11.2.4 CC Marine and Industrial Supply Ltd shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods and/or Services has not been paid by the Due Date for payment; and
  - 11.2.5 The above warranty does not extend to parts, materials or equipment not manufactured by CC Marine and Industrial Supply Ltd, and the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to CC Marine and Industrial Supply Ltd.
- 11.3 Subject as expressly provided in these terms and conditions all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

## 12 THE CUSTOMER'S WARRANTIES AND OBLIGATIONS

- 12.1 The Customer warrants and undertakes to CC Marine and Industrial Supply Ltd that it is the owner of the machinery and that it has full power and authority to agree with CC Marine and Industrial Supply Ltd to permit CC Marine and Industrial Supply Ltd to perform the Services and any Excepted Services.
- 12.2 The Customer undertakes to indemnify and hold CC Marine and Industrial Supply Ltd harmless against any loss, costs or damage that CC Marine and Industrial Supply Ltd may suffer as a result of a breach by the Customer of clause 13.1 above.
- 12.3 The Customer undertakes to CC Marine and Industrial Supply Ltd throughout any term for the provision of the Contract:
  - 12.3.2 to grant CC Marine and Industrial Supply Ltd access to the Site as CC Marine and Industrial Supply Ltd shall from time to time reasonably require in order to discharge the Services and/or deliver the Goods;

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- 12.3.3 to make available at the Site such facilities as CC Marine and Industrial Supply Ltd shall reasonably require in order to discharge its obligations including without limitation adequate work space, storage, office furniture and equipment;
- 12.3.4 to take all reasonable precautions to protect the health and safety of CC Marine and Industrial Supply Ltd 's employees, agents and sub-contractors while on the Site;
- 12.3.5 to make and keep the machinery available to CC Marine and Industrial Supply Ltd and supply all assistance, documentation and other information necessary for CC Marine and Industrial Supply Ltd to diagnose and/or remedy any fault; to take all reasonable measures to minimise any faults in the machinery; and to ensure that a reasonable prior diagnosis of a reported fault has been undertaken by an authorised Customer representative trained in the use of the machinery in which the fault has arisen so that the Customer can report the fault to CC Marine and Industrial Supply Ltd.

### 13 LIABILITY

- 13.1 If CC Marine and Industrial Supply Ltd fails to deliver the Goods and/or Services within a reasonable period for any reason other than any cause beyond CC Marine and Industrial Supply Ltd's reasonable control or the Customer's fault, and if CC Marine and Industrial Supply Ltd is liable, its liability shall be limited to the Customer (in the cheapest available market) of similar goods and/or services to replace the Goods and/or Services not delivered and/or completed or 125% of the price of the Goods and/or Services in question.
- 13.2 Liability is expressly excluded in respect of:-
  - 13.2.2 any part not manufactured by CC Marine and Industrial Supply Ltd which is incorporated in the Goods and/or the machinery to be Serviced, except that any benefit obtainable or enforceable by CC Marine and Industrial Supply Ltd from or against the manufacturer or the said item without legal or other expenses whatsoever shall be passed to the Customer;
  - 13.2.3 any defect caused by accident, misuse, neglect, tampering with or unauthorised modification of the Goods and/or machinery to be Serviced or any attempt at internal adjustment or repair by any person not authorised by CC Marine and Industrial Supply Ltd ; any defect found after the expiry of the guarantee period;
  - 13.2.4 any defect which may occur in any prior installation to which CC Marine and Industrial Supply Ltd 's equipment may be connected; and
  - 14.2.5 any indirect or consequential loss, including but not limited to loss of income or profit, loss of contracts or anticipated savings and any indirect or consequential loss, damage, costs, or expenses or any other losses which are agreed by the parties to be forms of indirect loss or other claims of any kind howsoever arising (whether caused by the negligence of CC Marine and Industrial Supply Ltd , its servants or agents or otherwise) which arise out of or in connection with these terms and conditions.
- 14.2.6 The parties agree this is a reasonable and fair apportionment of risk bearing in mind the amount being charged by CC Marine and Industrial Supply Ltd.

### 14 GUARANTEE

- 14.1 Except as stated below, and always subject to the Customer's compliance with CC Marine and Industrial Supply Ltd 's terms of payment and CC Marine and Industrial Supply Ltd 's receipt of prompt notification by the Customer, CC Marine and Industrial Supply Ltd guarantees at its option to make good or replace free of charge any defects or defective parts in any Goods supplied by it which are shown in CC Marine and Industrial Supply Ltd 's reasonable satisfaction to have proved defective under proper use and maintenance within the guaranteed period.
- 14.2 The guarantee period shall be [18] months from the date of delivery to the Site or FOB or into storage or [12] months from commissioning whichever the sooner is.
- 14.3 The opinion of CC Marine and Industrial Supply Ltd as to whether such parts are defective in manufacture shall be final and CC Marine and Industrial Supply Ltd's liability in respect of or consequent upon any such defects whether in original or replacement goods shall be limited as provided above.

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## 15 THIRD PARTY LIABILITY

- 15.1 The Customer shall comply with all instructions of CC Marine and Industrial Supply Ltd and all legislation regarding the processing, storage, sale, installation, commissioning and use of the Goods and/or Services supplied by CC Marine and Industrial Supply Ltd and shall indemnify CC Marine and Industrial Supply Ltd against all and any claims, demands, liabilities and costs whatsoever, howsoever arising, other than those arising by the proven negligence of CC Marine and Industrial Supply Ltd or its employees and reasonably foreseeable at the time of making the contract and not too remote.
- 15.2 The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to any contract between CC Marine and Industrial Supply Ltd and the Customer.

## 16 INTELLECTUAL PROPERTY

- 16.1 The Customer acknowledges that any and all of the trade marks, copyright, patents and other intellectual property rights used or subsisting in or in connection with the Goods and/or Services in which CC Marine and Industrial Supply Ltd or the respective manufacturer, developer or third party has an interest, are and shall remain the sole property of CC Marine and Industrial Supply Ltd or such manufacturer, developer or third party. The Customer shall not during or at any time after the completion, expiry or termination of these terms and conditions in any way question or dispute the ownership of these rights.
- 16.2 In the event that new inventions, know-how, designs or processes ("the Designs") evolve in performance or as a result of the Contract, the Customer acknowledges that the same shall belong to CC Marine and Industrial Supply Ltd unless otherwise agreed in writing by CC Marine and Industrial Supply Ltd.
- 16.3 The Customer agrees that the Designs may not be reproduced or used in any way except with the prior written consent of CC Marine and Industrial Supply Ltd.
- 16.4 CC Marine and Industrial Supply Ltd has not knowingly infringed any intellectual property rights of any third party but does not warrant or give any assurance to the Customer that any Design does not infringe the intellectual property rights of any third party.

## 17 INDEMNITY

The Customer shall indemnify and keep CC Marine and Industrial Supply Ltd indemnified against all costs, expenses, damages, claims and demands incurred by CC Marine and Industrial Supply Ltd in respect of:

- 17.1 any alleged infringement of the patents, trade marks, copyright design or other industrial property rights used by CC Marine and Industrial Supply Ltd at the request of the Customer;
- 17.2 any alleged breach or infringement of any statute or regulation concerning the preparation, marketing and distribution of the Goods and/or the Services; and
- 17.3 any alleged breach of any statute relating to trade descriptions or weights and measures where CC Marine and Industrial Supply Ltd relies or has relied upon such information or labels provided by the Customer, and the breach does not arise from the negligence or default of CC Marine and Industrial Supply Ltd .

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## 18 TERMINATION

- 18.1 Either party may terminate this Agreement immediately upon written notice to the other party in the event of:
- 18.1.2 any material breach of these terms and conditions or the Contract by the other party provided any such breach is not remedied (if remediable) within 30 days after the service of written notice requiring the same; or
- 18.1.3 the other party becoming bankrupt or entering into liquidation whether voluntary or compulsory (other than for the purpose of solvent amalgamation or reconstruction) passing a resolution for its winding up, having a receiver, manager, administrative receiver, administrator, trustee or similar officer appointed over the whole or any part of its business or assets, or making any composition or arrangement with its creditors or taking or suffering any similar action in consequence of its debt, or ceasing or threatening to cease to trade whether in the United Kingdom or equivalent or substantially similar provisions outside the United Kingdom if CC Marine and Industrial Supply Ltd is not based in the United Kingdom.
- 18.2 On the termination of this Agreement all rights and obligations of the parties under these terms and conditions shall automatically terminate except for such rights of action as shall have accrued prior to such termination and any obligations which expressly or by implication are intended to come into or continue in force on or after such termination.
- 18.3 On termination of this Agreement the Customer will pay CC Marine and Industrial Supply Ltd all money due.

## 19 PERFORMANCE

- 19.1 Whilst CC Marine and Industrial Supply Ltd will use its commercial endeavours to fulfil its contractual obligations, it shall not be liable for delay in performance or for non-performance, in whole or in part, of its obligations under the Contract directly or indirectly resulting from causes beyond the control of either CC Marine and Industrial Supply Ltd or its suppliers including, but not limited to acts of God, acts of the Customer or third party, adverse weather, breakdown or failure of plant or machinery, civil disturbance, delay in delivery to CC Marine and Industrial Supply Ltd or CC Marine and Industrial Supply Ltd's suppliers, delay on the part of the sub-contractor, embargoes, explosions, fire, flood, government regulations, hostilities, impact, industrial action, late receipt of the Customer's specification or other necessary information, sabotage, shortage of labour, shortage of any services, products and/or materials or strikes.
- 19.2 If the Contract becomes impossible of performance or is otherwise frustrated, the Customer shall be liable to pay to CC Marine and Industrial Supply Ltd all costs which CC Marine and Industrial Supply Ltd shall have incurred directly or indirectly and any pre-payments which may have been made to CC Marine and Industrial Supply Ltd under the Contract shall be applied towards satisfaction of such sum.

## 20 NOTICES

- 20.1 Any notice to a party under these terms and conditions shall be in writing, and shall, unless delivered to a party personally, be left at, or sent by prepaid first class post, prepaid recorded delivery, facsimile or email to the address of the party as set out on page 1 of these terms and conditions or as otherwise notified in writing from time to time and shall have effect two (2) days after posting or upon confirmation of transmission if sent by facsimile or after one (1) day if sent by email.

## 21 VARIATION

- 21.1 No variation of these terms and conditions shall be binding unless agreed in writing between the authorised representatives of CC Marine and Industrial Supply Ltd and the Customer.

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## 22 PRECEDENCE

- 22.1 In the case of conflict or ambiguity, the order of precedence for the Contract shall be, in descending priority:
- 22.1.1 these terms and conditions; then
  - 22.1.2 the Customer Order once accepted by CC Marine and Industrial Supply Ltd.
  - 22.1.3 For the avoidance of doubt, CC Marine and Industrial Supply Ltd shall only contract with the Customer pursuant to these terms and conditions regardless of any terms and conditions provided by the Customer at any time, unless a variation to these terms and conditions is specifically agreed in writing by CC Marine and Industrial Supply Ltd.

## 23 WAIVER OF REMEDIES

- 23.1 No failure or delay by either party in exercising any of its rights under these terms and conditions shall be deemed to be a waiver of that right, and no waiver by either party of any breach of these terms and conditions by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.

## 24 SEVERABILITY

- 24.1 In the event that all or any part of these terms and conditions shall be determined by any competent authority shall be invalid, unlawful or unenforceable to any extent such term, condition or provision shall to that extent be severed from the remaining terms and conditions which shall continue to be valid and enforceable to the fullest extent permitted by law.

## 25 HEADINGS

- 25.1 The headings in these terms and conditions are for convenience only and shall not affect their interpretation.

## 26 GOVERNING LAW AND JURISDICTION

- 26.1 English law shall be the applicable law of these terms and conditions and the parties agree to submit to the exclusive jurisdiction of the English courts.

## 27 FORCE MAJEURE

- 27.1 Definition of Force Majeure
- 27.2 Either party may seek relief of his duty to perform any obligation under the Contract in so far as:
- a) the failure was due to an event beyond his control; and
  - b) he could not reasonably be expected to have taken the event and its effects upon his ability to perform into account at the time of the conclusion of the contract; and
  - c) he could not reasonably have avoided the event or overcome it or at least its effects.
- 27.3 Any such event shall be deemed Force Majeure. Force Majeure events include but are not limited to:
- a) war, hostilities or warlike operations (whether war is declared or not), invasion, act of foreign enemy;
  - b) rebellion, revolution, insurrection, conspiracy, terrorist acts, military or usurped power or civil war;
  - c) riot, civil commotion or disorder, strike lock-out, industrial dispute;
  - d) confiscation, nationalization, mobilization, commandeering or requisition by or under the order of any government or de jure or de facto authority or ruler or any other act or failure to act of any local, state or national government authority;
  - e) sabotage, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, shipwreck, shortage or restriction of power supply, epidemics, quarantine, plague;

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- f) earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other unusually inclement weather condition, nuclear and pressure waves, or other natural or physical disaster;
- g) shortage or late supply of Plant, labour, materials or utilities where caused by circumstances that are themselves Force Majeure;
- h) Any order by any export credit agency to discontinue performance of the Contract.
- 27.3.2 No event that prevents the customer from making any payment due to CC Marine and Industrial Supply Ltd shall be considered Force Majeure.
- 27.4 Notice of Force Majeure
- 27.4.2 A party seeking relief shall promptly, but at the latest 14 Days from the occurrence of the event, give notice to the other party of such event and its effects on his ability to perform. Notice shall also be given when the ground of relief ceases. The ground of relief takes effect from the time of the event or, if timely notice is not given, from the time of notice. Failure to give timely notice makes the failing party liable to pay damages for any losses which could otherwise have been avoided.
- 27.5 Effect of Force Majeure
- 27.5.2 Neither party shall be considered to be in default or in breach of its duties under the Contract for such period of time and to the extent that performance of such duties is prevented by any Force Majeure event occurring after the Date of Signature of the Contract. If a Force Majeure event delays completion, then the Time for Completion shall be extended in accordance with Articles 6.1.2 (Extension of Time for Completion) and 9.2.1 (Claim for Extension of Time for Completion).
- 27.6 Damage Caused by Force Majeure
- 27.6.2 If in consequence of a Force Majeure event the Works shall suffer loss or damage, CC Marine and Industrial Supply Ltd shall be entitled to be paid the value of the Work performed, without regard to the loss or damage that has occurred, and such value shall be certified by the customer's Representative and paid by the customer to CC Marine and Industrial Supply Ltd.
- 27.7 Termination for Force Majeure
- 27.7.2 If Force Majeure prevents performance of duties under the Contract for a period of 182 Days then either party may serve on the other 28 Days' notice to terminate the Contract. If at the expiry of the period of 28 Days, the effects of the Force Majeure event shall still continue, the Contract shall terminate.
- 27.8 Procedure and Payment in the Event of Termination for Force Majeure
- 27.8.2 If the Contract is terminated under this Article (Force Majeure), CC Marine and Industrial Supply Ltd shall on the date specified in the notice of termination and subject to the payment stipulated below:
- 27.8.3 In the event of such termination, the customer's Representative shall certify, and the customer shall pay to CC Marine and Industrial Supply Ltd, insofar as the amount has not already been included in any Certificate of Payment paid by the customer or been subject to an advance payment, the Contract Value of the Works executed prior to the date of termination.
- a) cease all further work, except for such work as The customer may specify in the notice of termination for the sole purpose of protecting that part of the Works already executed; and
  - b) remove all Contractor's Equipment from the Site, repatriate all personnel for whom CC Marine and Industrial Supply Ltd is responsible, remove from the Site any wreckage, rubbish and debris of any kind, and leave the whole of the Site in a clean and safe condition; and
  - c) deliver to The customer the parts of the Works executed by CC Marine and Industrial Supply Ltd up to the date of termination; and
  - d) terminate all subcontracts, except those to be assigned to The customer; and
  - e) to the extent legally possible, assign to The customer all right, title and benefit of CC Marine and Industrial Supply Ltd to the Works, Plant as at the date of termination and, as may be required by The customer, in any subcontracts concluded between CC Marine and Industrial Supply Ltd and his Subcontractors; and
  - f) Deliver to The customer all non-proprietary drawings, specifications and other documents prepared by CC Marine and Industrial Supply Ltd or his Subcontractors as at the date of termination in connection with the Works.

- 27.8.4 CC Marine and Industrial Supply Ltd shall also be entitled to receive payment for:
- a) The Cost of Plant reasonably ordered for the Works or for use in connection with the Works which have been delivered to CC Marine and Industrial Supply Ltd or of which CC Marine and Industrial Supply Ltd is legally liable to accept delivery. Such Plant shall become the property of The customer when paid for by The customer, and the Purchaser shall be entitled to withhold payment in respect of such Plant until it has been delivered to him; and
  - b) The amount of any other expenditure which in the circumstances was reasonably incurred by CC Marine and Industrial Supply Ltd in the expectation of completing the whole of the Works; and
  - c) The reasonable Cost of removal of Contractor's Equipment and the return thereof to CC Marine and Industrial Supply Ltd 's country; and:
  - d) The reasonable Cost of repatriation of all CC Marine and Industrial Supply Ltd's staff and workmen employed at the Site on or in connection with the Works at the date of such termination.
- 27.8.5 CC Marine and Industrial Supply Ltd shall not be entitled to claim compensation for loss of profit in respect of any Works unexecuted at the date of termination.

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