

## **CONDITIONS OF SALE**

- 1a. "Vendor" shall mean the Bogerd Martin Company contracting to supply Goods or Services;
- 1b. "Purchaser" shall mean the person placing an order in respect of Goods or Services and where such person acts as agent of or otherwise for a third party ("the Principal"), such person and the Principal and the Vessel to which Goods or Services are provided shall jointly and severally be the Purchaser;
- 1c. "Goods" shall mean any and all items ordered by the Purchaser and/or supplied by the Vendor for use on board a Vessel or an offshore oil rig or similar, or incidental to the operation of the aforesaid;
- 1d. "Services" shall mean any and all services ordered by the Purchaser and/or supplied by the Vendor to a Vessel or an offshore oil rig or similar, or incidental to the operation of the aforesaid;
- 1e. "Vessel" shall mean the vessel or vessels to which Goods or Services are supplied or intended to be supplied by the Vendor. The Purchaser will declare the name of the Vessel to the Vendor.
- 1f. "Contract" shall mean any agreement between the Vendor and a Purchaser pursuant to which Goods or Services are supplied or are intended to be supplied;

## **GENERAL**

2. Unless otherwise expressly agreed in writing the following conditions shall apply to all contracts, orders and deliveries. Any conflicting purchasing conditions (or similar) of the Purchaser shall be deemed to have been rejected by the Vendor unless expressly accepted in writing.

## **ORDERS AND DELIVERIES**

- 3a. The Purchaser shall communicate as soon as reasonably practicable to the Vendor his order or orders.
- 3b. Provided the prevailing circumstances reasonably permit, the Vendor shall supply and deliver to the Purchaser the Goods or Services as ordered at the time and place stipulated by the Purchaser insofar as the Vendor has agreed to do so and such Goods or Services are available at the agreed port or port-area.
- 4a. The Vendor's responsibility for transport of the Goods shall end at the nearest point to the Vessel that the delivery vehicle(s) may, with the necessary authority, reach ("the Point of Delivery"). The cost of transportation of Goods to the Point of Delivery shall be agreed in advance or otherwise charged at cost to the Vendor.
- 4b. Should the Vendor expressly agree to transport/handle the Goods beyond the Point of Delivery as defined in Condition 4a the costs of such additional delivery/handling shall be agreed in advance.
- 4c. If delivery is requested outside the normal hours of the agreed port or port-area or on Saturdays, Sundays or religious or national or legal holidays, expenses incidental to such delivery shall be payable by the Purchaser as additional costs. Transport Costs shall be invoiced and payable by the Purchaser.
- 4d. The Goods shall be deemed delivered on the arrival of the Goods at the stipulated time at the Point of Delivery. The responsibility, cost and risk of unloading the delivery vehicle(s) and delivering on board are for account of the Purchaser. Risk in the Goods (but not property therein) shall, in all respects, pass to the Purchaser upon delivery.
- 4e. The Purchaser shall pay to the Vendor any costs or expenses incidental to any waiting period beyond a reasonable time.
- 4f. All orders and receipt notes will be signed by the master or his authorised representative.
- 4g. Where the Vendor is requested to deliver Goods other than to the Vessel responsibility rests with the Purchaser to ensure that the person responsible for accepting delivery gives a full and proper receipt for the Goods delivered. Signed receipt by that party shall constitute acceptance of delivery by and to the Purchaser.

## **PRICES**

5a. Subject to the following provisions of this Condition 5, in respect of the Goods or Services supplied by the Vendor, the Vendor shall charge to the Purchaser the prices current at the relative port or port-area at the time of delivery.

5b. Where requested to do so the Vendor shall submit a quotation to the Purchaser. Where the Purchaser accepts that quotation, the Vendor shall charge the Purchaser the sum quoted, subject to any necessary adjustment for reasonable variations in the quantities actually delivered.

5c. Where the Purchaser seeks to place an order for only some of the items for which Vendor has quoted, the Vendor shall be at liberty to decline the request to supply or amend the quoted prices.

5d. The Vendor may, if requested by the Purchaser, send to the Purchaser a list stating the prices of Goods and the period for which such prices are to apply. If such a list has expired and not been renewed, Condition 5a shall apply. Goods which cannot be offered at a price fixed in advance shall be clearly so marked on any such list and in this case Condition 5a shall apply.

5e. Where the Vendor gives the benefit of a quantified discount (whether in percentage terms, in a stated sum or otherwise) then the Purchaser's entitlement to such discount is strictly conditional upon payment of the Vendor's invoice within the agreed payment period. Where payment is not made within the agreed period the Vendors invoices shall be deemed to be adjusted to exclude any such discount.

## **QUALITY AND PACKING**

6. The Goods shall be of standard or prime quality as rated at the time and place of delivery. The Goods shall be supplied in the packing customary at the time and place of delivery. At the time of placing his order, the Purchaser shall inform the Vendor of any special packing requirements in view of the destination of the ship and/or Goods. Any additional expenditure incurred in complying with such requirements shall be chargeable to and payable by the Purchaser.

7a. Returnable packing material and containers supplied by the Vendor shall be clearly marked as such on the receipt-note and shall be returned by the Purchaser to the Vendor as soon as reasonably practicable.

7b. Returnable packing material and containers shall be charged separately at the prices current at the time and place of delivery. The amounts so charged shall be refunded by the Vendor to the Purchaser, provided such packing material and containers are returned undamaged within a reasonable period.

## **CLAIMS AND LIABILITY**

8. Subject only to Condition 9 below, by taking delivery of the Goods and, where applicable, signing the accompanying receipt-note, the Purchaser shall be deemed to have approved and accepted the Goods in every respect.

In cases where a delivery has been made to a third party designated by the Purchaser, a signed courier receipt may be provided as proof of acceptance on behalf of the Purchaser.

9. Any claims with regard to the conformity or quality of the delivered Goods must be notified in writing to the Vendor within 8 days from delivery and in the absence of such notification the Purchaser shall be deemed to have approved and accepted the Goods in every respect. In any way, all claims against the Vendor will become time-barred after 6 months as from the (physical) delivery of the goods or services.

10. In the event of a claim pursuant to Condition 9 the Purchaser shall be required to prove that, since delivery, the Goods were continuously handled, treated and stored by the Purchaser as a prudent administrator in keeping with the nature of the Goods and their propensity to deteriorate and that any alleged deficiency is not attributable to the Purchaser's fault or negligence. The Purchaser shall be required to make the Goods under claim available for inspection.

11. Save for claims for death or personal injury any damages/compensation shall be strictly limited to a refund of the price paid to or charged by the Vendor for the affected Goods or Services. The Vendor shall not under any circumstances whatsoever including the Vendor's gross negligence be liable for any claim for consequential loss, damage or injury arising out of the supply, or late supply or failure to supply, of any Goods or Services. The Vendor shall not be liable for the financial consequences arising from any delay to the Vessel or any period that the Vessel may be off-hire or otherwise unable to earn.

12. Any complaint by the Purchaser with regard to the Vendor's invoice will be absolutely barred unless lodged in writing by the Purchaser with the Vendor at the Vendor's usual business address within 8 days of delivery of the invoice.

## **PAYMENT**

13a. The Purchaser shall pay, prior to the Vessel's departure the invoiced amount or amounts in the currency stipulated, or by the express agreement of the Vendor at a later stipulated date.

13b. Notwithstanding Conditions 8 to 12 herein the Purchaser shall not be entitled to withhold payment of any sums after they have become due in the ordinary course for payment by reason of any claim, right of set-off or counterclaim which the Purchaser may allege or for any reason whatsoever.

13c. If payment is not made within the stipulated period the Purchaser shall pay the Vendor a compensation for late payment of 10% of the amounts due, as well as interests on all overdue or unpaid sums at a rate of 1.5% per month, or the equivalent to the commercial prime lending rate customarily charged at the time by the Vendor's bank in the Vendor's country, whichever may be the higher. Interests shall be calculated from the due date until actual date of payment.

13d. Regardless of any allocation stipulated by the Purchaser upon making any payment, the Vendor shall be entitled to apply payments received from the Purchaser in any way that it considers appropriate, including allocation firstly to interests that have accrued in accordance with 13c or costs incurred in accordance with 13e.

13e. The Vendor shall also be entitled to recover from the Purchaser any and all costs and/or expenses which may be incurred by the Vendor in recovering or seeking to recover from the Purchaser any overdue or unpaid sums whether or not formal legal steps (including but not limited to the arrest of a Vessel) have been undertaken. Such costs include both internal costs and costs and expenses incurred to external advisers, lawyers or debt collectors instructed for such purpose. Such costs shall be payable by the Purchaser to the Vendor upon demand on a full indemnity basis and may be included in the claim for which a Vessel is arrested.

13f. Where the Vendor has granted credit to the Purchaser and the Purchaser is in default in payment of any sums due by the Purchaser the Vendor shall be entitled to give immediate notice of the withdrawal of credit, entitling the Vendor to treat all unpaid charges for Goods and Services provided to the Purchaser as due for immediate payment. Interests shall accrue on such sums from the date of the notice, and the Vendor shall be entitled to take immediate legal action to recover the sums due.

13g. Notwithstanding delivery and the passing of risk, property in and title to the goods shall remain with the Vendor until the Vendor has received payment of the full price of (a) all Goods and/or Services the subject of the Contract and (b) all other Goods and/or Services supplied by the Vendor to the Purchaser under any contract whatsoever. Payment of the full price shall include, without limitation, the amount of any interests or other sum payable under the terms of this and all other contracts between the Vendor and the Purchaser.

## **FORCE MAJEURE**

14. If the Vendor is unable to make delivery, or to make delivery in good time, owing to force majeure (which shall include but is not limited to all or any circumstances or conditions for which the Vendor cannot be held responsible and as a consequence whereof it is not reasonably possible

to make delivery in good time or at all) then the Vendor's obligation to deliver shall cease or if appropriate be suspended for the duration of such force majeure without the Purchaser being entitled to any form of compensation.

### **LAW AND JURISDICTION**

15a. All contracts between the Vendor and the Purchaser shall be subject to Belgian law. In case of dispute, Belgian law shall also be applied in interpreting these terms and conditions.

15b. All disputes, claims and actions arising between the Vendor and the Purchaser or arising from the contracts entered pursuant to these terms and conditions shall exclusively be brought before the Antwerp Commercial Court (Rechtbank van Koophandel te Antwerpen, afdeling Antwerpen) and no other courts shall have jurisdiction with regard to any such dispute, claim or action. Notwithstanding the above, the Vendor is also entitled to bring the claim or action before any other competent court, amongst which but not limited to the court of the place where the defendant has its domicile or registered office.