

# BURGESS MARINE LTD STANDARD TERMS AND CONDITIONS OF CONTRACT

## 1. DEFINITIONS AND INTERPRETATION

1.1 In the Contract, the following definitions apply:

**Commencement Date:** has the meaning set out in clause 2.2.

**Contract:** the contract between the Contractor and the Customer for the supply of Services in accordance with these Conditions together with the Quotation (if applicable), the Contractor's charge out rates, payment schedule, specifications, plans, drawings and other documents as agreed between the Contractor and the Customer.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 9.

**Contractor:** Burgess Marine Ltd, of Channel View Road, Dover Kent, CT17 9TP, United Kingdom, registered in England and Wales with company number 05675410.

**Customer:** the person or firm who purchases or agrees to purchase the Services from the Contractor.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Order:** the Customer's written acceptance of the Quotation.

**Quotation:** the written quotation for the provision of Services to be supplied by the Contractor to the Customer.

**Price:** the charges payable by the Customer for the supply of the Services in accordance with clause 7.

**Services:** the services, including all materials, articles, goods or work to be supplied or rendered by the Contractor to the Customer as detailed in the Contract.

1.2 In these Conditions, the following rules apply:

1.2.1 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.2.2 a reference to a party includes its personal representatives, successors or permitted assigns;

1.2.3 a reference to a statute or statutory provision is a reference to such 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; and

1.2.4 a reference to "writing" means any communication consisting of words in any legible or visible form, including words produced by any form of electrical or mechanical means and in typed or printed format as well as in manuscript.

## 2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase the Services in accordance with these Conditions and where applicable, the Quotation.

2.2 The Order shall only be deemed to be accepted when the Contractor issues written acceptance of the Order or the Contractor commences the supply of Services at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Contractor which is not set out in the Contract.

- 2.4 These Conditions apply to the Contract 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.
- 2.5 A Quotation shall not constitute an offer, and is only valid for a period of 60 business days from the date of issue.

### 3. SUPPLY OF SERVICES

- 3.1 The Contractor shall supply the Services to the Customer in accordance with the specification as agreed between the Contractor and Customer in all material respects.
- 3.2 The Contractor shall use all reasonable endeavours to meet any performance dates specified, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 The Contractor 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.
- 3.4 If the Contractor is unable to perform the Services as a result of the Customer's failure to comply with its obligations under the Contract, then except where such failure or delay is caused by a force majeure event or by the Contractor's failure to comply with its obligations under the Contract, the Contractor reserves the right to charge the Customer for all related costs and expenses.
- 3.5 The Contractor warrants to the Customer that the Services will be provided using reasonable care and skill.

### 4. SUPPLY OF SURVEYS

- 4.1 In relation to the provision of surveys as part of the Services the Contractor shall:
- 4.1.1 act with reasonable care, skill and diligence in undertaking the Services to which these Conditions relate;
  - 4.1.2 make all reasonable endeavours to gain access to the commonly accessible areas of the site; and
  - 4.1.3 inspect the site and report on the condition of the site so far as can reasonably be established from a visual inspection of the accessible areas of the site at its location at the time of the survey.
- 4.2 The Contractor does not undertake to investigate and report upon the areas of the site that the Contractor believes to be inaccessible at the time of the inspection, which can include but is not limited to, interior linings, machinery or other internal systems of the site.
- 4.3 The Contractor shall not be liable under the Contract for any loss or damage caused by or to any hidden, unexposed or inaccessible areas of the site at the time of inspection by the Contractor.
- 4.4 The Contractor does not, whether in their report or any other communication arising between the Contractor and the Customer, make any guarantee against:
- 4.4.1 faulty design;
  - 4.4.2 latent defects;
  - 4.4.3 suitability of any site or other item for any particular purpose; or
  - 4.4.4 the compliance of any site or other item with any particular local, national or international rule, requirement, regulation, law, standard or code, unless agreed in advance between the Contractor and the Customer in writing.

### 5. CUSTOMER'S OBLIGATIONS

- 5.1 The Customer shall:

5.1.1 pay to the Contractor the price which is chargeable and/or detailed in the Quotation (if applicable) and/or as otherwise agreed, for all work executed by the Contractor immediately or in accordance with the agreed payment schedule or in the event that a credit account has been opened and sufficient credit is available, within 30 days of the date of the invoice sent to the Customer by the Contractor;

5.1.2 ensure that the terms of the Quotation (if applicable), scope of work and/or any information in the specification are complete and accurate;

5.1.3 co-operate with the Contractor in all matters relating to the Services or as otherwise agreed;

5.1.4 provide the Contractor, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation, vessel and other facilities as reasonably required by the Contractor;

5.1.5 provide the Contractor with such information and materials as the Contractor may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;

5.1.6 ensure that any equipment or materials required by the Contractor are delivered in a condition fit for the purpose of the Contract;

5.1.7 prepare the Customer's premises or vessel (as applicable) for the supply of the Services;

5.1.8 assist with the security of the Contractor's personnel and equipment whilst involved with this Contract;

5.1.9 obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start; and

5.1.10 keep and maintain all materials, equipment, documents and other property of the Contractor (**Contractor Materials**) at the Customer's premises in safe custody at its own risk, maintain the Contractor Materials in good condition until returned to the Contractor, and not dispose of or use the Contractor Materials other than in accordance with the Contractor's written instructions or authorisation.

5.2 Where the Contract involves work on Customer owned equipment or material, the Customer shall unless specified otherwise in writing by the Contractor, deliver such equipment or material at the time and to the places agreed by the Contractor as specified in the Contract and shall remove such equipment and material together with any waste products resulting from the work as requested by the Contractor.

5.3 Where any changes to the Services or programme of work specified in the Contract result in any additional requirement for any items to be stored in the Contractor's premises, the Customer shall, unless specified otherwise in writing in the Contractor's offer letter, meet all reasonable costs associated with such storage.

5.4 If the Contractor's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

5.4.1 the Contractor shall without limiting its other rights or remedies have the right to suspend performance of the 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 Contractor's performance of any of its obligations;

5.4.2 the Contractor shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Customer's failure or delay to perform any of its obligations as set out in this clause 5.4; and

5.4.3 the Customer shall reimburse the Contractor on written demand for any costs or losses sustained or incurred by the Contractor arising directly or indirectly from the Customer Default.

## 6. SAFETY

- 6.1 Nothing in the Contract shall release the Customer from its obligations under statutory requirements for health and safety and to provide prior written notice to the Contractor of any health or safety hazards associated with any equipment, materials or other substances supplied to the Contractor by the Customer or Customer facilities used by the Contractor in the performance of work under the Contract.
- 6.2 The Contractor reserves the right to inspect such equipment, materials or other substances and to remove them from use if it considers them to be unsafe or pose unacceptable risks of injury or damage to persons or property. The Contractor shall not be liable for any additional costs or delays to the Contract resulting from any decision under this clause 6.2. This right shall not be unreasonably invoked by the Contractor. The Customer shall meet any reasonable costs incurred by the Contractor resulting from the rejection of such items by the Contractor.
- 6.3 All Services shall be carried out in accordance with the Control of Asbestos at Work Regulations 2012 (**Regulations**) as amended from time to time and any applicable codes of practice. The Customer acknowledges that it is the “dutyholder” for the purposes of the Regulations and as such, remains solely responsible for determining whether asbestos is present or is likely to be present at its premises or vessels at which the Contractor is working, assessing the risk of the presence of asbestos or likelihood of it being present and managing any such asbestos. The Customer warrants that it will notify the Contractor of the existence of any asbestos prior to the commencement of the Services or immediately on becoming aware of the same and shall make a full declaration of the type and location of such material and present the Contractor with a copy of the asbestos register. Any liability under the Regulations arising in respect of asbestos or other hazardous substances in, on, under or emanating from the Customer’s premises or vessels shall be the sole responsibility of the Customer. The Contractor reserves the right to revise the prices quoted to reflect the discovery of asbestos or asbestos containing materials that had not been notified to the Contractor prior to the commencement of the Services and delays to the Contract completion date for which the Contractor accepts no liability.

## 7. CHARGES AND PAYMENT

- 7.1 Time for payment by the Customer in accordance with clause 5.1.1 shall be of the essence of the Contract.
- 7.2 The price for the Services shall be in accordance with the Quotation (if applicable), the Contractor’s charge out rates and/or the payment schedule.
- 7.3 Where a price has been quoted, this is based on the information given to the Contractor by the Customer. If it materialises that in the Contractor’s reasonable opinion, the information provided is incorrect or inaccurate, the Contractor shall be entitled to charge the Customer for any additional Services provided to those detailed in the Quotation together with all related costs and expenses incurred by the Contractor.
- 7.4 Where no Quotation has been provided, the price for the Services shall be on a time and material basis and shall be calculated in accordance with the Contractor’s charge out rates and/or payment schedule as notified to the Customer.
- 7.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Contractor to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Contractor, pay to the Contractor such additional amounts in respect of VAT as are chargeable on the supply of Services at the same time as payment is due for the supply of the Services.
- 7.6 The Contractor shall have a lien against the Customer for any unpaid sums, without prejudice to any right of the Customer and shall be deemed to have the authority of the Customer to retain possession of the goods and/or vessel in the Contractor’s custody at its premises or at any other place it is providing the Services, until the Customer has paid in full the price and any other sums due. If such unpaid sums are not satisfied within a reasonable time, the Contractor may sell the goods and/or vessel, or part thereof, as agent for the Customer and apply the proceeds towards any sums unpaid and the expenses of the retention, insurance and sale of the goods and/or vessel and shall, upon accounting to the Customer for any balance remaining, be discharged from all liability whatsoever in respect of the Services. The Contractor may exercise its lien on its own behalf or as agent for any assignee of its invoices at any time and at any place at its sole discretion whether or not sums have become payable in accordance with clause 5.1.1.

- 7.7 If the Customer fails to make any payment due to the Contractor under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per cent per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 7.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Contractor may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Contractor to the Customer.

## **8. CONTRACTOR'S OBLIGATIONS**

- 8.1 Where under the Contract, the Contractor is required to provide personnel as part of the Services this shall be on the understanding that the personnel are not:
- 8.1.1 used for publicity other than by prior written consent of the Contractor;
  - 8.1.2 publicly named or otherwise identified by name or by position;
  - 8.1.3 asked to endorse, or comment on, any product; and/or
  - 8.1.4 asked to comment on any matter appertaining to the Contractor otherwise than for the purposes of the Contract.
- 8.2 The Contractor's employees, agents and representatives shall abide by such regulations detailed in the Contract, including security and safety regulations, as are applicable to their presence on the Customer's premises and/or site.

## **9. CHANGES TO THE CONTRACT**

- 9.1 In the event that the Customer requires a change to the Services specification it shall immediately inform the Contractor in writing. Such changes shall not come into effect until a written acceptance of the proposed change detailing any consequential arrangements is issued by the Contractor.
- 9.2 It is not always possible to quantify specific and/or certain elements of the scope of work of a Contract from the outset. As a result, all Contracts may be subject to variation orders. Variation orders will be raised and agreed with the Customer if and when they arise. The Contractor shall endeavour to:
- 9.2.1 minimise variation orders; and
  - 9.2.2 ensure prompt communication of any such order to the Customer.

## **10. INTELLECTUAL PROPERTY RIGHTS AND PROPERTY RIGHTS**

- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Contractor, except where design work is involved when the following provisions shall apply:
- 10.1.1 The Customer shall, upon Contract for Goods incorporating design elements by the Contractor, be granted full Intellectual Property Rights of foreground printed Goods and the content thereof inclusive of printed reports and printed drawings.
  - 10.1.2 The Contractor retains exclusive Intellectual Property Rights over the foreground and background calculations and processes by which the Contractor produces Goods for the Customer.
- 10.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on the Contractor obtaining a written licence from the relevant licensor on such terms as will entitle the Contractor to licence such rights to the Customer.
- 10.3 The Contractor retains exclusive Intellectual Property Rights over all Goods derived from engagement of services by the Contractor from any Sub-Contracted source.

10.4 All Contractor materials are the exclusive property of the Contractor.

## 11. CONFIDENTIALITY

11.1 Without prejudice to the rights of either party arising elsewhere in the Contract all information exchanged, whether orally or in writing, which is of a confidential nature and has 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, its products and services which the receiving party may obtain shall be kept in strict confidence. The receiving party shall not use, disclose or knowingly permit to be disclosed to any person whomsoever (except to its employees, agents and subcontractors, whereby the receiving party shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause 11.1 as though they were a party to the Contract) any of such information without the prior written consent of the other party.

11.2 The obligations set out in Condition 11.1 shall survive termination of the Contract and remain in force for a period of one year from the completion (or earlier determination) of the Contract and shall not apply to information which:

11.2.1 is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction;

11.2.2 is in or enters the public domain otherwise than by any acts of the receiving party in breach of his obligations as to confidentiality;

11.2.2 is known to the receiving party without restriction at the time of disclosure;

11.2.3 becomes known to the receiving party without restriction from an independent source having the right to convey it; or

11.2.4 is shown to the reasonable satisfaction of the originating party to have been generated independently by the receiving party.

## 12. LIMITATION OF LIABILITY

12.1 The Contractor shall accept no liability for any loss, physical loss or damage, including consequential loss, whatsoever, in respect of the Customer's premises, vessel or property during the duration of this Contract unless such is a direct result of proven negligence of the Contractor.

12.2 Subject to clause 12.3, the Contractor shall accept no liability whatsoever in respect to injury or illness or death to the Customer's employees, agents or representatives arising from or in connection with the Contract.

12.3 Nothing in these Conditions shall limit or exclude the Contractor's liability for:

12.3.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

12.3.2 fraud or fraudulent misrepresentation;

12.3.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);

12.3.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or

12.3.5 defective products under the Consumer Protection Act 1987.

12.4 Subject to clause 12.3:

12.4.1 the Contractor shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

12.4.2 the Contractor's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited absolutely to reworking the defective part of the Services to a value not greater than the original price paid by the Customer.

- 12.5 The Customer shall indemnify the Contractor against loss of or damage to the Contractor's property and any claims for injury or death to the Contractor's personnel arising from or in connection with the Contract where such loss, damage, injury or death is caused by the Customer or the Customer's premises or vessels.
- 12.6 The Customer shall indemnify the Contractor against any and all loss, damage, liability, cost and expenses arising out of any claims which may be made by a third party as the result of any infringement of a third party's Intellectual Property Rights incurred as a result of the use of materials, equipment, documentation or software supplied by the Customer or directed by the Customer to be used in the course of work to be performed under the Contract.
- 12.7 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 12.8 The Contractor reserves the right to require the Customer to effect and maintain a policy or policies of insurance covering all matters which are the subject of the indemnities set out in this clause 12.
- 12.9 This clause 12 shall survive termination of the Contract.

### **13. TERMINATION**

- 13.1 Without limiting its other rights or remedies, either party may terminate the Contract by giving the other party one month's written notice.
- 13.2 Without prejudice or effect to any rights of actions or remedy which shall have accrued or shall accrue, either party may at any time by notice in writing terminate the Contract if:

13.2.1 the other party commits a material breach of any term of the Contract and (if such a breach is remediable which is subject to the reasonable determination of the first party) fails to remedy that breach within seven days of written notice to that party;

13.2.2 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 or limited liability partnership) 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;

13.2.3 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;

13.2.4 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 that other party (being a company);

13.2.5 the other party (being an individual) is the subject of a bankruptcy petition or order;

13.2.6 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 fourteen days;

13.2.7 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);

13.2.8 the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

13.2.9 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;

13.2.10 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 13.2.2 to clause 13.2.9 (inclusive);

13.2.11 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;

13.2.12 the other party's financial position deteriorates to such an extent that in the Contractor's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

13.2.13 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.

13.3 Where the Contract is terminated under this clause 13 the Customer shall pay a fair and reasonable price for Services provided up to the date of termination which shall include all costs and liabilities incurred by the Contractor, including any additional costs resulting from the termination of the Contract.

13.4 Without limiting its other rights or remedies, the Contractor may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment and fails to pay all outstanding amounts within thirty days after being notified in writing to do so.

13.5 Without limiting its other rights or remedies, the Contractor may suspend provision of the Services under the Contract or any other contract between the Customer and the Contractor if the Customer becomes subject to any of the events listed in clause 13.2.2 to clause 13.2.9, or the Contractor reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

#### **14. CONSEQUENCES OF TERMINATION**

14.1 On termination of the Contract for any reason:

14.1.1 the Customer shall immediately pay to the Contractor all of the Contractor's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Contractor shall submit an invoice, which shall be payable by the Customer immediately on receipt;

14.1.2 the Customer shall return all of the Contractor Materials and any deliverables which have not been fully paid for. If the Customer fails to do so, then the Contractor 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 and will not use them for any purpose not connected with this Contract;

14.1.3 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and

14.1.4 clauses which expressly or by implication survive termination shall continue in full force and effect.

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

15.1 Neither party shall be liable for any failure to perform or any delay in performing its obligations if the failure or delay is due directly or indirectly to any cause beyond the reasonable control of that party which shall include but not be limited to the following:

15.1.1 any act of God, fire, flood, explosion, accident, civil disturbance or emergency;

15.1.2 any major plant or equipment failure which results in a closure of a facility; or

15.1.3 the postponement of any trial or test as a result of adverse weather conditions or conditions being otherwise unsafe.

15.2 In the event of delay arising from such circumstances the affected party will provide full details to the other party and shall take all reasonable steps to mitigate the effect of the delay. Performance of the Contract shall be suspended for such time as the delay continues.

15.3 Either party shall be released from all obligations under the Contract if the event of force majeure lasts more than thirty days or is such as to render continuation or completion of the Contract impossible.

## **16. ASSIGNMENT**

Neither party shall give, bargain, sell, assign, sub-let or otherwise dispose of the Contract or any part thereof for the benefit or advantage of the Contract without the consent in writing of the other party, this consent shall not be unreasonably withheld.

## **17. PUBLICITY**

Neither the Customer nor the Contractor shall make use of the other's name or the name of any other party's personnel, customers or agents or of any information obtained under the Contract for publicity purposes without the prior written consent of the other party.

## **18. DISPUTES**

The parties will use all reasonable endeavours mutually to resolve any disputes differences or claims arising under the Contract. In the event that the parties are unable to reach agreement by negotiation, they will attempt in good faith to resolve the dispute, differences or claim through an Alternative Dispute Resolution (ADR) as recommended to the parties by the Centre for Dispute Resolution.

## **19. WAIVER**

A waiver of any right under the Contract or law 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 provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## **20. NOTICES**

20.1 Any notice required to be given under the Conditions of the Contract shall be in writing and may be delivered by hand, dispatched by pre-paid first class post to the other party or by email. Any notice delivered by hand or sent by post shall be deemed to have been served on delivery (if delivered by hand) or at the expiration of 48 hours from the time of posting. A notice by email shall only be accepted on a business day and during working hours of the Contractor and shall be deemed to have been delivered when it enters the addressee's inbox. A confirmatory copy must be sent by first class post to the other party.

20.2 Each of the parties shall give notice to the other, at the earliest possible opportunity of the change or acquisition of any address, email address or telephone, or similar number.

## **21. APPLICABLE LAW**

21.1 This Contract, 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.

- 21.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

## 22. WARRANTY

- 22.1 The Contractor shall take all reasonable care to ensure all workmanship, materials and design (if applicable) shall be free from faults or defects.
- 22.2 The Contractor shall warrant such work free of defect, for a period of ninety (90) days following completion of the work, and, if during the warranty period, defects attributable solely to faulty workmanship or materials (or design) provided by the Contractor are found and agreed, then the Contractor shall make good such items to a value not greater than the original cost, provided that:
- 22.1.1 any defect is solely attributable to faulty workmanship or material provided by the Contractor and for which the Contractor agrees contractual liability;
  - 22.1.2 any defect, degradation of equipment performance or loss in aesthetic appearance is not caused by fair wear and tear, unauthorised repair, neglect or misuse by the Customer;
  - 22.1.3 the Contractor shall always be advised in writing, prior to expiry of the warranty period, of any claims for warranted defects;
  - 22.1.4 the Contractor shall always have the right of first refusal to correct such defects without cost to the customer; and;
  - 22.1.5 such defects are not attributable to latent defects originating from build or subsequent repair, modernisation or conversion actions prior to contract with the Contractor.

## 23. INSURANCE

- 23.1 The Customer shall keep the vessel, property and/or location (as applicable) fully insured and shall ensure that all insurance for hull and machinery, protection and indemnity and all other transit and marine risks are in force where appropriate throughout the Contract duration and maintenance period.
- 23.2 The Contractor shall maintain in force throughout the duration of the Contract and maintenance period standard cover with the following limits: Employers Liability £25m, Public Liability £20m and Products Liability £20m. Contract works (excluding terrorism damage) £1.5m. Professional Indemnity £5m.

## 24. SEVERANCE

- 24.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 24.2 If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

## 25. NO PARTNERSHIP OR AGENCY

Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

## **26. THIRD PARTIES**

A person who is not a party to the Contract shall not have any rights to enforce its terms.

## **27. VARIATION**

Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Contractor.

## **28. BS EN 1090 – EXECUTION CLASS**

If an execution class has not been defined within a customer specification/tender/RFQ EN 1090-2 section 4.1.2 states if no execution class is specified, EX 2 shall apply. Contractor quotations are prepared to meet the requirements of Execution Class 2.