

1. DEFINITIONS

In these Conditions, unless the context otherwise requires, the following words have the following meanings:

"Buyer"	Keynvor Morlift Limited and any person firm or company to whom it may have assigned the benefit of the Contract;
"Contract"	the contract for the purchase of the Goods or Services constituted by the Seller's acceptance of the Purchase Order in accordance with these Conditions;
"Contract Price"	the price or prices specified in the Purchase Order;
"Force Majeure"	circumstances as defined in Clause 19 below.
"Goods or Services"	the Goods or Services (or any of them or part or instalment thereof) as described in the Purchase Order;
"Purchase Order"	the Purchase Order placed by the Buyer for the supply of the Goods or Services; to which these Conditions are annexed.
"Results"	all reports, specifications, software, drawings or other information in any form created by the Seller pursuant to the supply of Goods or Services;
"Seller"	the person, firm or company to whom the Purchase Order is addressed;
"Specification"	the technical description (if any) of the Goods or Services contained or referred to in the Purchase Order, including any relevant plans, drawings, data and information.

2. GENERAL

- 2.1 These Conditions, and any agreed formally authorised amendments thereto, shall govern the Contract to the exclusion of any terms and conditions which the Seller may seek to impose.
- 2.2 The Purchase Order constitutes an offer by the Buyer to purchase the Goods subject to these Conditions and supersedes all prior discussions and negotiations.
- 2.3 Any concession allowed by the Buyer at any time shall not constitute a waiver of its rights under the Contract or otherwise.
- 2.4 The Buyer will be bound by a Purchase Order only if:
 - a) it is placed on the Buyer's official Purchase Order form; and
 - b) the Seller accepts it by undertaking any action or conduct or performance which the Buyer reasonably considers is consistent with the Purchase Order.

3. VARIATION

- 3.1 No variation of these Conditions or of the Contract shall be effective unless agreed in writing between an authorised representative of the Seller and an authorised representative of the Buyer.
- 3.2 The Buyer shall be entitled to vary a Purchase Order and any Specification that may relate to such Purchase Order, at any time prior to delivery. In this event, the Seller reserves the right to re-negotiate the terms of the Purchase Order including the price and delivery timescale.

4. QUALITY AND DESCRIPTION

- 4.1 The Seller warrants to the Buyer that the Goods or Services shall:
 - a) be of satisfactory quality and free from defects in design, material or workmanship and be fit for their intended purpose;
 - b) conform to the quantity, description and drawings contained or referred to in the Purchase Order;
 - c) be of sound material and workmanship;
 - d) be equal in all respects to the Specification or to the samples or patterns provided or given by either party (if any);
 - e) meet any quality standard and be capable of any performance specified in the Purchase Order;
 - f) be new and free from any lien, charge or other encumbrance; and
 - g) comply with all statutory requirements and regulations relating to the sale of the Goods or Services; and
 - h) if designed by the Seller or their sub-contractors be free of defects in design.
- 4.2 The Buyer shall have no liability in respect of any representation or warranty made prior to the Contract unless it was made fraudulently.

5. PATENTS AND OTHER INTELLECTUAL PROPERTY RIGHTS

- 5.1 The Seller warrants that neither the Goods or Services, nor the performance of the obligations under this Contract, will infringe any letters patent, registered design, trade or service mark, know-how, copyright or other intellectual property rights ("IPR").
- 5.2 The Seller further warrants that the Goods or Services will not cause any infringement of IPR of any third party resulting from the use or resale of the Goods or Services or any part of them.
- 5.3 All rights in any IPR arising in the Results shall be the property of the Buyer who shall have the right to use the Results for any purpose without further payment.

6 PRICE

- 6.1 The Contract Price is fixed and firm, exclusive of VAT and inclusive of packaging and any delivery and insurance costs as stated in the Purchase Order.
- 6.2 No increase in the Contract Price may be made, whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise, without the prior consent of the Buyer in writing.

7 PAYMENT

The Buyer shall pay for Goods or Services within 60 days of delivery provided that they are in accordance with any applicable Specification and the terms of the Contract. Without prejudice to any other right or remedy, the Buyer reserves the right to set off any sum of money owing at any time by the Seller to the Buyer against any sum payable by the Buyer to the Seller under the Contract or under any other current contract between the Buyer and the Seller.

8 DELIVERY, DELAY, LIQUIDATED DAMAGES AND OTHER CONSEQUENCES

- 8.1 The Goods or Services must be delivered suitably packed and carriage paid to such destination as the Buyer may direct, in the Purchase Order.
- 8.2 The Seller shall deliver the Goods or Services by the date specified in the Purchase Order. If owing to Force Majeure the Seller is unable to deliver the Goods or Services by the specified date, then provided that the Seller shall have given the Buyer immediate notice in writing of its intention to claim an extension of time due to Force Majeure, the Buyer shall grant the Seller such extension of time as may be reasonable (but in any event no longer than one calendar month). Should the Force Majeure event continue for more than one calendar month then the Buyer shall have the right to termination in accordance with Clause 21.4
- 8.3 Should the Seller fail to deliver the Goods or Services by the specified date for any reason other than Force Majeure, the Buyer (without prejudice to any other right or remedy which it may have) shall be entitled to, whether as a deduction from any sums due to the Seller or otherwise, 10% of the total Contract Price due to the Seller in respect of those delayed Goods or Services for each week (or part thereof) in which the Seller fails to deliver them.
- 8.4 Should the Seller fail to deliver the Goods or Services by the specified date for any reason other than Force Majeure, the Buyer (without prejudice to any other right or remedy which it may have) shall be entitled to:
- a) cancel or vary that part of the Purchase Order which has not been delivered by the specified date;
 - b) obtain replacement Goods or Services from another supplier; and
 - c) charge to the Seller any additional costs, losses or expenses which the Buyer may reasonably incur due to the Seller's failure to deliver the Goods or Services by the specified date.
- 8.5 In addition to any other right that the Buyer may have under these Conditions, it shall be entitled to postpone the date of delivery for a period to be agreed with the Seller after giving 15 working days' notice in writing to the Seller provided that the Buyer shall pay the Seller's reasonable storage charges.
- 8.6 If the Goods or Services are to be delivered by installments, the Contract will be treated as a single contract and not severable.

9 RISK AND DAMAGE/LOSS IN TRANSIT

- 9.1 The Goods or Services shall remain at the Seller's risk until delivered and accepted by the Buyer.
- 9.2 The Seller will repair or replace free of charge, Goods or Services damaged or lost in transit provided the Buyer shall give the Seller written notification of such damage or loss within such time as will enable the Seller to comply with the carrier's conditions of carriage as affecting loss or damage in transit, or where delivery is made by the Seller's own transport, within a reasonable time.

10 TIME

Time for performance and all other dates specified in the Purchase Order shall be of the essence. The supply of Goods and Services by the Seller to the Buyer may be time or project critical, and thereby a critical path item. The supply of Goods or Services by the Seller to the Buyer may be crucial for the timely and efficient operation of ships and vessels or marine facilities. The Seller must not delay or impede the operation of the Buyer's ships and vessels or marine facilities.

11 PROPERTY

- 11.1 Property in the Goods or Services shall pass to the Buyer on delivery (without prejudice to the Buyer's right of rejection under these Conditions) or when the invoice for such Goods or Services is received by the Buyer whichever occurs first.
- 11.2 If the seller postpones delivery at the request of the Buyer under clause 8.5, the property in the Goods or Services shall pass to the Buyer seven days after the date of receipt of notification from the Seller that the Goods or Services are due and ready for delivery or on such other date as may be agreed. The Goods or Services shall nevertheless remain at the Seller's risk until delivery has been completed in accordance with the Purchase Order and the Buyer has confirmed in writing that the Goods or Services have been received.

12 REJECTION

- 12.1 If any of the Goods or Services do not comply with the Contract or the Seller does not comply with its obligations under clause 4, the Buyer shall be entitled to reject those Goods or Services or any part of them by notice in writing to the Seller given within 14 days or such other period as may be agreed. All rejects shall be held at the Supplier's risk and expense, including all transportation and handling costs until returned to the Supplier or corrected by the Supplier.

12.2 The Buyer shall, when giving notice of rejection, specify the reasons for it and shall return the rejected Goods or Services to the Seller or at the Buyer's option request that the Goods or Services be collected by the Seller at the Seller's risk and expense. In such case, the Seller shall within a reasonable time replace those rejected Goods or Services with Goods or Services which are in all respects in accordance with the Contract.

12.3 Any sums paid by the Buyer to the Seller in respect of any rejected Goods or Services not replaced by the Seller within a reasonable time, together with any additional expenditure over and above the Contract Price reasonably incurred by the Buyer in obtaining other Goods or Services in replacement, shall be paid by the Seller to the Buyer.

13 INDEMNITY

13.1 The Seller shall indemnify the Buyer against all liability, claims, costs and expenses (including reasonable legal expenses), loss, personal injury or damage to property which the Buyer may suffer or incur as a result of or in connection with:

- a) any act or omission (including negligence) of the Seller, its sub-sellers, employees or agents in supplying, delivering and installing the Goods or Services in accordance with the Contract and the Conditions,
- b) a breach of any warranty given by the Seller in relation to the Goods or Services including, but not limited to, the warranties contained in clauses 4 and 15;
- c) any claim that the Goods or Services infringe any IPR whether in Britain or overseas except where Goods or Services have been manufactured solely in accordance with particular designs or specifications of the Buyer;
- d) any liability which the Buyer may incur as a result of a claim against the Buyer under the Consumer Protection Act 1987 in respect of an alleged defect in the Goods or Services or in other items into which the Goods or Services are incorporated where the defect is attributable to the Goods or Services.

13.2 The Seller shall not be liable to the Buyer for any damage to property or personal injury to the extent that it is caused by or arises out of the acts or omissions of the Buyer or of others. The Seller shall remain fully liable for the acts or omissions of the Seller's servants or agents.

14 ASSIGNMENT AND SUB-CONTRACTING

14.1 The Seller shall not assign or transfer the whole or any part of the Contract without the prior written consent of the Buyer whose consent shall not be unreasonably withheld.

14.2 The Seller shall not sub-contract the Contract or any part of it other than for materials, minor details or for any part of the Goods or Services of which the makers are named in the Purchase Order or Specification, without the consent in writing of the Buyer. Any such consent shall not relieve the Seller of any of its obligations under the Contract.

15 SERVICES

15.1 Where the Seller is providing any services, the "Goods or Services" as used in these Conditions shall be interpreted to include the provision of such services. In providing those services, the Seller warrants that it shall use only qualified and experienced personnel acting with all care and diligence and it accepts full responsibility for such personnel, their property, their acts and omissions.

15.2 Where consultancy or design work is involved in the services provided by the Seller, the Seller accepts full professional responsibility for the services and will carry them out with such skill and expertise necessary to ensure they are of the standards required under the Contract. The Seller shall take out and maintain for a period of six years from completion of the consultancy or design work, Professional Indemnity insurance to a level of at least one million pounds.

15.3 All rights in any IPR arising in the Results shall be the property of the Buyer who shall have the right to use the Results for any purpose without further payment.

16 INSPECTION, SURVEILLANCE AND EXPEDITING

16.1 The Buyer's representatives and those of its customer(s) shall at all reasonable times have access to the Seller's premises and those of the Seller's sub-contractors for the purposes of inspection, testing, surveillance and expediting. Any such inspection or failure to inspect shall not relieve the Seller of any obligation with respect to the Contract and shall not affect the Buyer's right to reject the Goods or Services after delivery.

16.2 The Seller shall be obliged to comply with the Buyer's reasonable instructions arising from such inspection, testing, surveillance and expediting and shall upon request provide the Buyer with copies of all test reports and all data discovered as a result of testing. In the event that this causes a delay to the delivery date then this shall be deemed to be a granting of this delay and the Seller shall not be liable to Liquidated Damages under Clause 8.3 for the period of delay directly attributable to the Seller complying with the Buyer's instructions.

17 DELIVERABLES

The deliverables shall, in addition to the Goods or Services, include all documentation specified or referred to in the Purchase Order as being required. Such documentation is to be supplied to the Buyer's satisfaction in the timescales specified in the Purchase Order. Receipt of deliverables is a condition precedent to payment.

18 SELLER TO INFORM ITSELF

The Seller shall be deemed to have satisfied itself as to the extent and nature of the Goods and Services; in the case of Services including but not limited to the services, personnel, materials and equipment, plant, consumables and facilities required, the correctness and sufficiency of the Seller's rates and prices accepted by the Buyer, general / local conditions, access, climatic, sea, water and weather conditions, and all other matters which could affect progress or performance of the Seller's obligations.

19 FORCE MAJEURE

19.1 Only the following occurrences shall be Force Majeure:

- a) Riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not), acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power;
- b) Ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- c) Pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
- d) Earthquake, flood, fire, explosion and/or other natural physical disaster, but excluding weather conditions as such, regardless of severity;
- e) Strikes at a national or regional level or industrial disputes at a national or regional level, or strikes or industrial disputes by labour not employed by the affected party, its subcontractors or its suppliers and which affect a substantial or essential portion of the work;
- f) Maritime or aviation disasters;
- g) Unforeseen and unforecast changes to any general or local Statute, Ordinance, Decree, or other Law, or any regulation or bye-law of any local or other duly constituted authority or the introduction of any such Statute, Ordinance, Decree, Law, regulation or bye-law.

19.2 In the event of a Force Majeure occurrence, the party that is or may be delayed in performing the contract shall notify the other party without delay giving the full particulars thereof and shall use all reasonable endeavours to remedy the situation without delay.

19.3 If either party is delayed in performing the contract by a Force Majeure occurrence, the Seller's delivery dates or programme but not the Seller's prices shall be adjusted by agreement with the Buyer.

19.4 Following notification of a Force Majeure occurrence, the Buyer and the Seller shall meet without delay with a view to agreeing a mutually acceptable course of action to minimise any effects of such occurrence.

20 CONFIDENTIALITY

The Specification, Results and any drawings or other information issued by the Buyer to the Seller are confidential and the property of the Buyer and shall be kept confidential and not copied nor used for any other purpose (apart from in connection with the Contract) without the prior written consent of the Buyer.

21 TERMINATION

21.1 Without prejudice to its other rights, the Buyer shall be entitled to terminate or cancel a Contract in whole or in part at any time giving not less than 15 working days' notice in writing. The Seller shall be entitled to reasonable payment for the work satisfactorily completed up to the time of termination. Upon receipt of a termination notice, the Seller shall immediately cease all work in performance of the Contract and shall make every reasonable effort to obtain cancellation of all sub-contracts made by it relating to the Contract.

21.2 The Buyer may cancel a Contract at any time without any cost to the Buyer by serving a notice in writing on the Seller if the Seller fails to comply with any significant provisions of the Contract.

21.3 The Seller shall not cancel the Contract without the consent of the Buyer, such consent to be conditional on the Seller indemnifying the Buyer against all direct loss damage, claims or actions arising out of such cancellation.

21.4 The Buyer may terminate the contract by giving 15 working days' notice in writing of its intention to do so in the event of a Force Majeure event continuing for a period in excess of one calendar month. The Seller shall be entitled to reasonable payment for the work satisfactorily completed up to the time of termination.

22 INSOLVENCY

This clause shall be reciprocal between the Buyer and the Seller.

If either before or after acceptance of the Purchase Order, the Seller (or Buyer) becomes bankrupt or insolvent or compounds with its creditors, or being a limited company, commences to be wound-up, or if a Receiver is appointed of any part of the Seller's (or Buyer) assets, the Buyer (or the Seller) shall be at liberty by notice in writing to immediately cancel the Order or the Contract as the case may be, without being liable for loss or damage of any kind arising from such cancellation, and without prejudice to any right or remedy which shall have accrued or shall accrue thereafter to the Buyer (or Seller).

23 PUBLICITY

The Seller may not describe, illustrate or refer to the Goods or Services in any form of advertising without the Buyer's written consent. This consent shall not be unreasonably withheld.

24 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

No term of these Conditions (whether express or implied) is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

25 LAW

These Conditions and the Contract shall in all respects be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English courts.

26 LIMITATION OF LIABILITY

- 26.1 The exclusions and limitation of liability set out in this Limitation of Liability Clause shall apply to all claims of any kind whether as a result of breach of contract or warranty, negligence or otherwise on the part of the Seller, its employees, agents, sub-contractors or suppliers.
- 26.2 The Seller shall compensate the Buyer for any legal liability for personal injury to, or death of, any person or damage to any property to the extent that such personal injury or death or damage is caused by negligence of the Seller or its employees or agents.
- 26.3 For the purpose of the Limitation of Liability Clause, the Seller contracts also on behalf of its employees, agent, sub-contractors and suppliers who shall have no greater liability in relation to the Contract than the Seller.