

Terms and Conditions for the Supply of Goods and Services

1. Definitions

In these conditions the "Company" means ENGINEERING AND MARINE SERVICES LIMITED. The "Buyer" means any company, firm or individual from whom the Company received an order which the Company has accepted (in writing); the "Goods" means the products, materials to be supplied by the Company as set out in the Company's Quotation which forms part of this contract as Schedule []; and the "Services" means the services to be supplied by the Company which forms part of this contract as Schedule [].

2. Basis of Contract

- 2.1. The order shall only be deemed to be accepted once the Company issues written acceptance of the order at which point the contract shall come into existence.
- 2.2. No alterations or additions to these conditions shall form part of the contract unless they are expressly set out in the written acceptance of the order.
- 2.3. All of these conditions shall apply to the supply of both Goods and Services.

3. Delivery

- 3.1. Each delivery will be accompanied by a consignment note which shows all relevant information for both the Company and the Buyer.
- 3.2. The Company shall not be in breach of this contract nor liable for delay in performing, or failure to perform, any of its obligations under this contract if such delay or failure results from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be entitled to a reasonable extension of time for performing such obligations. If the period of delay or non-performance continues for more than 4 weeks, then Company may terminate this contract by giving Buyer 14 days written notice.
- 3.3. Unless otherwise agreed in writing the Company shall deliver the goods ex Works at Company registered office (Incoterms 2000).
- 3.4. The Company reserves the right to deliver the goods by instalments and in such event each instalment shall be treated as a separate contract and can be invoiced as set out in clause 5.

4. Supply of Services and or Goods

- 4.1. The Company shall use reasonable endeavours to meet any performance dates for the Goods and/or Services specified within the Order, but any such dates shall be estimates only and time shall not be of the essence.
- 4.2. When providing labour (on an hourly rate basis) the Company will supply their workmen with timesheets which will be signed off by the Buyer's representative on a weekly basis (such signoff shall not be unreasonably withheld or delayed).
- 4.3. The Company shall have no liability in respect of any costs claims, damages, losses or expenses ("Claims") arising from or in connection with the use of any defective, faulty or unsuitable tackle plant apparatus or equipment provided by the Buyer, or any drawings, information or data supplied by the Buyer. The Buyer shall indemnify the Company against all such Claims.
- 4.4. Where the Company are responsible for assembly at the Buyer's premises, the Buyer must provide free use of water, gas, electricity and other services including lavatory and canteen facilities.
- 4.5. Where the company carries out work on the Buyers site(s) the Buyer shall be responsible for ensuring that all relevant and appropriate health and safety regulations are complied with and that the Buyers employees, agents or contractors are fully trained in all relevant aspects of health and safety requirements and procedures. The Buyer shall indemnify the Company against any claims arising from any breach of this clause 4.5.
- 4.6. The Buyer will be responsible for ensuring a safe site complying with all relevant health and safety regulations or statutory provisions and common law obligations in connection with any work undertaken upon your site. The Buyer shall indemnify the Company for any breach of the above clause 4.5.

5. Design services

- 5.1. The company will supply goods in accordance with designs or specifications provided by the Buyer. The Company shall not be liable for any failure of the goods to be suitable for a specific purpose even if that purpose is made known to the Company where that failure arises from a fault in the design of the goods or products in question. The Company's acceptance of the Buyers specifications does not imply any acceptance of responsibility for the design, drawings or specification..
- 5.2. The Company can arrange for a third-party contractor to provide design services as part of a contract to supply Goods and Services. The third-party contractor and the designs must be approved by the Buyer prior to acceptance of any order by the Company and the Company accepts no liability for any default or defect in the design services.

6. Price

- 6.1. The price quoted is based upon costs prevailing at the date of the quotation and the Company reserve the right to vary this price at any time by the amount of any increase or decrease in the cost of labour, materials and transport arising after that date.
- 6.2. The quotation is based on the work scope being carried out during normal working hours (8:00a.m. to 4.00p.m. or such hours agreed between the Company and Buyer), and all overtime worked at the request of the Buyer shall be discussed and approved in writing between the parties in advance.
- 6.3. All prices are quoted exclusive of Value Added Tax ("VAT") and VAT will be added to all invoices at the applicable rate.

7. Payment

- 7.1. The Buyer shall pay each invoice within 30 days of the date of the invoice. For the purposes of this clause 7.1, time shall be of the essence in relation to payment obligations.
- 7.2. All cheques should be made payable to: ENGINEERING AND MARINE SERVICES LIMITED.
- 7.3. In no case will the property of any of the Goods (or any reports for any Services) pass to the Buyer until payment of the full contract price has been made to the Company. Risk in the Goods shall pass to the Buyer on delivery as set out at clause 3 and the Buyer shall insure the same and keep the same separate from the other Goods of the Buyer and hold the Goods as bailee until property in the Goods has passed.
- 7.4. If any payment falls in to arrears, the Company shall have the right to cancel or postpone performance of the contract wholly or in part and to be paid immediately for performance of the contract to date. The Buyer shall be responsible for any costs incurred in enforcing any payments which fall more than 14 days overdue.
- 7.5. If the Company is entitled to terminate the contract where it appears to the Company that the Buyer is insolvent (or similar) or is unable to pay its debts.

8. Liability and Insurance

- 8.1. The Company takes no responsibility for "Free Issued Material" that is issued to the Company by the Buyer.
- 8.2. Notwithstanding any other provision of this contract the Company's total aggregate liability for all claims of any kind, whether in contract, warranty, indemnity, tort, strict liability, or otherwise, arising out of or in connection with the contract shall not exceed the contract price paid from Buyer to Company related to this contract.
- 8.3. Both Parties shall mutually waive their rights of recourse against each other and shall indemnify and hold each other harmless from and against any loss or damage arising from loss of profit or revenues, loss of use of property or any associated equipment, cost of capital, cost of substitute equipment, facilities, or downtime costs or for any special consequential, incidental, or indirect damages.
- 8.4. The Company shall have in place all such insurances as are relevant to the Goods and/or Services set out in this contract.
- 8.5. These terms and conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

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9. General

- 9.1. The Company warrants that on delivery and for a period of 6 months thereafter the Goods will conform with their specification set out in the relevant Schedule to this Agreement and be free from material defects in design, material and workmanship. Furthermore the Company warrants to the Buyer that the Services will be provided using reasonable care and skill. Where goods are provided under the provisions of clause 5 of this agreement this warranty shall not extend to any defects which arise as a result of any fault in the design in the goods as set out in that clause.
- 9.2. This contract shall be governed by, and construed in accordance with, English Law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

10. Hire of Equipment

- 10.1. See EMS Terms and Conditions for 'Hire of Equipment'.