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## GRAIG SHIP MANAGEMENT LIMITED

### General Conditions of Purchase (Goods)

#### 1. Definitions for these Conditions.

'**Buyer**' means Graig Ship Management Ltd (contracting as agent only for and on behalf of the Owner), whose registered office is 1 Caspian Point, Caspian Way, Cardiff, CF10 4DQ.

'**Classification Society**' (**Class**) means a marine classification society that is a member of the International Association of Classification Societies and has been contracted to act as the classification society for the Vessel.

'**Conditions**' means, the standard terms and conditions of purchase set out in this document (unless the context otherwise requires) including any special terms and conditions agreed in Writing between the Buyer and Seller.

'**Contract**' means the contract for the sale and purchase of the Goods pursuant to the Order.

'**Delivery**' means the delivery of the goods at the time and to the place as specified in the Order or as otherwise specified by the Buyer.

'**Delivery Address**' means the address or Vessel and location stated on the Order or as otherwise specified by the Buyer.

'**Goods**' means the goods and/or services (including any instalment of the goods or any part of them) described in the Order.

'**Order**' means the Buyer's purchase order (issued as agent only for and on behalf of the Owner) to which these Conditions are annexed and which incorporates these Conditions.

'**Owner**' includes in relation to any Vessel or other floating structure any corporate body, charter manager, mortgagee or any other person or body having possession thereof on whose behalf the Order has been placed by the Buyer.

'**Price**' means the price of the Goods stated in the Order.

'**Seller**' means the person, firm or company to whom the Order is addressed.

'**Specification**' includes any plans, drawings, data or other information relating to the Goods.

'**Vessel**' includes any floating unit or storage unit and any other man-made structure designed for use at sea and whether or not fixed to the seabed.

1.2 A reference to **writing** or **written** includes electronic e-mail, telex, and cable; fax transmission and comparable means of communication

#### 2. Basis of Purchase.

2.1 The Order constitutes an offer by the Buyer on behalf of the Owner to purchase the Goods subject to these Conditions which shall apply to the Contract to the entire exclusion of any other terms and conditions on which any quotation has been given to the Buyer or subject to which the Order is accepted or purported to be accepted by the Seller and the Seller waives any right which it otherwise might have to rely on such terms and conditions.

2.2 Buyers Authority: The Buyer (for the purpose of these Conditions and the Contract) contracts as agent only for and on behalf of the Owner. As regards the Seller the Buyer has no authority to enter into any contract, which may give rise to any entitlement or claim on the part of the Seller to detain any Vessel. The Buyer has no authority to incur any lien of whatsoever nature on the Vessel whether maritime or possessory.

#### 3. Specification.

3.1 Without prejudice to clause 8 the quantity, quality and description of the Goods shall be as specified in the Order and/or in any applicable Specification supplied by the Buyer to the Seller or as agreed upon in Writing between the Buyer and the Seller.

3.2 The Seller shall not unreasonably refuse any request by the Buyer for the inspection and the test of the Goods during manufacture, processing or storage at the premises of the Seller or any third party prior to despatch, and the Seller shall provide the Buyer with all facilities reasonably required for inspection and testing.

3.3 If as a result of inspection or testing the Buyer is not satisfied that the Goods will comply in all respects with the Contract and the Buyer so informs the Seller within 30 days of inspection or testing, the Seller shall take any means that are necessary to ensure compliance and in addition the Buyer shall have the right to require and witness further testing and inspection.

3.4 The Goods shall be clearly marked giving all details of the contents i.e. size, quantity, part number etc. and shall also be marked in accordance with any applicable regulations or requirements of any relevant carrier, and properly packed and secured (to include all suitable documentation for transit, such as Customs notices) so as to reach their destination in an undamaged condition in the ordinary course of transit.



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- 3.5 The Goods when and where applicable to be inspected by Class and supplied with a class certificate in accordance to Class requirements.
- 3.6 If any of the Goods fail to comply with the provisions set out in this clause 3 the Buyer and/or Owner shall be entitled to avail itself of one or more of the remedies listed in clause 8.
- 4. Price of Goods.**
- 4.1 The price of Goods shall be as stated in the Order and shall be net of VAT where applicable and unless otherwise so stated shall be:
- 4.1.1 inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the Delivery Address and any duties, imports or levies other than VAT;
- 4.1.2 net of any applicable discount; and
- 4.1.3 zero-rated for VAT under HM C&E notice 744C Schedule 8 Group 8.
- 4.2 No increase to the 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.
- 5. Terms of Payment.**
- 5.1 Invoices quoting Order numbers must be rendered within 30 days of delivery of the Goods. Unless otherwise agreed payment will be due after good and proper delivery and confirmation of compliance with the Order within 30 days after the end of the month in which the Buyer shall receive a proper invoice.
- 5.2 The Buyer shall be entitled to set off against the price any sums owed to the Buyer by the Seller.
- 5.3 The Seller shall issue a credit note in respect of Goods which are non compliant to the Order and incorrectly delivered. Failure to comply with these Conditions or to issue credit notes may result in delay in payment of the account without forfeiture of discount.
- 6. Delivery.**
- 6.1 The Goods shall be delivered to the Delivery Address at the time, and on the date stated on the Order or as otherwise agreed between the Buyer and the Seller in Writing. The Seller shall offload the Goods at its own risk as directed by the Buyer.
- 6.2 Where the date of delivery of the Goods is to be specified after the placing of the Order the Seller shall give the Buyer reasonable notice of the specified date and in any event delivery shall take place within 28 days of the Order unless otherwise agreed in writing by the Buyer and the Seller.
- 6.3 Time for delivery of the Goods is of the essence of the Contract.
- 6.4 A packing note (to include all suitable documentation for transit, such as Customs notices) quoting the Order number, date of Order number, packages and contents and a customs invoice declaring the actual ordered value of the goods, and, in the case of part delivery, the outstanding balance remaining to the delivered, must accompany each delivery or consignment of the Goods and must be prominently displayed.
- 6.5 If the Goods are to be delivered by instalments, the Contract will be treated as a single contract and not severable.
- 6.6 The Buyer shall be entitled to reject any Goods delivered which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods until the Buyer has had a reasonable time to inspect them following delivery or if later, within a reasonable time after any defect in the Goods or missing Goods has become apparent.
- 6.7 The Buyer shall notify the Seller of any damage to Goods or missing Goods and shall have the right to claim against the Seller in respect of any damage notified.
- 6.8 Any rejected or incorrectly delivered Goods shall be collected at the Seller's expense within 21 days of notice being given by the Buyer to the Seller in Writing.
- 6.9 The Buyer shall not be obliged to return to the Seller any packaging or packing materials for the Goods, whether or not any Goods are accepted by the Buyer.
- 6.10 Delivery shall be evidenced by the signature and clearly printed name of the Master, Chief Engineer or Chief Officer of the receiving Vessel or where delivery is not made to the Vessel, by the person having authority to accept delivery on the Buyer's behalf with the date and time of delivery clearly marked. Such signature shall not constitute any admission that the Goods delivered are in good condition or otherwise comply with the Contract.



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- 6.11 If the Goods are not delivered on the due date then, without prejudice to any other rights which it may have, the Buyer and/or Owner reserve the right to:
- 6.11.1 cancel the Contract in whole or in part;
  - 6.11.2 refuse to accept any subsequent delivery of the Goods which the Seller attempts to make;
  - 6.11.3 recover from the Seller any expenditure reasonably incurred by the Company in obtaining the Goods in substitution from another supplier; and
  - 6.11.4 claim damages for any additional costs, loss or expenses incurred by the Buyer and/or Owner which are in any way attributable to the Seller's failure to deliver the Goods on the due date.

#### **7. Risk and Property.**

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer upon delivery to the Buyer in accordance with the Contract and after such time that the Buyer has noted that the Goods conform to the Specification set out in the Order.
- 7.2 The property in the Goods shall pass to the Buyer upon delivery, unless payment for the Goods is made prior to delivery, when it shall pass to the Buyer once payment has been made and the Goods have been appropriated to the Contract.

#### **8. Warranties and Liability.**

- 8.1 The Seller warrants to the Buyer that the Goods:
  - 8.1.1 will be of a satisfactory quality and/or the best available design as applicable and/or conform with original equipment manufacturer performance requirements, and fit for any purpose held out by the Seller or made known to the Seller in writing at the time the Order is placed;
  - 8.1.2 will be free from defects in design, material and workmanship;
  - 8.1.3 will correspond with any relevant Specification or sample;
  - 8.1.4 will comply with all statutory and classification requirements and regulations relating to the sale of the Goods; and
  - 8.1.5 in respect of services, will be performed by suitably qualified, experienced and skilled persons and with due skill, care and diligence in accordance with all applicable regulations, statutes, other legal requirements and industry standards (including, without limitation, all environmental laws and class society regulations) and to such high standard of care as it is reasonable for the Buyer to expect having regard to the nature of the services being provided.
- 8.2 The Buyer's and/or Owner's rights under these Conditions are in addition to the statutory conditions implied in favour of the Buyer by the Sale of Goods Act 1979 (or any statutory modification or re-enactment thereof for the time being in force).
- 8.3 Without prejudice to any right or remedy which the Buyer and/or Owner may have, if any Goods are not supplied in accordance with, or the Seller fails to comply with, any of the terms of the Contract the Buyer and/or Owner shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods have been accepted by the Buyer:
  - 8.3.1 to rescind the Order;
  - 8.3.2 to reject the Goods (in whole or in part) and return them to the Seller at the risk and cost of the Seller on the basis that a full refund for the Goods so returned shall be paid forthwith by the Seller;
  - 8.3.3 at the Buyer's and or Owner's option to give the Seller the opportunity at the Seller's expense either to remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
  - 8.3.4 to refuse to accept any further deliveries of the Goods but without any liability to the Seller;
  - 8.3.5 to carry out at the Seller's expense any work necessary to make the Goods comply with the Contract; and/or
  - 8.3.6 to claim such damages as may have been sustained in consequence of the Seller's breach or breaches of the Contract.
- 8.4 The Seller shall indemnify the Buyer and the Owner in full against all liability, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by the Buyer or the Owner as a result of, or in connection with:
  - 8.4.1 breach of any warranty given by the Seller; and/or defective workmanship, quality or materials;



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## GRAIG SHIP MANAGEMENT LIMITED

### General Conditions of Purchase (Goods)

- 8.4.2 any claim that the Goods infringe, or their importation, use or re-sale, infringes, the patent, copyright, design right, trademark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any Specification supplied by the Buyer;
- 8.4.3 any claim made against the Buyer and/or Owner in respect of any liability, loss, damage, injury, cost or expense sustained by the Buyer's and/or Owner's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Contract by the Seller; or
- 8.4.4 any act or omission of the Seller or its employees, agents, or sub-contractors in supplying and delivering the Goods and including, without prejudice to the generality of the foregoing, any wrongful act neglect or default in or about the installation of any Goods on any Vessel or other premises.
- 8.5 Under no circumstances shall the Buyer or the Owner become liable to the Seller, whether in contract, tort (including negligence), breach of statutory duty, or otherwise for any special or indirect losses including, without limitation:
  - 8.5.1 loss of profit or any economical loss;
  - 8.5.2 loss of anticipated savings;
  - 8.5.3 loss of business or business opportunity;
  - 8.5.4 loss of, or loss of use of, data;
  - 8.5.5 loss of revenue; or
  - 8.5.6 loss of contracts.

#### **9. Termination.**

- 9.1 In addition to the Buyer's and/or Owner's right (pursuant to clause 10) to cancel the Order in the event of force majeure the Buyer and/or Owner shall be entitled to cancel the Order in respect of all or part of the Goods by giving notice to the Seller at any time prior to delivery, in which event the sole liability shall be for the Owner to pay the Seller fair and reasonable compensation for work in progress at the time of cancellation but such compensation shall not include loss of anticipated profits or any consequential loss.
- 9.2 The Buyer and/or Owner shall be entitled to terminate the Contract without liability to the Seller by giving notice to the Seller at any time if:
  - 9.2.1 the Seller commits a material breach of any of the terms and conditions of the Contract;
  - 9.2.2 any distress, execution or other process is levied upon any of the assets of the Seller;
  - 9.2.3 the Seller has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Seller or notice of intention to appoint an administrator is given by the Seller or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986 (or any statutory modification or re-enactment thereof)) or a resolution is passed or a petition presented to any court for the winding up of the Seller or for the granting of an administration order in respect of the Seller, or any proceedings are commenced relating to the insolvency or possible insolvency of the Seller;
  - 9.2.4 the Seller ceases, or threatens, not to continue in business;
  - 9.2.5 there is a change of control of the Seller; or
  - 9.2.6 the Buyer reasonably apprehends that any of the events mentioned above is about to occur in relation to the Seller and notifies the Seller accordingly.
- 9.3 In the event of termination by the Buyer and/or Owner the Buyer and/or Owner shall have the right to recover and the Seller shall refund any or all advance funds or payments made by the Buyer to the Seller.
- 9.4 The termination of the Contract, however arising, shall be without prejudice to the rights and duties of the Buyer and/or Owner accrued prior to termination. The Conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

#### **10. Force Majeure.**

- 10.1 The Buyer and/or Owner reserves the right to defer the date of delivery or payment or to cancel the Contract or reduce the volume of the Goods ordered if the Buyer and/or Owner is prevented from or delayed in the carrying on of business due to circumstances beyond the reasonable control of the Buyer and/or Owner including, without limitation:



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- 10.1.1 acts of God;
- 10.1.2 governmental actions;
- 10.1.3 war or national emergency;
- 10.1.4 acts of terrorism, piracy or armed conflict;
- 10.1.5 protests, riot or civil commotion;
- 10.1.6 fire, explosion, loss at sea, flood or epidemic;
- 10.1.7 lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce);
- 10.1.8 restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials;
- 10.1.9 interference by civil or military authorities; or
- 10.1.10 failure of energy sources or transport network.

#### **11. Applicable Law and Jurisdiction.**

- 11.1 This Contract shall be governed by and construed in accordance with the laws of England and Wales and the parties submit to the exclusive jurisdiction of the English and Welsh Courts.

#### **12. General**

- 12.1 Each right or remedy of the Buyer (and/or Owner) under the Contract is without prejudice to any other right or remedy of the Buyer (and/or Owner) whether under the Contract or not.
- 12.2 If any provision of the Contract is found by any court, tribunal or administrative body of the competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provisions shall continue in full force and effect.
- 12.3 Failure or delay by the Buyer (and/or Owner) in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 12.4 Any waiver by the Buyer (and/or Owner) of any breach of, or any default under, any provision of the Contract by the Seller shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 12.5 The Seller shall not be entitled to assign the Contract or any part of it without the prior consent in writing of the Buyer.
- 12.6 Material, equipment, tools, dyes, moulds, copyright, design rights or any other forms of intellectual property rights in all drawings, specifications and data supplied by the Buyer to the Seller or not so supplied but used by the Seller specifically in the manufacture of Goods shall at all times be and remain the exclusive property of the Buyer but shall be held by the Seller in safe custody at its own risk and maintained and kept in good condition by the Seller until returned to the Buyer and shall not be disposed of other than in accordance with the Buyer's written instructions, nor shall such items be used otherwise than as authorised by the Buyer in Writing.
- 12.7 The Seller shall not offer or give, or agree to give, to any member, employee or representative of the Buyer or any other third party any gift or consideration of any kind as an inducement or reward for doing or refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this Contract or any other contract with the Buyer or for showing or refraining from showing favour or disfavour to any person in relation to this or any such contract. The attention of the Seller is drawn to the criminal offences created by the Bribery Act 2010.
- 12.8 No variation of these Conditions or the documents referred to in them shall be valid unless it is in writing and signed by or on behalf of each of the parties.
- 12.9 Nothing in these Conditions shall create any rights for third parties under the Contracts (Rights of Third Parties) Act 1999. No variation to these Conditions and no supplemental or ancillary agreement to these Conditions shall create any such rights unless expressly so stated in any such agreement by the parties. This does not affect any right or remedy of a third party which exists or is available otherwise than pursuant to that Act.
- 12.10 The Seller shall keep secret and not disclose and shall procure that its employees and sub-contractors keep secret and do not disclose any information of a confidential nature obtained by it or them by reason of the Contract except information which is in the public domain otherwise than by reason of a breach of this provision. The provisions of condition 12.10 shall apply during the continuance of the Contract and after its termination howsoever arising.
- 12.11 Any notice given pursuant to the Contract may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted by telex, telemessage, facsimile transmission or other means of telecommunication resulting in the receipt of a written communication in permanent form and if so sent or transmitted to the address of the party shown on the Order, or to such other address as the party may by notice to the other have substituted therefore, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.