




## PALFINGER MARINE

### GENERAL SALES CONDITION FOR GOODS AND SERVICE

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## 1 GENERAL

### 1.1 General comments

All offers, quotations, supplies and services (hereinafter collectively or individually also referred to as “Product”) of the PALFINGER Marine Group company (hereinafter “we” or “Palfinger” or “Supplier”), which are not intended for the Palfinger distributor network, shall be governed exclusively by Orgalim S 2022 “GENERAL CONDITIONS FOR THE SUPPLY OF MECHANICAL, ELECTRICAL AND ELECTRONIC PRODUCTS” (hereinafter “Orgalim”) as changed and amended by Palfinger’s SPECIAL CONDITIONS (hereinafter “Special Conditions”); both together being the Palfinger GENERAL SALES CONDITIONS FOR GOODS AND SERVICES (hereinafter the “GSC”), supplemented by the applicable statutory regulations.

The GSC shall be an integral element of every order or contract. By accepting a quotation and/or placing an order, the Purchaser confirms that it has read, understands, accepts and agrees to these GSC. We hereby expressly object to other general terms and conditions and/or terms and conditions of purchase of the Purchaser.

The GSC shall take precedence over all other documents relating to the Product, unless otherwise agreed by both parties and confirmed by handwritten or certified electronic signature. In the event of inconsistencies or discrepancies between the Special Conditions and the conditions of Orgalim, the Special Conditions shall prevail.

### 1.2 Palfinger legal entities

These conditions are valid for the following legal entities in Palfinger Marine:

- PALFINGER Marine GmbH
- PALFINGER Marine Netherlands B.V.
- PALFINGER Marine Vietnam Co., Ltd.,
- PALFINGER Neptune Marine Equipment Technology (Shanghai) Co., Ltd.
- PALFINGER Marine Poland sp. z.o.o.
- PALFINGER Marine Do Brasil Ltda.
- PALFINGER Marine Norway AS
- PALFINGER Marine Safety AS
- PALFINGER Marine Canada Inc.
- PALFINGER Marine LSE Qingdao) Co., Ltd.
- PALFINGER Marine Hong Kong Limited
- PALFINGER Marine UK Limited
- PALFINGER Marine DK AS
- PALFINGER Marine Spain SL
- PALFINGER Marine Italy Sri
- PALFINGER Marine Germany GmbH
- PALFINGER Marine Europe B.V.
- PALFINGER Marine Czech s.r.o.
- PALFINGER Marine Doha WLL
- PALFINGER Asia Pacific Pte Ltd.

together the “PALFINGER Marine Group company”

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## 2 SPECIAL CONDITIONS

<b>QUOTATION AND CONCLUSION OF CONTRACT</b>	
<i>After clause 2. Orgalim, insert new section "QUOTATION AND CONCLUSION OF CONTRACT":</i>	<p>2.1 Unless otherwise agreed, any quotations by Supplier shall be non-binding.</p> <p>2.2 The Purchaser shall be bound to an order for a period of thirty (30) days.</p> <p>2.3 A binding contract shall only be formed upon receipt of the Supplier's order confirmation in writing.</p>

<b>DELIVERY. PASSING OF RISK</b>	
<i>Clause 11. Orgalim, add after last sentence:</i>	<p>11.1 Compliance with delivery dates shall be subject to the timely receipt of all preliminary services to be provided by the Purchaser, including but not limited to specifications, the timely provision of parts or components, the timely provision of approvals or documents by the Purchaser and compliance with the terms of payment, failing which the delivery date shall be postponed by the duration of the delay incurred.</p> <p>11.2 Notwithstanding anything to the contrary contained in any agreement, in no event and for no reason whatsoever (including, without limitation, warranty or damages claims) shall Supplier be liable for any kind of offshore logistics costs (such as board and lodging offshore, transportation to, from and at the offshore site, heavy offshore lifting, works performed below the waterline, etc.) or any other costs incurred to provide access to, scaffolding for, repair, assembly or disassembly of the Product or other objects at the offshore site.</p>

<b>TIME FOR DELIVERY. DELAY</b>	
<i>Clause 14. Orgalim, add after last sentence:</i>	<p>14.1 The Supplier shall also be entitled to adjust the Contract Price to cover any additional costs incurred by Supplier, including any increase in the production costs of the Product.</p> <p>14.2 The Purchaser shall defend, indemnify and hold harmless the Supplier in respect of all claims arising out of or in connection with such delay.</p>
<i>Clause 19. Orgalim, add after last sentence:</i>	<p>19.1 Without prejudice to the above, in the event the Purchaser fails to accept delivery of the Product in accordance with the Contract, payment shall be due and payable as if delivery had been successfully completed. The Supplier furthermore reserves the right to transfer the Product to alternative storage facilities at the Purchaser's risk and cost. The Purchaser shall be fully liable for any transport and storage costs plus handling fees.</p>

<b>CHANGE ORDER / VARIATION</b>	
<i>After above clause 19.1 insert new section "CHANGE ORDER / VARIATION":</i>	<p>19.2 The Purchaser may request a change order or variation in the quality, quantity or characteristics of the Product and/or of the time schedule. A change order must be reasonable, i.e. it shall not exceed what could reasonably be expected at the time of order confirmation and/or be within the Supplier's reasonable production</p>

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	<p>and/or service capacity. The Supplier shall inform the Purchaser within a reasonable time of the effect on the Contract Price and/or the delivery schedule/delivery date.</p> <p>19.3 The Supplier shall not be under any obligation to implement a change prior to the written agreement of a change order between the parties. In the event of an agreed change order, the Purchaser shall pay any additional costs on request against presentation of the relevant invoice. Prices shall be based on the prices and labor costs at the time of execution of the change order.</p> <p>19.4 In the event of a decrease, reduction or suspension of the work or order, section ANTICIPATED NON-PERFORMANCE, clauses 49 to 49.4 shall apply.</p>
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<b>CONTRACT PRICE</b>	
<i>After above clause 19.4 insert new section "CONTRACT PRICE":</i>	<p>19.5 Prices and discount rates quoted by the Supplier shall only apply to the respective individual order. Unless expressly agreed otherwise in writing, the prices are net prices without VAT, excluding delivery, and without discount, in Euro. If the Purchaser has special requests regarding packaging, these shall be invoiced separately.</p>

<b>PAYMENT</b>	
<i>Clause 20. Orgalim, add after last sentence:</i>	<p>20.1 The Purchaser shall not be entitled to a right of retention of payment or set-off with counterclaims. Claims under warranty or guarantee shall not entitle the Purchaser to withhold any payments due.</p>
<i>Clause 22. Orgalim, add after last sentence:</i>	<p>22.1 In case of late payment, the Supplier shall also be entitled to</p> <ul style="list-style-type: none"> <li>a) demand immediate payment of all its claims by the Purchaser; and/or</li> <li>b) at the Supplier's request, require the Purchaser to provide an on-demand bank guarantee for the remaining instalments, issued by a bank acceptable to the Supplier; and/or</li> <li>c) if the parties have agreed on a warranty retention or a retention bond, the Supplier shall be entitled to withdraw from this agreement and recover such retention from the Purchaser; and the Purchaser shall cover the entire costs of collecting the claim, including any legal costs and compensation for loss and damages.</li> </ul>


<b>RETENTION OF TITLE</b>	
<i>Clause 23. Orgalim, add after last sentence:</i>	<p>23.1 In the event of late payment, the Product may be collected by the Supplier at any time. In this case, the Purchaser shall be obliged to reimburse the Supplier for all related transport costs, charges, taxes and customs duties.</p> <p>23.2 In the event of processing, transformation, or combination of the Product, the Supplier shall become a joint owner of the new item in proportion to the value of the Product supplied by the Supplier, which the Purchaser shall keep safe on behalf of the Supplier to this extent.</p>

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	<p>23.3 The resale of Product subject to retention of ownership shall only be permitted if the retention of ownership is maintained. In this event, the Purchaser shall assign all rights to which it is entitled from the sale (including without limitation purchase price claims, retentions of title, etc.) to the Supplier upon conclusion of the resale contract. At the Supplier's request, the Purchaser shall be obliged to hand over all documents about the resale and to settle all outstanding claims immediately.</p>
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<b>SERVICES</b>
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<p><i>After above clause 23.3 insert new section "SERVICES":</i></p>	<p>23.4 The Supplier's services include testing, commissioning, maintenance, repair, periodic inspection and rectification. These services are subject to a specific contract or specific contractual provisions in a purchase contract.</p> <p>23.5 Unless otherwise agreed in writing, services shall be invoiced in accordance with the Supplier's rates and conditions in force at the time the service is performed. The Purchaser shall be liable for any additional costs arising out of or in connection with any non-contractual and/or additional services, services performed outside normal working hours, waiting times, rescheduling or cancellation.</p> <p>23.6 When ordering a service, the Purchaser shall provide the Supplier with sufficient information and a detailed description of the service to be performed to enable the Supplier to dispatch the correct service personnel, determine the date and place of performance and, if necessary, order any special supplies or spare parts. Any additional costs, including labor costs, resulting from unclear or incomplete information or description shall be covered by the Purchaser.</p> <p>23.7 The Purchaser shall provide full access to the worksite, provide utilities and facilities (such as electricity, water, premises, machinery, tools, etc.) as well as technical assistance on site and translators at the place of performance of the service, unless the local population has a good knowledge of English or a Scandinavian language, for the performance of the service.</p> <p>23.8 The Purchaser shall actively cooperate in obtaining all necessary public permits from the immigration authorities or any other authority required for the performance of the services by the service personnel at the place of performance.</p> <p>23.9 The Purchaser shall be responsible for ensuring that working and living conditions of the service personnel are safe and secure and comply with all applicable health, safety and environmental (HSE) regulations.</p> <p>23.10 In the event of a breach of Supplier's service conditions, the Purchaser shall be liable for all costs and consequences of such breach. The Purchaser shall defend, indemnify and hold the Supplier fully harmless.</p> <p>23.11 The Purchaser may inspect the performance of the services and, if necessary, request a test and shall prepare a report to be signed by both parties before the service personnel leave the place</p>
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	<p>where the services have been performed. Unless expressly stated otherwise in such a report, the services shall be deemed to have been properly performed and the Purchaser shall have no claim.</p> <p>23.12 The Supplier shall only be liable if it is responsible for the service and the service is performed by the Supplier or by service personnel specifically appointed by the Supplier. The Supplier shall not be liable for any damage, injury or death arising out of or related to acts or omissions of any third party, including but not limited to lack of maintenance, improper installation and/or faulty repair.</p>
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<b>LIABILITY FOR DEFECTS</b>
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<i>Clause 24. Orgalim, add after last sentence:</i>	<p>24.1 The Purchaser shall be obliged to inspect the delivered Product immediately and completely. Any defects found shall immediately be notified by phone and by registered letter or email with acknowledgement of receipt. In the event of later defects, the Purchaser shall notify the Supplier in the same way after becoming aware of the defect. If the Purchaser fails to comply with this obligation or fails to comply with this obligation within the contractually agreed time period or to the full extent, any claim under warranty for defects shall be excluded.</p>
<i>Clause 31. Orgalim, add after last sentence:</i>	<p>31.1 Defective parts shall be stored at the Purchaser's premises for inspection by the Supplier at the Purchaser's expense. After a reasonable period of time, which shall not be less than thirty (30) days, the Purchaser may require the defective parts to be destroyed. However, the Purchaser shall not destroy such parts if the Supplier agrees to cover the storage costs at cost or to ship them at the Supplier's expense to the Supplier's place of business or any other place designated by Supplier. In the event of legal proceedings or the possibility of such proceedings, the defective parts shall be stored at the Purchaser's expense until such proceedings have been finally concluded.</p>
<i>Delete clause 33. Orgalim and replace with the following new clause:</i>	<p>33. Unless otherwise agreed, the place of performance of the warranty obligations shall be the Supplier's registered office. Any necessary transport of the Product or parts thereof to and from the Supplier in connection with the remedying of defects for which the Supplier is liable shall be at the risk and expense of the Purchaser. The Purchaser shall follow the Supplier's instructions regarding such transport.</p> <p>33.1 At the request of the Supplier, the Purchaser shall position and/or prepare the Product for repair under warranty by or on behalf of the Supplier, either itself or through a third party having control of the Product. In the event of delay and/or waiting time for the Supplier's personnel, the Purchaser shall cover all additional costs incurred as a result of the delay, including labor costs for waiting time.</p>
<i>Delete clause 36. Orgalim and replace with the following new clause:</i>	<p>36. Before making a warranty claim, the Purchaser shall duly verify whether the claim is covered by the Supplier's warranty.</p> <p>36.1 In the event of repair of the Product by the Supplier or by a third party on behalf of the Supplier in connection with an unjustified warranty claim by the Purchaser, the Purchaser shall bear all costs resulting out of or in connection with such warranty claim, including without limitation the travel and living expenses of the persons carrying out inspections, repair and/or replacement, as well as the labor costs for working and travelling time.</p>



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	<p>36.2 If the Purchaser requests a customer to address a warranty claim directly to the Supplier without properly examining whether the claim is covered by the Supplier's warranty, the Supplier shall be entitled to charge the Purchaser for the cost of the repair.</p> <p>36.3 If the Supplier realizes that the claim is unjustified because the defect in question is not covered by the warranty, the Supplier shall be entitled to demand an advance payment and the repair and/or replacement shall not be started before receipt of the advance payment, without any liability for the Supplier.</p> <p>36.4 Unless otherwise agreed in writing, in the event of repairs being carried out by the Purchaser or a third party not expressly authorized by the Supplier, the Supplier shall not assume any responsibility or liability for the repair, the consequences thereof or the payment thereof and any warranty or guarantee shall be null and void.</p> <p>36.5 The Purchaser shall defend, indemnify, and hold the Supplier harmless against all unjustified warranty claims.</p>
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<b>ALLOCATION OF LIABILITY FOR DAMAGE CAUSED BY THE PRODUCT</b>
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<p><i>Clause 45. Orgalim, add after last sentence:</i></p>	<p>45.1 Product liability claims for damage to Product used by companies for business purposes shall be fully excluded. The Product is purchased by the Purchaser within the scope of its business.</p> <p>45.2 The Supplier shall not be liable for any defect, damage, injury or death resulting from supply or performance in conformity with technical or other requirements from the Purchaser, its customer, any governmental authority, a supervisory institution or a classification institution.</p> <p>45.3 The Purchaser is obliged to inform the Supplier in due time of any technical specifications required by the Purchaser, the customer, a public authority, a supervisory institution, or a classification institution. In the event of a breach of this obligation, the Purchaser shall not be entitled to make any claim for non-conformity with such specifications and the Purchaser shall defend, indemnify, and hold the Supplier harmless.</p> <p>45.4 In the event of offshore activities under the Contract, each party shall be solely responsible for any loss of (including consequential losses) or damage to its own property and for personal injury to or death of its respective personnel arising out of or in connection with the performance or non-performance of the Contract and each party waives all rights of recourse against the other party and shall indemnify, defend and hold the other party harmless in respect of any such claim, damage, cost, loss, injury or death even if caused by the slight negligence of the other party or its personnel.</p>
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<b>LIMITATION OF LIABILITY</b>
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<p><i>After above clause 45.4, add after last sentence:</i></p>	<p>45.5 Notwithstanding anything to the contrary in the Contract, whether based on contract, tort, warranty, negligence, strict liability or otherwise, the Supplier's total cumulative liability shall be limited to a maximum amount equal to 100% of the Contract Price.</p>
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<b>FORCE MAJEURE</b>	
<i>Clause 48. Orgalim, add after last sentence:</i>	48.1 If the Supplier is unable to perform a Contract due to Force Majeure or if a Contract is terminated due to Force Majeure, the Purchaser shall pay the Supplier pro rata for the Product already performed by the Supplier, including purchases made by the Supplier and parts of the Product already manufactured in accordance with the production schedule and in stock, and, in the case of the provision of services, the costs of the service personnel.


<b>ANTICIPATED NON-PERFORMANCE</b>	
<i>Clause 49. Orgalim, add after last sentence:</i>	<p>49.1 The Purchaser shall have the right to suspend the whole or any part of the Product for its convenience by giving prior written notice to the Supplier. The notice shall specify which part of the Product shall be suspended, the effective date of the suspension and the expected date for resumption of the Product.</p> <p>49.2 In the event of a reduction or suspension of the work or order, the Supplier will immediately cease production of the part of the order which can be ceased, use his best endeavors to reduce his costs and inform the Purchaser of the new price without undue delay.</p> <p>49.3 The Purchaser shall pay all costs of the Supplier which cannot be reduced. The Purchaser shall pay for, including without limitation, all Products manufactured in stock and for services performed, for parts of partially manufactured Products and all components and materials ordered, as well as costs associated with the dismissal of personnel and/or termination of subcontracts and administrative costs required as a result of the reduction or suspension. The Purchaser shall compensate the Supplier for any additional costs necessarily and directly incurred by the Supplier as a result of such suspension.</p> <p>49.4 During suspension the Supplier shall, at the Purchaser's expense, properly protect and secure any materials or equipment used in the performance of the Product.</p>

<b>EXPORT CONTROL AND SANCTIONS</b>	
<i>After clause 50. Orgalim, insert new section "EXPORT CONTROL AND SANCTIONS":</i>	<p>50.1 The sale, supply, transfer, transit, import, export or re-export of Product may be subject in whole or in part to the applicable national or international export control and sanctions regulations. The Purchaser undertakes to comply with all export control and sanction regulations applicable to these actions.</p> <p>50.2 Due to applicable national or international export control or sanction regulations, the Supplier may be subject to an obligation to prohibit the Purchaser from re-exporting the Product supplied under or in connection with the Contract to certain countries or for use in such countries. The Purchaser undertakes not to re-export the Product to such countries. In particular, the Purchaser shall not sell, export or re-export, directly or indirectly, to the Russian Federation or for use in the Russian Federation any goods supplied under or in connection with a Contract that fall under the scope of Article 12g of Council Regulation (EU) No 833/2014.</p>

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	<p>50.3 The Purchaser shall undertake its best efforts to ensure that the purpose of paragraphs 50.1 and 50.2 is not frustrated by any third parties further down the commercial chain, including by possible resellers.</p> <p>50.4 The Purchaser shall establish and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers, that would frustrate the purpose of paragraphs 50.1 and 50.2.</p> <p>50.5 Any violation of paragraphs 50.1 to 50.4 shall constitute a material breach of an essential element of the Contract, and the Supplier shall be entitled to seek appropriate remedies, including, but not limited to:</p> <ul style="list-style-type: none"> <li>a) termination of the Contract; and</li> <li>b) a penalty of 150% of the total value of the Contract Price or price of the Product exported, whichever is higher.</li> </ul> <p>50.6 The Purchaser shall promptly notify the Supplier about any problems in applying paragraphs 50.1 to 50.4, including any relevant activities by third parties that could frustrate the purpose of paragraphs 50.1 or 50.2. The Purchaser shall make available to the Supplier information concerning compliance with the obligations under paragraphs 50.1 to 50.4 within two weeks of the simple request of such information.</p>
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<b>DISPUTES AND APPLICABLE LAW</b>	
<i>Delete clause 51. Orgalim and replace with the following new clause:</i>	<p>51. The 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 will be construed in accordance with the law of the place of business of the contracting Supplier company. Each party irrevocably submits to the exclusive jurisdiction of the courts at the seat of the contracting Supplier company to settle any dispute or claim that arises out of or in connection with this Contract, its subject matter or formation (including non-contractual disputes or claims).</p>
<i>Delete clause 52. Orgalim and replace with the following new clause:</i>	<p>52. In the event of a non-conformity claimed by the Purchaser, the parties shall agree to the appointment of an independent technical expert by DNV (<a href="http://www.dnv.com">www.dnv.com</a>) at the request of either party. The expert shall prepare a technical report in English on the alleged non-conformity, propose solutions and give an opinion. Unless otherwise agreed in writing, the expert shall not be a national of the countries of the parties and the opinion shall not be binding on the parties. If required, the Purchaser shall arrange for an inspection to be carried out by the expert. The failing party shall cover the expert's fees and costs. If the expert considers that both parties are responsible, the fee shall be shared equally between the parties.</p>
<i>After last sentence of above clause 52. add the following new clauses:</i>	<p>53. Any judgement shall be enforceable in any country, including any country in which the party concerned has assets. The parties undertake not to oppose the enforcement of any such settlement or decision. The court may reduce the court procedure costs to be reimbursed at its reasonable discretion if the successful party is unable to enforce all of its claims. The unsuccessful party shall bear all costs of enforcement and all legal costs incurred by the successful party.</p>

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	<p>54. If any provision should be or become invalid or unenforceable, the remaining provisions of the Contract shall remain unaffected. The invalid or unenforceable provisions shall be replaced by a provision which comes closest to the originally intended purpose.</p>
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<b>COMPLIANCE</b>	
<p><i>After last sentence of above clause 54. Insert new section "COMPLIANCE":</i></p>	<p>55. The Purchaser hereby confirms that he is aware of and will comply with the Palfinger Code of Conduct as published on <a href="http://www.palfinger.ag/en/code-of-conduct">www.palfinger.ag/en/code-of-conduct</a>.</p>

<b>TERMINATION FOR CONVENIENCE</b>	
<p><i>After above clause 55. Insert new clause "TERMINATION FOR CONVENIENCE":</i></p>	<p>56. The Purchaser may terminate the Contract for convenience, in whole or in part. On termination of the Contract, the Supplier shall be paid in full for the proportion of the Product completed in accordance with the Contract up to the date of termination, and shall be reimbursed for all work in progress and demobilization costs including overhead and profit.</p>

# GENERAL CONDITIONS FOR THE SUPPLY OF MECHANICAL, ELECTRICAL AND ELECTRONIC PRODUCTS

Brussels, October 2022

## PREAMBLE

1. These General Conditions shall apply when the parties agree thereto. Any modifications of or deviations from them must be agreed In Writing.

## DEFINITIONS

2. In these General Conditions the following terms shall have the meanings hereunder assigned to them:
  - « **Contract** » : the agreement In Writing between the parties concerning supply of the Product and all appendices, including agreed amendments and additions In Writing to the said documents;
  - « **Gross Negligence** » : a deliberate or reckless failure to take such care as is obviously required in the circumstances to avoid serious consequences for the other party;
  - « **In Writing** » : communication by document signed by both parties or by letter, electronic mail, fax and by such other means as are agreed by the parties;
  - « **the Product** » : the object(s) to be supplied under the Contract, including software and documentation;
  - « **Contract Price** » : the agreed price, which shall be either a fixed price or, in case the parties have specifically agreed on a price revision clause, the revised price.

## PRODUCT INFORMATION/INSTRUCTIONS

3. All information and data contained in general product documentation and price lists, regardless of form, shall be binding only to the extent that they are by reference In Writing expressly included in the Contract.
4. The Supplier shall, not later than at the date of delivery, provide free of charge information and drawings which are necessary to permit the Purchaser to install, commission, operate and maintain the Product. Such information and drawings shall be supplied as one paper copy of each and also electronically. The Supplier shall not be obliged to provide manufacturing drawings for the Product or for spare parts.

## INTELLECTUAL PROPERTY AND CONFIDENTIALITY

5. All intellectual property rights in the Product, including in any embedded software, and in any technical information relating to the Product, shall rest with the Supplier or, in the appropriate case, with a third party which has licensed the Supplier to sublicense these rights. Subject to any limitations that may have been agreed between the third party and the Supplier, the Purchaser shall acquire a non-exclusive, perpetual and transferable right to use these intellectual property rights, but limited to the extent required by the purpose of the Contract. The Supplier shall not be obliged to provide the Purchaser with the source code or with updates for any embedded software.

This clause shall also apply when the Product and/or software has been specifically developed for the Purchaser, unless otherwise agreed In Writing.

6. Technical, commercial and financial information and information, which has been declared as confidential or which must by its very nature be deemed to be confidential, disclosed In Writing or orally by one party to the other, shall be treated confidentially. The information shall therefore not without the consent of the disclosing party In Writing be used for any other purpose than that for which it was provided. It may not, without the consent of the disclosing party In Writing, be transmitted, communicated or otherwise disclosed to a third party.

## ACCEPTANCE TESTS

7. Acceptance tests provided for in the Contract shall, unless otherwise agreed, be carried out at the place of manufacture during normal working hours.

If the Contract does not specify the technical requirements, the tests shall be carried out in accordance with general practice in the appropriate branch of industry concerned in the country of manufacture.

8. The Supplier shall notify the Purchaser In Writing of the acceptance tests in sufficient time to permit the Purchaser to be represented at the tests. If the Purchaser is not represented, the test report shall be sent to the Purchaser and shall be accepted as accurate.
9. If the acceptance tests show the Product not to be in accordance with the Contract, the Supplier shall without

delay remedy any deficiencies in order to ensure that the Product complies with the Contract. New tests shall then be carried out at the Purchaser's request, unless the deficiency was insignificant.

10. The Supplier shall bear all costs for acceptance tests carried out at the place of manufacture. The Purchaser shall however bear all travelling and living expenses for his representatives in connection with such tests.

### **DELIVERY. PASSING OF RISK**

11. Any agreed trade term shall be construed in accordance with the INCOTERMS® in force at the formation of the Contract.

If no trade term has been specifically agreed, the delivery shall be Free Carrier (FCA) at the place of manufacture of the Product.

If, in the case of delivery Free Carrier, the Supplier, at the request of the Purchaser, undertakes to send the Product to its destination, the risk will nevertheless pass to the Purchaser as soon as the Product is handed over to the first carrier.

Partial delivery shall not be permitted, unless otherwise agreed In Writing.

### **TIME FOR DELIVERY. DELAY**

12. If the parties, instead of specifying the date for delivery, have specified a period of time within which delivery shall take place, such period shall start to run as soon as the Contract is entered into and all agreed preconditions to be met by the Purchaser have been fulfilled, such as official formalities, payments due at the formation of the Contract and securities.

13. If the Supplier anticipates that he will not be able to deliver the Product at the time for delivery, he shall forthwith notify the Purchaser thereof In Writing, stating the reason and, if possible, the time when delivery can be expected.

If the Supplier fails to give such notice, the Purchaser shall be entitled to compensation for any additional costs which he incurs and which he could have avoided had he received such notice.

14. If delay in delivery is caused by any of the circumstances mentioned in Clause 46, by an act or omission on the part of the Purchaser, including suspension under Clauses 22 and 49, or any other circumstances attributable to the Purchaser, the Supplier shall be entitled to extend the time for delivery by a period which is necessary having regard to all the circumstances of the case. This provision shall apply regardless of whether the reason for the delay occurs before or after the agreed time for delivery.

15. If the Product is not delivered at the time for delivery, the Purchaser shall be entitled to liquidated damages from the date on which delivery should have taken place.

The liquidated damages shall be payable at a rate of 0.5 per cent of the Contract Price for each commenced week of delay. The liquidated damages shall not exceed 7.5 per cent of the Contract Price.

If only part of the Product is delayed, the liquidated damages shall be calculated on that part of the Contract Price which is attributable to such part of the Product as cannot in consequence of the delay be used as intended by the parties.

The liquidated damages shall become due at the Purchaser's demand In Writing but not before delivery has been completed or the Contract is terminated under Clause 16.

The Purchaser shall forfeit his right to liquidated damages if he has not lodged a claim In Writing for such damages within six months after the time when delivery should have taken place.

16. If the delay in delivery is such that the Purchaser is entitled to maximum liquidated damages under Clause 15 and if the Product is still not delivered, the Purchaser may In Writing demand delivery within a final reasonable period which shall not be less than one week.

If the Supplier does not deliver within such final period and this is not due to any circumstances which are attributable to the Purchaser, then the Purchaser may by notice In Writing to the Supplier terminate the Contract in respect of such part of the Product as cannot in consequence of the Supplier's failure to deliver be used as intended by the parties.

If the Purchaser terminates the Contract he shall be entitled to compensation for the loss he suffers as a result of the Supplier's delay, including any consequential and indirect loss. The total compensation, including the liquidated damages which are payable under Clause 15, shall not exceed 15 per cent of that part of the Contract Price which is attributable to the part of the Product in respect of which the Contract is terminated.

The Purchaser shall also have the right to terminate the Contract by notice In Writing to the Supplier, if it is clear from the circumstances that there will occur a delay in delivery which, under Clause 15, would entitle the Purchaser to maximum liquidated damages. In case of termination for this reason, the Purchaser shall be entitled to maximum liquidated damages and compensation under the third paragraph of this clause.

17. Liquidated damages under Clause 15 and termination of the Contract with limited compensation under Clause 16 shall be the only remedies available to the Purchaser in case of delay on the part of the Supplier. All other claims against the Supplier based on such delay shall be excluded, except where the Supplier has been guilty of Gross Negligence.

18. If the Purchaser anticipates that he will be unable to accept delivery of the Product at the time for delivery, he shall forthwith notify the Supplier In Writing thereof, stating the reason and, if possible, the time when he will be able to accept delivery.

If the Purchaser fails to accept delivery at the time for delivery for a reason which is not attributable to the Supplier, he shall nevertheless pay any part of the Contract Price which becomes due at the time for delivery, as if delivery had taken place at the time for delivery. The Supplier shall arrange for storage of the Product at the risk and expense of the Purchaser. The Supplier shall also, if the Purchaser so requires, insure the Product at the Purchaser's expense.

19. Unless the Purchaser's failure to accept delivery is due to any of the circumstances mentioned in Clause 46, the Supplier may by notice In Writing require the Purchaser to accept delivery within a final reasonable period.

If, for a reason which is not attributable to the Supplier and not the result of any of the circumstances mentioned in Clause 46, the Purchaser fails to accept delivery within such period, the Supplier may by notice In Writing terminate the Contract in whole or in part. The Supplier shall then be entitled to compensation for the loss he suffers by reason of the Purchaser's default, including any consequential and indirect loss. The compensation shall not exceed that part of the Contract Price which is attributable to that part of the Product in respect of which the Contract is terminated.

## **PAYMENT**

20. Payment shall be made within thirty days after the date of invoice.

Unless otherwise agreed, the Contract Price shall be invoiced with one third at the formation of the Contract and the remaining part when the Product is delivered.

21. Whatever the means of payment used, payment shall not be deemed to have been effected before the Supplier's account has been irrevocably credited for the amount due.

22. If the Purchaser fails to pay by the stipulated date, the Supplier shall be entitled to interest from the day on which payment was due and to compensation for recovery costs. The rate of interest shall be as agreed between the parties

or otherwise 8 percentage points above the interest rate of the European Central Bank for the main refinancing operations (MRO). The compensation for recovery costs shall be 1 per cent of the amount for which interest for late payment becomes due.

In case of late payment or in case the Purchaser fails to give an agreed security by the stipulated date the Supplier may, after having notified the Purchaser In Writing, suspend his performance of the Contract until he receives payment or, where appropriate, until the Purchaser gives the agreed security.

If the Purchaser has not paid the amount due within three months the Supplier shall be entitled to terminate the Contract by notice In Writing to the Purchaser and, in addition to the interest and compensation for recovery costs according to this clause, to claim compensation for the costs and loss he incurs, including indirect and consequential loss.

## **RETENTION OF TITLE**

23. The Product shall remain the property of the Supplier until paid for in full to the extent that such retention of title is valid under the relevant law.

The Purchaser shall at the request of the Supplier assist him in taking any measures necessary to protect the Supplier's title to the Product.

The retention of title shall not affect the passing of risk under Clause 11.

## **LIABILITY FOR DEFECTS**

24. The Product shall be in conformity with the Contract. Pursuant to the provisions of this clause and Clauses 25-44, the Supplier shall remedy any defect in or nonconformity of the Product (hereinafter termed defect) resulting from faulty design, materials or workmanship.

25. The Supplier shall not be liable for defects arising out of a design, materials or production methods provided, stipulated or specified by the Purchaser.

26. The Supplier shall only be liable for defects which appear under the conditions of operation provided for in the Contract and under proper use of the Product.

27. The Supplier shall not be liable for defects caused by circumstances which arise after the risk has passed to the Purchaser, e.g. defects due to faulty or incorrect installation, maintenance or repair, or to any alteration, carried out by the Purchaser or by a third party on behalf of the Purchaser. The Supplier shall neither be liable for normal wear and tear nor for deterioration.

28. The Supplier's liability shall be limited to defects which appear within a period of one year from delivery. If the use of the Product exceeds that which is agreed, this period shall be reduced proportionately.

29. When a defect in a part of the Product has been remedied, the Supplier shall be liable for defects in the repaired part or in the part in replacement under the same terms and conditions as those applicable to the original Product for a period of one year. For the remaining parts of the Product, the period mentioned in Clause 28 shall be extended only by a period equal to the period during which and to the extent that the Product could not be used as a result of the defect.

The Supplier shall not be liable for defects in any part of the Product for more than one year from the end of the liability period referred to in Clause 28 or from the end of any other liability period agreed upon by the parties.

30. The Purchaser shall without undue delay notify the Supplier In Writing of any defect which appears. The notice shall contain a description of the defect. Such notice shall under no circumstances be given later than two weeks after the expiry of the period given in Clause 28 or the extended period(s) under Clause 29, where applicable.

If the Purchaser fails to notify the Supplier In Writing of a defect within the time limits set forth in the first paragraph of this clause, he shall lose his right to have the defect remedied and any other rights in respect of the defect.

Where the defect is such that it may cause damage, the Purchaser shall immediately notify the Supplier In Writing. The Purchaser shall bear the risk of damage to the Product resulting from his failure so to notify. The Purchaser shall take reasonable measures to minimise damage and shall in that respect comply with instructions of the Supplier.

31. On receipt of the notice under Clause 30, the Supplier shall at his own cost remedy the defect without undue delay, as stipulated in Clauses 24-44. The time for remedial work shall be chosen in order not to interfere unnecessarily with the Purchaser's activities.

Remedial work shall be carried out at the place where the Product is located unless the Supplier deems it more appropriate that the Product is sent to him or a destination specified by him.

If the defect can be remedied by replacement or repair of a defective part and if dismantling and re-installation of the part do not require special knowledge, the Supplier may demand that the defective part is sent to him or a destination specified by him. In such case the Supplier shall have fulfilled his obligations in respect of the defect when

he delivers a duly repaired part or a part in replacement to the Purchaser.

32. The Purchaser shall at his own expense provide access to the Product and arrange for any intervention in equipment other than the Product, to the extent that this is necessary to remedy the defect.

33. Unless otherwise agreed, necessary transport of the Product or parts thereof to and from the Supplier in connection with the remedying of defects for which the Supplier is liable shall be at the risk and expense of the Supplier. The Purchaser shall follow the Supplier's instructions regarding such transport.

34. Unless otherwise agreed, the Purchaser shall bear any additional costs which the Supplier incurs for remedying the defect caused by the Product being located in a place other than the place specified in the Contract for putting the Product into service, or if not specified, the place of delivery.

35. Defective parts which have been replaced shall be made available to the Supplier and shall be his property.

36. If the Purchaser has given such notice as mentioned in Clause 30 and no defect is found for which the Supplier is liable, the Supplier shall be entitled to compensation for the costs he incurs as a result of the notice.

37. If the Supplier does not fulfil his obligations under Clause 31 or 43, the Purchaser may by notice In Writing fix a final reasonable period for completion of the Supplier's obligations, which shall not be less than one week.

If the Supplier fails to fulfil his obligations within such final period, the Purchaser may himself undertake or employ a third party to undertake necessary remedial work at the risk and expense of the Supplier, provided the Purchaser or third party does so in a professional manner.

Where successful remedial work has been undertaken by the Purchaser or a third party, reimbursement by the Supplier of reasonable costs incurred by the Purchaser shall be in full settlement of the Supplier's liabilities for the said defect.

38. Where the defect has not been successfully remedied, as stipulated under Clause 37,

a) the Purchaser shall be entitled to a reduction of the Contract Price in proportion to the reduced value of the Product, provided that under no circumstances shall such reduction exceed 15 per cent of the Contract Price, or



- b) where the defect is so substantial as to significantly deprive the Purchaser of the benefit of the Contract as regards the Product or a substantial part of it, the Purchaser may terminate the Contract by notice In Writing to the Supplier in respect of such part of the Product as cannot in consequence of the defect be used as intended by the parties. The Purchaser shall then be entitled to compensation for any loss, including any consequential and indirect loss, up to a maximum of 15 per cent of that part of the Contract Price which is attributable to the part of the Product in respect of which the Contract is terminated.
39. Save as stipulated in Clauses 24-38, the Supplier shall not be liable for defects. In consequence, the Supplier shall not be liable for any other loss the defect may cause, including loss of production, loss of profit and other indirect loss. This limitation of the Supplier's liability shall not apply if he has been guilty of Gross Negligence.

#### **LIABILITY FOR INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS**

40. Unless otherwise agreed, the Supplier shall, in accordance with this clause and Clauses 41 - 44 be liable towards the Purchaser for the Product infringing patents, copyrights or any other intellectual property rights of a third party in the Purchaser's country. The Supplier shall in such case indemnify the Purchaser and hold the Purchaser harmless against claims of third parties, provided that such claims are confirmed as valid by a final award or a settlement approved by the Supplier. The Supplier shall however not be liable for the Purchaser's loss of production, loss of profit, loss of use and loss of contracts, unless the Supplier has been guilty of Gross Negligence.
41. The Supplier shall have no liability for infringement of intellectual property rights arising out of:
- the Product being used elsewhere than in the Purchaser's country;
  - the Product being used otherwise than agreed or in a way the Supplier could not have foreseen;
  - the Product being used together with equipment or software not supplied by the Supplier, or
  - a design or construction stipulated or specified by the Purchaser.
42. The Supplier shall only be liable if the Purchaser notifies the Supplier In Writing without delay of any claim as referred to in Clause 40 which he receives and allows the Supplier to decide how the claim shall be dealt with.

Defence against claims referred to in Clause 40 shall be for the Supplier's account. The Supplier shall compensate the Purchaser for any amounts the latter is obliged to pay under a final award or a settlement approved by the Supplier.

43. Infringement of intellectual property rights shall, at the Supplier's discretion, be remedied by:
- providing the right for the Purchaser to use the Product,
  - adjusting the Product so that the infringement ceases, or
  - by replacing the Product with another product, which can be used without infringing applicable intellectual property rights.
44. If the Supplier fails to remedy the infringement in accordance with Clause 43 without undue delay, Clauses 37, 38 and 39 shall apply.

#### **ALLOCATION OF LIABILITY FOR DAMAGE CAUSED BY THE PRODUCT**

45. The Supplier shall not be liable for any damage to property caused by the Product after it has been delivered and whilst it is in the possession of the Purchaser. Nor shall the Supplier be liable for any damage to products manufactured by the Purchaser or to products of which the Purchaser's products form a part.

If the Supplier incurs liability towards any third party for such damage to property as described in the preceding paragraph, the Purchaser shall indemnify, defend and hold the Supplier harmless.

If a claim for damage as described in this clause is lodged by a third party against one of the parties, the latter party shall forthwith inform the other party thereof In Writing.

The Supplier and the Purchaser shall be mutually obliged to let themselves be summoned to the court or arbitral tribunal examining claims for damages lodged against one of them on the basis of damage allegedly caused by the Product. The liability between the Supplier and the Purchaser shall however be settled in accordance with Clause 51.

The limitation of the Supplier's liability in the first paragraph of this clause shall not apply where the Supplier has been guilty of Gross Negligence.

## **FORCE MAJEURE**

46. Either party shall be entitled to suspend performance of his obligations under the Contract to the extent that such performance is impeded or made unreasonably onerous by force majeure, meaning any of the following circumstances: industrial disputes and any circumstance beyond the control of the parties such as fire, war, extensive military mobilization, insurrection, requisition, seizure, embargo, restrictions in the use of power, currency and import or export restrictions, epidemics, natural disasters, extreme natural events, terrorist acts and defects or delays in deliveries by sub-contractors caused by any such circumstance referred to in this clause.

A circumstance referred to in this clause whether occurring prior to or after the formation of the Contract shall give a right to suspension only if its effect on the performance of the Contract could not be foreseen at the time of the formation of the Contract.

47. The party claiming to be affected by force majeure shall notify the other party In Writing without delay on the intervention and on the cessation of such circumstance. If a party fails to give such notice, the other party shall be entitled to compensation for any additional costs which he incurs and which he could have avoided had he received such notice.

If force majeure prevents the Purchaser from fulfilling his obligations, he shall compensate the Supplier for costs which the Supplier incurs in storing, securing and protecting the Product and avoiding unreasonable interference with his other activities.

48. Regardless of what might otherwise follow from these General Conditions, either party shall be entitled to terminate the Contract by notice In Writing to the other party if performance of the Contract is suspended under Clause 46 for more than six months.

## **ANTICIPATED NON-PERFORMANCE**

49. Each party shall be entitled to suspend the performance of his obligations under the Contract, where it is clear from the circumstances that the other party is not going to perform his obligations. A party suspending his performance of the Contract shall forthwith notify the other party thereof In Writing.

## **CONSEQUENTIAL LOSSES**

50. Save as otherwise stated in these General Conditions or in case of Gross Negligence there shall be no liability for either party towards the other party for loss of production, loss of profit, loss of use, loss of contracts and for any other consequential or indirect loss whatsoever, whether the loss was foreseeable or not.

## **DISPUTES AND APPLICABLE LAW**

51. All disputes arising out of or in connection with the Contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.
52. The Contract shall be governed by the substantive law of the Supplier's country.