

### 1. DEFINITIONS

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In these Terms and Conditions:

**"Agreement"** means any written agreement between the Parties with regard to the Products and/or Services which attaches, refers to or otherwise incorporates these Conditions;

**"Conditions"** means these Wärtsilä Voyage General Terms and Conditions of Sale;

**"Contract"** means the contract between the Parties for the supply of Products and/or Services including these Conditions, together with any Quotation, accepted Order and/or any Agreement, as well as any attachments and exhibits, Specification, additional terms, drawings, instructions, policies and other information, physically attached or incorporated by reference thereto;

**"Customer"** means the contracting party which agrees to purchase Products and/or Services from Supplier under the Contract;

**"IPR"** means patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, semi-conductor topography rights, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

**"Order"** means a written order placed by Customer with Supplier for Products and/or Services;

**"Parties"** means Supplier and Customer, and **"Party"** means either one of them as applicable;

**"Products"** means any software and/or hardware and any other goods or equipment, as well as any documentation accompanying them, to be supplied by Supplier under the Contract;

**"Quotation"** means a written quotation provided by Supplier to Customer for the supply of Products and/or Services;

**"Services"** means any services to be rendered by Supplier under the Contract, such as training, project management and installation, support, repairs and maintenance of Products;

**"Software"** means any software programmes which form part of the Products;

**"Specification"** means any Supplier specification for the Products and/or Services;

**"Supplier"** means Wärtsilä Voyage Limited (a company registered in Ireland with company number 360963 whose registered office is at 13-18 City Quay, Dublin 2, D02 ED70, Ireland) or such other Supplier's Affiliate which is party to the Contract;

**"Supplier's Affiliate"** any other company within the Wärtsilä group of companies which is a subsidiary or holding company from time to time of Wärtsilä Voyage Limited, and any subsidiary from time to time of a holding company of Wärtsilä Voyage Limited.

### 2. BASIS OF CONTRACT, ORDERS & PRECEDENCE OF THESE CONDITIONS

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- (a) These Conditions apply to any provision of Products and/or Services by Supplier to the exclusion of all other terms and conditions which Customer may seek to impose or incorporate in any order or similar document or by trade, custom, practice or course of dealing.
- (b) All Quotations shall be subject to these Conditions and unless otherwise stated or unless withdrawn by Supplier shall be valid for a period of sixty (60) days from the date of the Quotation. The Quotation is not an offer to proceed, and Customer is required to place a written Order with Supplier using the same reference as on the Quotation.
- (c) Any Order constitutes an offer by Customer to purchase Products and/or Services in accordance with these Conditions. Order shall only be deemed to be accepted when Supplier issues a written acceptance of the Order, or starts to fulfil it, at which point the Contract shall come into existence. Once accepted by Supplier no Order can be amended or cancelled except with Supplier prior written approval and upon such terms as Supplier may require.
- (d) If there is a conflict between these Conditions and the terms set out in an Agreement and/or an Order and/or a Quotation, the order of priority shall be, as applicable, the terms set out: (i) Agreement; (ii) Quotation (iii) any other documents forming part of the Contract (other than these Conditions and an Order); (iv) Conditions, and (v) Order (if accepted by Supplier).

### 3. PRODUCTS SPECIFICATION

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- (a) Supplier will supply the Products as set out in the Contract and generally in accordance with the Specification. Supplier reserves the right to amend the Specification and/or Products without liability to Customer if required by any applicable statutory or regulatory requirements. In addition, Supplier's policy is one of continuous development and consequently the Specification may be amended and/or Products may differ from the Specification from time to time and Supplier will not accept liability in such cases except where any variation from the Specification is materially adverse to Customer. Supplier shall provide prompt notice to customer of any changes referred to in this clause 3(a).
- (b) Descriptions and illustrations contained in Supplier catalogues shall not form part of the Contract.
- (c) All specifications, drawings, technical descriptions and other documents submitted by Supplier with or in connection with any Quotation or Contract are proprietary intellectual property of Supplier and its suppliers

### 4. PRODUCT & SYSTEM TESTING

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- (a) If included in the Contract, Supplier will carry out a factory acceptance test (FAT) at Supplier's premises before delivery of the Products. The purpose of the FAT is to verify that the Products are capable of complying with the Specification or other criteria agreed in the

Contract once properly installed. The FAT shall be carried out as follows:

- (i) Supplier shall give Customer written notice of the time and place of the FAT no later than 2 weeks prior to the scheduled FAT date. If Customer decides to attend the FAT, Customer shall notify Supplier in writing of the number, names and positions of representatives attending together with any information reasonably required by Supplier. Such notification shall be given no later than 7 days prior to the scheduled FAT date. Travel and accommodation costs and other expenses shall be the responsibility of Customer. Any failure by Customer to attend a scheduled FAT shall not prevent Supplier from performing the FAT as planned.
  - (ii) After FAT, a FAT report shall be prepared by Supplier and issued to Customer summarising the results of the test.
  - (iii) If the Products do not pass the FAT, Supplier shall take the necessary steps to rectify the failure without undue delay. When the failure has been rectified, the FAT, or such part of it as applicable, shall be repeated.
  - (iv) Upon completion of a successful FAT, Supplier shall issue a FAT certificate.
- (b) If included in the Contract, a site acceptance test (SAT) of the Products shall be conducted at a location specified in the Contract. The purpose of the SAT is to verify the successful installation of the Products onsite. For the avoidance of doubt, SAT does not provide verification that the physical surroundings at the site represent a suitable or compliant location or environment for operational use of the Products. When installation of the Products is completed, SAT shall be carried out as follows:
- (i) Unless otherwise specified in the Contract, Supplier and Customer shall as soon as possible agree upon the date of the SAT which shall be within 7 days of completion of installation.
  - (ii) After SAT, a SAT report shall be prepared by Supplier and issued to Customer summarising the results of the test.
  - (iii) If the Products do not pass the SAT, Supplier shall take the necessary steps to rectify the failure without undue delay. When the failure has been rectified, the SAT, or such part of it as applicable, shall be repeated.
  - (iv) Upon completion of a successful SAT, Supplier shall issue a SAT certificate.
  - (v) If Supplier personnel appear at the scheduled SAT date and the SAT cannot be carried out due to circumstances outside Supplier's control, Customer shall bear all reasonable costs incurred by Supplier in connection with the carrying out of a new SAT, including the costs of travel and accommodation.
  - (vi) Customer may not commence use of the Products until a successful SAT has been completed without Supplier's written permission. If Customer is permitted to use the Products before completion of SAT then, pending completion of SAT and final payment to Supplier ("License Conditions"), Customer shall have only a temporary license to use the Software and system. If satisfaction of the License Conditions is delayed by any matters outside the control of Supplier, Supplier may suspend the license rendering the Software and system inoperable in whole or part.
  - (vii) SAT shall be deemed completed on the earlier of:  
**(A)** the issue of a SAT certificate; **(B)** the use of the Products by Customer in the ordinary course of business.

## 5. DELIVERY AND RISK

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- (a) Supplier will deliver the Products and/or Services in accordance with the delivery dates specified in the Contract. The delivery terms for the Products shall be EXW (Incoterms 2010) Supplier's warehouse or as otherwise specified in the Contract. Risk in the Products shall pass to Customer upon delivery.
- (b) All dates and times specified to Customer for delivery and installation of the Products or the provision of Services are estimates only and the time of delivery is not of the essence. Supplier shall not have any liability for delay or for any damages or losses sustained by Customer as a result of such dates or times not being met. Customer shall not be entitled to refuse acceptance of the Products or Services as a consequence of such delay.
- (c) Supplier reserves the right to make deliveries in instalments. Delay or other default in relation to a particular instalment shall not entitle Customer to cancel any other instalment nor to relieve Customer of its obligations to accept delivery and pay for other instalments.
- (d) Supplier may in its absolute discretion withhold delivery of the Products and/or supply of the Services pending payment of any sum due from Customer to Supplier.
- (e) Customer shall inspect the Products immediately upon delivery or collection, and Customer shall notify Supplier in writing of any matter or thing by reason of which Customer states that the Products are not in accordance with the contract. If Customer fails to give such notice within ten (10) days, it shall be conclusively presumed that Customer has accepted the Products and that the Products are in accordance with the contract, and Customer shall have no right to reject the Products.
- (f) Customer must make all claims for shipment shortages to Supplier in writing within ten (10) days of the date of delivery.
- (g) If Customer does not accept delivery of a consignment of Products in accordance with the Contract:
  - (i) Supplier shall be entitled to claim payment in accordance with clause 11 for the Products refused; and
  - (ii) the Products refused shall be in all respects at Customer's risk; and
  - (iii) the cost of storing the Products shall be borne by Customer.If the failure to accept delivery continues for more than ten (10) days Supplier shall have the right to terminate the Contract pursuant to clause 19(a)(i) and take possession of and resell or otherwise dispose of the Products.

## 6. TITLE

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- (a) Subject to the provisions of clause 13 regarding Software Supplier shall retain the legal and beneficial interest in the Products until Supplier shall have received all sums due to it from Customer for such Products.
- (b) Until such time as title passes:
  - (i) Customer shall store the Products in a satisfactory condition and in a manner which makes them readily identifiable as the property of Supplier and keep the Products insured against all risks for their full price; and
  - (ii) the relationship of Customer to Supplier shall be fiduciary in respect of the Products and accordingly Supplier shall have the right to trace any proceeds of sale.
- (c) If any event occurs under clause 19 below which would entitle Supplier to terminate the Contract:

- (i) Customer shall immediately notify Supplier of such event; and
  - (ii) notwithstanding any failure to so notify, all sums due to Supplier shall become immediately payable; and
  - (iii) Supplier by its servants or agents may for the purposes of recovery of all or any of the Products enter upon any premises or vessel where they are reasonably thought to be stored and may repossess the same.
- (d) Customer is licensed by Supplier to mix the Products with goods not supplied by Supplier subject to the following express conditions, which shall apply unless and until all sums due to Supplier have been paid:
- (i) if the Products are incorporated in or fixed or attached to or used as material for goods owned by Customer to form new goods, such goods shall be deemed to be the sole and exclusive property of Supplier; or
  - (ii) if the Products are incorporated in or used as material for goods owned by a third party to form new goods such goods shall become or shall be deemed to be owned in common with that third party in proportion the value of the Products to the other goods at the date of such incorporation or use.

Supplier's rights hereunder shall extend to these new goods whether under subclauses (d)(i) or (d)(ii) above and in particular Customer shall hold any proceeds of sale of such new goods on trust for Supplier.

## 7. SHIPPING AND INSURANCE

All costs of shipping and insurance shall be borne by Customer. Supplier shall have no liability for lost or damaged Products that are shipped in accordance with Customer's instructions.

## 8. CONSENTS/EXPORTING

Where agreed in the Contract, Supplier shall endeavour to obtain an export licence and all other necessary consents to enable the Products to be exported. Customer shall comply with all applicable laws and regulations applicable to the export, import and use of Products or technical information supplied by Supplier and agrees to co-operate with Supplier in such matters, including by promptly obtaining or providing any necessary documentation. If Customer or its agent does not furnish the necessary instructions and/or documents, Supplier will make declarations according to its best judgement but will in no case be responsible for any fines or other charges due to errors or incorrect declarations, which shall be the sole responsibility and legal and financial liability of Customer. In the event that Supplier is unable to obtain an export licence or visas or consents for personnel required to provide Services in Customer's location, Supplier shall not be held liable for any damages that Customer may suffer.

## 9. SERVICES

- (a) Supplier shall provide the Services to Customer in accordance with the Specification in all material respects and using reasonable care and skill.
- (b) Supplier shall use all reasonable endeavours to meet any specified performance dates for the Services but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- (c) Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and Supplier shall notify Customer in any such event.

## 10. CUSTOMER ACKNOWLEDGEMENTS & OBLIGATIONS

Customer acknowledges and agrees that:

- (a) it is responsible for the operation of the Products and/or Services and should ensure that they are used safely and that it should use, maintain, store and keep the Products in accordance with any instructions, user handbook or other form of guidance relating to them;
- (b) it would be prudent for Customer to insure against all loss or damage Customer may suffer as a result of Supplier's acts or omissions whether negligent or not;
- (c) Customer shall co-operate with Supplier and at its own cost and risk provide such supplies, services, delivery and other relevant instructions, documentation, information, access to its premises or vessel, facilities, permits, licenses, transportation to and from offshore installations and such other things which is required or necessary in due time and otherwise within reasonable time so as not to delay Supplier's performance of its obligations including any Services;
- (d) Customer shall be solely responsible and bear all risk in connection with the accuracy and completeness of all supplies, services, instructions, documentation, information and other work provided by it or its personnel or subcontractors, and Supplier is not responsible to control or correct such work, nor for any consequences that may occur as a result of default or errors therein;
- (e) **Customer acknowledges that (i) Supplier's Products and Services related to the operation and monitoring of vessels (including but not limited to solutions relating to onboard navigation and remote ship traffic control) are provided only as an aid to decision making, and (ii) the safe voyage planning, navigation, manoeuvring, operation and monitoring of and instructions and advice given to vessels are dependent on human skill and judgement and are the responsibility of the relevant appropriately qualified personnel responsible for such tasks in accordance with all applicable laws, regulations and best practices. Accordingly, Supplier will not be liable for any accident, damage or delay caused by or to any vessel owned or operated by Customer or any other person whether or not the accident or damage is related to the operation or failure of the Products or Services;**
- (f) If Supplier's performance of any of its obligations in respect of the Contract is prevented or delayed by any act or omission by Customer or failure by Customer to perform any of its obligations under the Contract (**Customer Default**):
  - (i) Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Contract until Customer remedies Customer Default, and shall be relieved from the performance of any of its obligations to the extent Customer Default prevents or delays Supplier's performance of any of its obligations under the Contract (including any Services);
  - (ii) Supplier shall not be liable for any costs or losses sustained or incurred by Customer arising directly or indirectly from Supplier's failure or delay to perform any of its obligations; and
  - (iii) Customer shall compensate Supplier for **(A)** costs and extra work, **(B)** additional costs for storage, **(C)** additional costs for travel, board and lodging for Supplier's personnel, **(D)** additional financing costs and costs of insurance, and **(E)** other documented costs, incurred by Supplier as a result of Customer Default.
- (g) Except to the otherwise expressly agreed in the Contract, Customer shall be fully responsible for and

acknowledges that Supplier shall not be responsible for (i) the integration of Supplier delivered systems with other information systems and (ii) protection against cyber security threats after delivery of such systems.

## 11. PRICE AND PAYMENT

- (a) The price applicable for the Products and/or Services shall be set out in the Quotation or Agreement or as otherwise agreed in writing in the Contract. Unless otherwise agreed in writing, prices will be in the currency specified by Supplier and will not include the costs and charges of packaging, insurance and transport of the Products, which shall be invoiced to Customer as an additional charge at cost price plus 5%, payable by Customer when it pays for the Products. Unless otherwise stated, all prices are quoted EXW (Incoterms 2010) Supplier's warehouse or as otherwise specified in the Contract and are net of all taxes.
- (b) Customer shall pay Supplier for Products and/or Services in accordance with prices and payment terms stated in any Agreement or Quotation or otherwise agreed in writing between the parties in the Contract. If such terms include any advance payments, Supplier shall not be obliged to commence delivery of Products and/or Services until the advance payment relating to such Products and/or Services has been paid. In the absence of any other payment terms agreed in the Contract, payment for Products and/or Services shall be made within thirty (30) days of the date of the relevant invoice issued by Supplier. Any sums not paid on the due date shall be subject to an interest charge at the rate of eight percent (8%) per annum compounded on all amounts overdue until payment thereof, such to run from day to day and to accrue after as well as before any judgment. Customer shall pay the interest together with the overdue amount.
- (c) If Customer requests any changes to the scope or Specification of the Products and/or Services, Supplier reserves the right to amend the charges and payment terms for the Products and/or Services and shall not be obliged to implement any such changes to the Products and/or Services until the changes and such amended charges and payment terms have been agreed in writing between the Parties.
- (d) Supplier reserves the right at any time prior to delivery to vary the price quoted for the Products and/or Services if following the date of the Quotation the cost of supplying the Products and/or Services is increased by any factor beyond the control of Supplier. If any such variation in the net price of the Products and/or Services results in an increase on such price of more than five per cent (5%) Customer may cancel the Order by so notifying Supplier in writing within seven (7) days of notice of such increase.
- (e) Unless otherwise stated all prices are quoted excluding taxes, levies, duties or similar governmental assessments of any nature including without limitation value added, sales, use or withholding taxes, assessable by any jurisdiction, which are payable by Customer.
- (f) Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. Supplier shall have the right at its sole discretion to reduce any outstanding Customer indebtedness which is due and payable to Supplier or any outstanding Supplier indebtedness which is due and payable to Customer by offsetting such indebtedness against any sums due and payable to Customer or to Supplier, as may be applicable.

## 12. LIMITED WARRANTY

- (a) Unless otherwise specified in the Contract and subject to clause 13 below, Supplier warrants that the Products will at the time of delivery conform in all material respects with their description and the Specification and be free from material defects in material and workmanship under normal use and service when installed under supervision of Supplier's certified service engineer within twelve (12) months after date of installation or eighteen (18) months after the date of delivery, whichever shall expire first.
- (b) If Supplier receives written notice of defects in workmanship or materials or non-conformance with hardware Specifications, or substantial non-conformance with branded software Specifications during the warranty period, and Supplier is given a reasonable opportunity of examining such Products, Supplier will, at its option, refund, repair or replace the affected Products.
- (c) Supplier shall not be liable for the Products' failure to comply with the warranty set out in clause 12(a) above in any of the following events:
  - (i) Customer makes any further use of such Products after giving notice to Supplier of any discovered defect;
  - (ii) the defect arises because Customer failed to follow Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Products or (if there are none) good trade practice regarding the same;
  - (iii) the defect arises as a result of Supplier following any drawing, design or specification supplied by Customer;
  - (iv) the defect arises as a result of any modification, alteration or repair of such Products, or integration or combination of such Products with other products, carried out without the written consent of Supplier and/or not carried out by certified Supplier personnel;
  - (v) the defect arises as a result of wear and tear, accidental or wilful damage, negligence, or abnormal storage or working conditions; or
  - (vi) the Products differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- (d) Except as provided in clause 12(b), Supplier shall have no further liability to Customer in respect of the Products' failure to comply with the warranty set out in clause 12(a).
- (e) The warranty provisions in this clause 12 shall apply to any repaired or replacement Products until the end of the original warranty term.

## 13. SOFTWARE TERMS

- (a) All use of the Software is subject to Customer's compliance with the terms and conditions of Supplier's End User License Agreement (the "EULA") (available at <https://www.wartsila.com/docs/default-source/marine-documents/transas/WVL-EULA.pdf> (or such other web page that may be used from time to time), or upon request, or provided by Supplier), which is incorporated herein by this reference and may be updated from time to time at Supplier's discretion. If there is any conflict between these Conditions and the EULA, these Conditions shall take precedence.
- (b) Supplier grants to Customer the non-exclusive, non-transferable, limited right (i) to operate the Software, in connection with the normal and proper use of the Products in accordance with the Specification and (ii) to make copies of the Software only where essential for the operation of the Products or for archival or back-up

purposes. Otherwise, Customer shall not copy, modify, disassemble, reverse-engineer or decompile the Software. Customer agrees that it shall not use or attempt to use the Software except as authorised in these Conditions or the Contract. The Software does not include updates or upgrades unless otherwise stated in writing by Supplier. Customer shall not have any title or ownership to the Software other than ownership of the physical media.

- (c) Supplier warrants that the Software shall not contain any material non-conformance with Supplier's Specification for such Software for a period of one (1) year after the date of invoice for the copy of such Software.

**EXCEPT FOR THE EXPRESS WARRANTIES STATED IN CLAUSES 12 AND 13 ABOVE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SUPPLIER HEREBY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED OR INCORPORATED INTO THE CONTRACT, WHETHER BY STATUTE, COMMON LAW OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED CONDITIONS, WARRANTIES OR OTHER TERMS AS TO SATISFACTORY QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, COMPLETENESS, OPERABILITY AND INTEROPERABILITY, AND NONINFRINGEMENT OF THIRD PARTY RIGHTS.**

#### **14. THIRD PARTY HARDWARE AND SOFTWARE**

- (a) Customer acknowledges that the Software may have been developed by third party software supplier(s) named in the copyright notice(s) included with the Software and agrees that such software suppliers are authorised to hold Customer responsible for any copyright infringement or breach of clause 13 of these Conditions.
- (b) Any hardware or software designed, manufactured or produced by third parties and not bearing Supplier's logo shall be subject to the warranty provided by such third parties that Supplier may elect to pass on to Customer, provided such pass through of warranty coverage is permissible under Supplier's agreement with its supplier.

#### **15. INTELLECTUAL PROPERTY**

- (a) Customer acknowledges that all IPR in the Products and Services belong to and shall remain vested in Supplier or its licensors. None of the provisions of the Contract shall be interpreted in any way to constitute a full or partial transfer or assignment of any IPR by Supplier to Customer.
- (b) Customer acknowledges that, in respect of any third party IPR in the Products and/or Services, Customer's use of any such IPR is conditional on Supplier obtaining a written licence from the relevant licensor on such terms as will entitle Supplier to license such rights to Customer.

#### **16. CONFIDENTIAL INFORMATION**

Customer shall at all times, both during the term of the Contract, and for a period of five (5) years after its termination, keep in strict confidence all of Supplier's technical or commercial information, software products, IPRs, know-how, specifications, drawings, inventions, processes or initiatives or any other information in any form which relates to Supplier's business and/or the terms of the Contract and has been disclosed to Customer by or on behalf of Supplier (**Confidential Information**) and Customer shall restrict disclosure of such Confidential

Information to such of its employees, agents or sub-contractors on a need to know basis for the purposes of discharging Customer's obligations to Supplier and shall ensure that such employees, agents or sub-contractors are subject to the same obligations of confidentiality as bind Customer. Customer shall obtain Supplier's written consent prior to any publication, presentation, public announcement, or press release concerning its relationship with Supplier. Customer will immediately give notice to Supplier of any unauthorised use or disclosure of the Confidential Information. Customer agrees to assist Supplier in remedying such unauthorised use or disclosure of the Confidential Information. This obligation will not apply to the extent that Customer can demonstrate (i) the disclosed information at the time of disclosure is part of the public domain and became part of the public domain, by publication or otherwise, except by breach of the provisions of the Contract; (ii) the disclosed information can be established by written evidence to have been in the possession of Customer at the time of disclosure; or (iii) the disclosed information is received from a third party without similar restrictions and without breach of the Contract.

#### **17. LIABILITY**

- (a) The warranties given in clauses 12 and 13 above are the only warranties given by Supplier and otherwise this clause 17 specifies the entire liability of Supplier including liability for negligence and in particular but without limitation all statutory or other express implied or collateral terms conditions or warranties are excluded to the fullest extent permitted by law. Supplier shall have no liability for any failure to deliver the Products to the extent that such failure is caused by events described in clause 18 hereof or by any Customer Default.
- (b) Nothing in these Conditions shall limit or exclude Supplier's liability for:
- (i) death or personal injury caused by its negligence, or by the negligence of its employees, agents or subcontractors;
  - (ii) fraud or fraudulent misrepresentation; or
  - (iii) any other liability which cannot legally be excluded.
- (c) Subject to clause 17(b), Supplier shall under no circumstances whatever be liable to Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise for:
- (i) any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;
  - (ii) any loss or corruption (whether direct or indirect) of data or information;
  - (iii) loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time);
  - (iv) business interruption or any loss or liability (whether direct or indirect) under or in relation to any other contract; or
  - (v) any indirect or consequential loss or liability whatsoever.
- (d) Subject to clause 17(b), Supplier's total liability to Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the amount paid to Supplier under the Contract for the immediately preceding twelve (12) month period.
- (e) Customer is required to notify Supplier of any claim as soon as reasonably possible and in any event within ten (10) days of Customer suffering any alleged loss or damage.



- (f) Customer shall indemnify Supplier and its officers, directors, employees, affiliates, successors and assigns against, and hold them harmless from, all liability with regard to Products and/or Services supplied to Customer under the Contract arising out of or in connection with (i) the use or misuse of the Products by the Customer, its employees, contractors and/or agents (ii) any negligence or willful acts or omissions of Customer, its employees, contractors and/or agents; (iii) any breach of this agreement by Customer, its employees, contractors and/or agents; (iv) any property damage, bodily injury, personal injury, advertising injury and wrongful death caused directly or indirectly by Customer, its employees, contractors and/or agents; and (v) any accident, damage or delay caused by or to any vessel owned or operated by Customer or any other person, property damage, bodily injury, personal injury or wrongful death caused directly or indirectly by Customer, its employees, contractors and/or agents.

## 18. FORCE MAJEURE

- (a) For the purposes of these Conditions, **Force Majeure Event** means an event beyond the reasonable control of Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, imposition of sanctions, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- (b) Supplier shall not be liable to Customer as a result of any delay or failure to perform its obligations under the Contract as a result of a Force Majeure Event.
- (c) If the Force Majeure Event prevents Supplier from providing any of the Products and/or Services for more than 6 months, either Party may terminate this Contract immediately by giving written notice to the other Party.

## 19. TERMINATION AND SUSPENSION

- (a) Without prejudice to any claim or right it might otherwise make or exercise, Supplier shall have the right forthwith to terminate the Contract with immediate effect by notice and to claim for any losses, costs or expenses thereby incurred if:
- (i) Customer commits a material breach of any term of the Contract (including a failure to pay any amount due under the Contract on the due date for payment) and (if such a breach is remediable) fails to remedy that breach within 30 days of Customer being notified in writing to do so;
- (ii) Customer makes or offers to make any arrangement or composition with creditors or suffers any act of insolvency, bankruptcy, or if any petition or receiving order in bankruptcy is presented or made against Customer, or if any resolution or petition to wind up Customer is passed or presented otherwise than for reconstruction or amalgamation or if a receiver of Customer's property or assets or any part thereof is appointed (or, if any step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction) or if a third party seizes or threatens to seize the Products before legal ownership has passed to Customer in accordance with clause 6 above.

- (iii) Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- (iv) Customer's financial position deteriorates to such an extent that in Supplier's opinion Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- (b) Without limiting its other rights or remedies, Supplier may suspend provision of the Products and/or Services under the Contract (including suspending any Software license and rendering the Products inoperable in whole or part) if Customer becomes subject to any of the events listed in clause 19 (a)(i) to (a)(iv) above, or Supplier reasonably believes that Customer is about to become subject to any of them, or if Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment.
- (c) On termination of the Contract for any reason Customer shall immediately pay to Supplier all of Supplier's outstanding unpaid invoices and interest.
- (d) Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim monies due or damages in respect of any breach of this Contract that existed at or before the date of termination.

## 20. DATA PROTECTION

- (a) In this clause 20, the following definitions shall apply:
- Agreed Purposes:** the performance of the Contract by each Party.
- Controller, data controller, processor, data processor, data subject, personal data, processing and appropriate technical and organisational measures:** as set out in the Data Protection Legislation in force at the time.
- Data Protection Legislation:** (i) unless and until the General Data Protection Regulation ((EU) 2016/679) ("GDPR") is no longer directly applicable, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, and then (ii) any successor legislation to the GDPR.
- Permitted Recipients:** the Parties, the staff of each Party and any third parties which perform obligations in connection with the Contract.
- Shared Personal Data:** the personal data to be shared between the Parties under clause 20(b). Shared Personal Data shall be confined to the following categories of information relevant to the following categories of data subject:
- (i) **Categories of personal data:** Name, Work Address, Work or Personal Email Address and telephone number (including mobile telephone number);
- (ii) **Categories of data subject:** the staff of Supplier, Customer and any other party which performs obligations in connection with the Contract.
- (b) **Shared Personal Data.** This clause sets out the framework for the sharing of personal data between the Parties as data controllers. Each Party acknowledges that one Party (the Data Discloser) will regularly disclose to the other Party (the Data Recipient) Shared Personal Data collected by the Data Discloser for the Agreed Purposes.
- (c) **Effect of non-compliance with Data Protection Legislation.** Each Party shall comply with all the obligations imposed on a controller under the Data Protection Legislation, and any material breach of the Data Protection Legislation by one Party shall, if not remedied within 30 days of written notice from the other party, give grounds to the other Party to terminate this agreement with immediate effect.

**(d) Particular obligations relating to data sharing.** Each Party shall:

(i) ensure that it has all necessary notices and consents in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes;

(ii) process the Shared Personal Data only for the Agreed Purposes;

(iii) not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;

(iv) ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this agreement;

(v) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

(vi) not transfer any personal data received from the Data Discloser outside the EEA unless the transferor:

(1) complies with the provisions of Articles 26 of the GDPR (in the event the third party is a joint controller); and

(2) ensures that (A) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 GDPR; (B) there are appropriate safeguards in place pursuant to Article 46 GDPR; or (C) one of the derogations for specific situations in Article 49 GDPR applies to the transfer.

**(e) Mutual assistance.** Each Party shall assist the other in complying with all applicable requirements of the Data Protection Legislation.

**(f) Supplier Privacy Notice.** Full details of Supplier's personal data processing activities are set out in the Supplier Privacy Notice which is available at: [www.transas.com](http://www.transas.com). Customer shall provide details of or access to the Supplier Privacy Notice to any data subject whose details are shared with Supplier by Customer and/or who works on behalf of Customer in connection with the Contract.

## 21. GENERAL

**(a) Governing Law and Disputes.**

(i) These Conditions and the Contract shall be governed by and construed in accordance with the law of England.

(ii) Any dispute arising out of or in connection with these Conditions and the Contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the London Court of International Arbitration Rules, which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be one. The seat, or legal place, of arbitration shall be London. English law and the Arbitration Act 1996 (or any replacement Act) shall apply. The language to be used in the arbitral proceedings shall be English. A request by a party to a court of competent jurisdiction for interim measures necessary to preserve that party's rights, including pre-arbitration attachments or injunctions, shall not be deemed incompatible with, or a waiver of, this agreement to arbitrate. The arbitration award shall be final and binding upon the Parties.

**(b) Relationship of the Parties.** The Parties are independent contractors. There is no relationship of agency, partnership, joint venture, employment, or franchise between the Parties in any way. Neither Party nor its employees has the authority to bind or commit the other Party in any way or to incur any obligation on its behalf.

**(c) Assignment and subcontracting.** Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract provided that if Supplier subcontracts its obligations it shall remain liable for them. Customer may not assign, transfer, charge, subcontract or deal in any other manner with any or all of Customer's rights or obligations under the Contract without Supplier's prior written consent.

**(d) Notices.** Any notice or other communication given to a Party under or in connection with the Contract shall be in writing, addressed to that Party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that Party may have specified to the other Party in writing, and shall be delivered personally, or sent by pre-paid first class post, recorded delivery or commercial courier. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

**(e) Severance.** If any court or competent authority finds that any provision of these Conditions (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of these Conditions shall not be affected. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

**(f) Waiver.** A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a Party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

**(g) Third Parties.** Except as expressly provided, a person who is not a party to it has no rights to enforce any term of the Contract.

**(h) Survival of Terms.** The provisions of the Contract which expressly or by implication survive expiration or termination thereof shall continue in full force and effect until all obligations are satisfied.

**(i) Entire Agreement.** The Contract constitutes the entire agreement between the Parties. These Conditions supersede all previous conditions, understandings, commitments, agreements or representations whatsoever whether oral or written relating to the subject matter hereof.

**(j) Consumer.** Where Products are sold under a consumer transaction the statutory rights of the consumer are not affected by these Conditions.

**(k) Variation.** No modification of these Conditions or any other provision of the Contract (including but not limited to the scope of the Products and/or Services) shall be effective unless made by an express written agreement between the Parties.

**(l) Language.** The language of these Conditions is English. Any translation of these Conditions into any other language shall be for convenience only and shall have no legal effect, and the English language text shall in any event prevail.

**(m) Anti-Bribery.** Each Party represents and confirms that it is aware of, understands, and will comply with all

applicable country laws and regulations relating to anti-corruption and anti-bribery. In addition, each Party agrees that so long as it is conducting business with the other Party or the other Party's affiliates, it will not, directly or indirectly, on behalf of the other Party or the other Party's affiliates promise, offer, solicit, authorize, give or receive a bribe, or other corrupt payment, item or service of value, or any other corrupt advantage, whether in cash or in kind, in relation to the performance of the Contract.

**(n) Technical Data Collection.** Supplier may use tools or third party analytical software to collect and use certain technical data, which does not directly enable Supplier to identify any individuals ("non-personal data"), gathered in connection with the Products and/or Services provided to Customer. Customer agrees that Supplier may collect, use and disclose to Supplier's partners, affiliates and contractors non-personal data, including but not limited to: (i) device properties, including, but not limited to IP address, Media Access Control address and unique device identifier or other device identifier; (ii) device software platform and firmware; (iii) mobile phone carrier; (iv) geographical and hydrographical data; (v) vessel data; and (vi) other technical non-personal data, as reasonably required by Supplier to provide the Services (including monitoring the system and providing remote support and maintenance), to provide customized services or technologies to Customer and to improve its products and services provided to customers generally. Supplier will not disclose this information in a form that personally identifies Customer or any individual without the necessary consent provided by Customer or other legal basis. Customer recognizes and agrees that Supplier and any analytics companies utilized by Supplier and its affiliates may combine the information collected with other information they have independently collected from other services or products relating to Customer's activities. These companies collect and use information under their own privacy policies.