1. INTRODUCTION

These General Terms and Conditions – Parts (2019) (the “Conditions”) shall, unless otherwise agreed in writing, apply to any purchase order, acknowledgement of purchase order or any change order, proposal, quotation or tender by any authorized member, agent or representative of the Wärtsilä Group (the “Supplier”) to a purchaser (the “Buyer”). The Supplier’s offers are non-binding until accepted and confirmed by a purchase order issued by the Buyer in connection with the proposals which is signed by the Buyer and sent to the Supplier by such acknowledged purchase order, a “Contract”. These Conditions shall form an integral part of the Contract. The Buyer may not change or cancel any purchase order after it has been received by the Supplier unless the Supplier has agreed in writing to such change or cancellation.

2. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

2.1 Neither party shall copy or disclose to a third party any document or data provided by the other party without the prior written consent of the other party or use them for purposes other than those for which they were provided. Intellectual property rights associated with the Work are exclusive to the party who originated them. The rights granted hereunder shall survive any termination or expiration of the Contract.

3. CYBERSECURITY PROTECTION

3.1 Unless otherwise agreed, upon delivery of any equipment provided by the Supplier, the Buyer agrees and covenants that it will use the degree of care appropriate to avoid obtaining, using or distributing any “Critical Component” provided by the Supplier. The rights granted hereunder shall survive any termination or expiration of the Contract.

4. DELIVERY, ACCEPTANCE AND RETURNS

4.1 All references to trade terms shall be interpreted in accordance with Incoterms® 2020. Unless otherwise agreed in writing, the Parts shall be deemed to be sold “FCA”. Any date or period for delivery stipulated or quoted shall be deemed to be an estimate only. Packing materials shall not be returned to the Supplier. The Buyer shall be deemed to have accepted the quantity and quality of the Parts delivered by the Supplier as being in accordance with the Contract unless the Buyer has notified the Supplier of any shortages or damage within three (3) days following delivery of the Parts. No returns of Parts will be permitted or allowed by the Supplier.

4.2 If the Buyer does not accept delivery of Parts at the time set forth in the Contract, the Buyer shall notify the Supplier in writing stating the reason and the time when the Buyer anticipates being able to accept delivery. The Buyer shall pay the part of the Contract price that became payable prior to the delivery date if the delivery time is taken place. If the Supplier may by notice require the Buyer to accept the delivery within a final reasonable time. Any additional costs related to such delay shall be borne by the Buyer.
7. SUPPLIER’S LIABILITY

7.1 IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, BREACH OF WARRANTY, TORT LIABILITY (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, SHALL THE SUPPLIER BE LIABLE FOR ANY INDIRECT, CONTINGENT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, HOWEVER CAUSED OR ARISING (WHETHER ACTUAL OR ANTICIPATED) NOR FOR LOSSES OR DAMAGES SUSTAINED OR INCURRED (INCLUDING, BUT NOT LIMITED TO, TRANSACTION, FAILED ATTEMPTS TO DELIVER OR REPAIR SERVICE WORK NOT ARISING FROM THE WARRANTY PROVIDED HEREIN, TOWAGE CHARGES, POLLUTION REMEDIATION COSTS, COSTS OF DOCKING, DIVING OR SUB-SEA WORK, DAMAGE TO ANY VESSEL, ENGINE ROOM OR POWER PLANT SITE, YARD OR OTHER PROPERTY (INCLUDING DAMAGE TO GOODS OWNED BY THE BUYER), DAMAGE TO ANY EQUIPMENT OR PROPERTY OTHER THAN THE EQUIPMENT, COMPONENTS AND PARTS DELIVERED HEREFUNDER, COSTS FOR ANY ADDITIONAL TESTS, SEA TRIALS, DEBRIS REMOVAL OR FOR LOSS OF TIME OR USE OF ANY EQUIPMENT, INSTALLATION SYSTEM, OPERATION OR SERVICE.

7.2 NOTWITHSTANDING ANY OTHER PROVISION OF THE CONTRACT, IN NO EVENT SHALL THE SUPPLIER’S AGGREGATE LIABILITY TO THE BUYER UNDER THE CONTRACT, WHETHER IN CONTRACT, TORT, OR OTHERWISE (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED THIRTY PERCENT (30%) OF THE CONTRACT PRICE.

7.3 The parties agree that this waiver of all rights of recourse and subrogation against the other party from its insurers as well as indemnify and hold the other party harmless for all claims of or by either of the parties’ insurers.

7.4 The Supplier shall not be liable for any harm, injury or damages due to or arising in connection with (1) software provided by the Buyer; (2) monitoring, digital and/or cybersecurity-related systems other than those provided by the Supplier; or (3) improper service work, installation or alterations carried out by the Buyer on any monitoring, digital and/or cybersecurity-related systems. “Improper Service Work” is any act or failure to act which contradicts the OEM recommended maintenance, configuration and advisable operations resulting in detrimental reliability or increased possibility of failure.

8. EXPORT CONTROLS AND TRADE SANCTIONS

8.1 The parties agree that the Parts shall be delivered subject to all applicable export controls, sanctions or restrictions imposed on technology and products by any country or organization or nation which are enforceable in the jurisdiction of the Supplier, its affiliates or parent company, including the Suppliers country, the United Nations, the European Union and the United States of America. The Buyer acknowledges that the Parts and all related technical information, documents and materials may not be imported or exported, re-exported, transferred, traded, diverted or transferred, directly or indirectly, contrary to such controls, sanctions or restrictions.

8.2 The Buyer confirms that the Parts supplied will be used solely for peaceful purposes. The Buyer further confirms that the Parts will not be used in connection with, or for purposes associated with any chemical, biological or nuclear weapons, missiles or any other vehicles or vessels capable of delivering such weapons, or in support of any terrorist activity, or in connection with any other military end use. Nor will the Parts be re-sold if it is known or suspected by the Buyer that it is intended to be used for such purposes. Upon request, the Buyer will furnish the Supplier with all the relevant certificates relating to export control laws, regulations, sanctions and restrictions, such as, but not limited to, end-user certificates, in form and substance specified by the Supplier.

8.3 The Supplier has no liability resulting from delay, cancellation or amendment of this sale resulting from export controls, sanctions or other applicable restrictive measures.

9. FORCE MAJEURE

Neither the Supplier nor the Buyer shall be liable for any failure or delay in performing its obligations hereunder, or for any loss or damage resulting therefrom, caused by or arising from an event of force majeure (“Force Majeure”), which includes without limitation, acts of God, wars whether declared or not, any events involving ammunitions of war, civil wars and riots, hostilities, public disorder, acts of terrorism and severe threat of terrorism, any measures taken by public authorities in connection with threat of terrorism, embargos, acts of civil or military authorities, fire, flood, accidents, strikes, failure of a subSupplier or sub-supplier to provide manpower, materials or goods caused by an event that qualifies under this Clause 9, undue transportation or customs clearance problems arising out of the withdrawal of the United Kingdom from the European Union or any preparatory measures therefor ("Brexit"), epidemics, unusually severe weather affecting either party, or causes beyond their control.

10. SECURITY AGREEMENT

The Buyer hereby grants to the Supplier a continuing security interest, and when applicable a maritime lien for necessaries, in and to the Parts, together with all goods into which the Parts are attached at any time, and all products and proceeds derived from the sale or lease thereof as security for the payment in full of such Parts.

11. DUTIES, TAXES, FEES AND COMPLIANCE WITH LAWS

11.1.2 All disputes arising out of or in connection with the Contract shall be settled through friendly consultation between the Parties. In case no agreement can be reached through consultation, the dispute shall be submitted exclusively to arbitration for final settlement in accordance with the Rules of Arbitration of the International Chamber of Commerce with three (3) arbitrators appointed in accordance with the said Rules. The arbitration proceedings shall be conducted in English language. The place of arbitration shall be Helsinki, Finland.

12. GOVERNING LAW AND ARBITRATION

12.3 Nothing contained in this Clause shall preclude the Supplier from bringing any legal suits, action or proceeding against the Buyer in the courts of any jurisdiction where the Buyer or any of its property or assets may be found or located, and the Buyer hereby irrevocably submits to the jurisdiction of any such court.

13. ENTIRE AGREEMENT

These Conditions, plus the additional agreed upon terms of the Contract (relating only to price, time and location for delivery, technical specifications and quantity of Parts to be delivered) contain the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings relating to such subject matter. Any service work to be provided by the Supplier to the Buyer shall be in accordance with the Supplier’s General Terms and Conditions – Service Work (latest version then in effect). If a provision of these Conditions is at variance with necessary requirements of applicable law, then these Conditions shall be deemed to be amended to the minimum extent necessary to comply with such applicable law. No terms, conditions, representations, warranties or covenants contained in any correspondence, catalogue, or in any other form shall be applicable unless incorporated herein by express written agreement of the parties hereto.