

Chemring Marine LIMITED
STANDARD TERMS AND CONDITIONS OF SALE

1. INTERPRETATION

1.1 In these Conditions, where the context so permits, the following expression shall bear the following meanings:-

Expression Meanings

"the Company" Chemring Marine Limited;

"Conditions" the standard terms and conditions of purchase set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed between the Company and the Customer in accordance with Clause 2.1;

"Contract" any contract for the supply of the Goods or Services to the Customer;

"Customer" the person who accepts a quotation of the Company for the sale of Goods or provision of Services on the Company's standard acknowledgement form or whose order for Goods or provision of Services is accepted by the Company;

"Goods" the whole or any part of goods to be supplied or produced by the Company for the Customer;

"Services" means the services to be provided by the Company to the Customer;

"Insolvency" (i) where the Customer, has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors;

(ii) in the case of a corporate Customer, where the Customer convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to the court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer;

(iii) in any case, the appointment of a receiver or a receiver and manager of all or any part of the Customer's assets; any distress or execution being levied on the Customer or the Customer entering into any negotiations for any arrangement or composition with creditors or the Customer being deemed unable to pay its debts as they fall due; the Customer ceasing or threatening to cease to carry on business; the deterioration of the financial position of the Customer to such an extent that in the opinion of the Company the capability of the Seller adequately to fulfil its obligations under the Contract has been placed in jeopardy; and Insolvent shall be construed accordingly.

1.2 The headings shall not affect the construction of these Conditions.

1.3 In these Conditions the singular shall include the plural and vice-versa; and references to persons shall include bodies corporate, partnerships and unincorporated associations.

2. GENERAL

2.1 These Conditions shall apply to the supply of Goods or the provision of Services for the Customer to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document) and no variation or abrogation of any kind whatsoever shall be effective unless it is expressly agreed and evidenced in writing, signed by a duly authorised officer of the Company and containing a specific reference to these Conditions being varied or abrogated.

2.2 The giving by the Customer of any order for the supply of Goods or the provision of Services or any part thereof or the acceptance by the Customer of delivery of the Goods or and conduct by the Customer in confirmation of the transaction set out on the face hereof shall constitute unqualified acceptance by the Customer of these Conditions, and any order placed by the Customer for the supply of Goods or the provision of Services shall, notwithstanding that it may be expressed to be subject to certain terms and conditions, be deemed to have been placed subject to these Conditions any acceptance by the Company of such an order shall be on and subject to these Conditions.

2.3 All specifications, technical data and other information in the Company's catalogues, trade literature and other published matter are of a generally informative nature only and none of them form part or are intended to form part of any Contract or give rise to any independent or collateral liability of whatsoever nature on the part of the Company.

2.4 The Customer shall participate free of charge in safety monitoring, information gathering, product marking and all other activities necessary for the Customer and the Company to fulfil their obligations under the General Product Safety Regulations 1994.

2.5 The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

2.6 Each order or acceptance of a quotation for Goods or Services by the Customer from the Company shall be deemed to be an offer by the Customer to buy Goods or receive Services subject to these conditions.

2.7 No order placed by the Customer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods or supplies the Services to the Customer.

2.8 The Customer shall ensure that the terms of its order and any applicable specification are complete and accurate.

2.9 Any quotation is given on the basis that no Contract shall come into existence until the Company despatches an acknowledgement of order to the Customer. Any quotation is valid for a period of [30] days only from its date, provided that the Company has not previously withdrawn it.

3. PRICE

3.1 The Company shall be entitled to bring an action for the price whether or not the title to the Goods has passed and whether or not the Services have been completed.

3.2 Unless fixed prices have been specifically agreed by the Company in writing, notwithstanding any prior quotation or price list all prices are subject to alteration without notice and the supply of Goods or the provision of Services will be invoiced at the Company's prices ruling at the date of despatch.

3.3 The Company shall be entitled to charge the amount of any purchase tax, value added tax or other tax levied on the supply of Goods or the provision of Services whether or not included on the quotation or invoice and all costs and charges in relation to packaging, loading and unloading, carriage and insurance, all of which amounts the Customer shall pay in addition when it is due to pay for the Goods or Services.

4. DELIVERY OF GOODS AND PROVISION OF SERVICES.

4.1 Delivery of Goods shall be ex works (as defined in INCOTERMS 2000) unless otherwise agreed in writing by the Company. If otherwise agreed in writing by the Company, the price may include delivery to the address specified in the Company's acknowledgement of order, provided also that the Company reserves the right to make additional charges to cover any increase in transport costs occurring before the date of delivery.

4.2 The Customer shall be deemed to have accepted the Goods upon their delivery. Delivery shall take place within 7 days of the Company giving notice that the Goods or provision of Services are ready for delivery.

4.3 The Company will endeavour to meet any date accepted by the Company for delivery of Goods or the provision of Services. Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be of the essence. If no dates are so specified, delivery shall be within a reasonable time.

4.4 If the Goods are to be collected by the customer the Company will give the Customer notice to collect the Goods. It is a condition of the Contract that the Customer will then collect the Goods, or give the Company instructions for their delivery, within 7 days commencing from the day such notice is given.

4.5 Delivery to a carrier for the purpose of transmission to the Customer shall be deemed for all purposes of the contract to constitute delivery to the Customer. Section 32(2) and (3) Sale of Goods Act 1979 shall not apply.

4.6 The Company shall be entitled to make partial deliveries of the Goods or deliveries of the Goods by instalments, provided that deliveries of further instalments may be withheld until the Goods comprised in earlier instalments has been paid for in full. Each delivery will constitute a separate Contract and any failure or defect in any one delivery will not entitle the Customer to repudiate or cancel any other Contract as to the remaining deliveries.

4.7 Any complaint of short delivery or of Goods damaged in transit must be notified within [48] hours of receipt of Goods and confirmed in writing at that time by the Customer to the Company. If the Customer shall fail to give such notification and confirmation, the Customer shall be bound to accept the Goods delivered and pay for such Goods in full.

4.8 The Goods are at the Customer's risk from delivery and Section 20(2) Sale of Goods Act 1979 shall not apply.

4.9 Unless otherwise agreed by the Company in writing, packing cases, packaging materials and the like are not included in the Contract price. The manner of packing shall be at the Company's discretion. No liability shall be accepted for failure to pack to any particular standard or against any particular risk unless otherwise agreed in writing.

4.10 If for any reason the Customer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:

4.10.1 risk in the Goods shall pass to the Customer (including for loss or damage caused by the Company's negligence);

4.10.2 the Goods shall be deemed to have been delivered; and

4.10.3 the Company may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

4.11 The Customer shall provide at the delivery point and at its expense adequate and appropriate equipment and manual labour for loading the Goods.

5. PAYMENT OF THE PRICE

5.1 Payment shall be made in full as per agreed terms without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer or unless otherwise agreed in writing.

5.2 Where only part of the Contract Goods are delivered or only part of the Services performed payment shall be made of the Contract price attributable to that part.

5.3 In the event of any delay or delays in performance of Services or despatch or delivery of Goods which are attributable to the Customer's actions or failure to act, the Customer must make payment to the Company in accordance with the above as if Services had been performed or the Goods had been delivered at the times at which but for such delay or delays such performance or delivery would have taken place. Any extra costs incurred as a result of such delay or delays will be added to the Contract price and will be payable by the Customer.

5.4 Time for payment shall be of the essence and, if the Customer shall fail to pay the Company any sum due pursuant to the Contract, the Company shall be entitled to interest on the outstanding amount at the annual rate of 3% above the base lending rate from time to time of Bank of Scotland, accruing on a daily basis until payment is made, whether before or after any judgment. In addition, but without prejudice to such right and all other rights and remedies, if the Customer shall fail to pay for the Goods or the Services when due the Company may treat the Contract as repudiated by the Customer or may suspend the performance of the Contract until all overdue sums have been paid.

5.5 No payment shall be deemed to have been received until the Company has received cleared funds.

5.6 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

6. TRANSFER OF TITLE OF THE GOODS

6.1 Title to the Goods shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due from the Customer in respect of:

6.1.1 the Goods or Services; and

6.1.2 all other sums which are or which become due to the Company from the Customer on any account.

6.2 The Customer's right to possession of the Goods shall terminate immediately if:

6.2.1 the Customer enters into Insolvency; or

6.2.2 the Customer encumbers or in any way charges any of the Goods.

6.3 Until the title of the Goods passes to the Customer, the Customer shall:

6.3.1 keep the Goods free from any charge, lien or other encumbrance;

- 6.3.2 store the Goods (at no cost to the Company) in such a way that they are easily identifiable as belonging to the Company;
 - 6.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - 6.3.4 maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for that full price against all risks to the reasonable satisfaction of the Company. On request, the Customer shall produce the policy of insurance to the Company.
- 6.4 Until title to the Goods has passed to the Customer it may not re-sell any Goods in its possession other than with the express permission of the Company. Where permission is given and has not been withdrawn or return of the Goods demanded, the Customer (acting on its own account and not as agent of the Company) may agree to re-sell any Goods in its possession in the ordinary course of trading notwithstanding that the property in the Goods has not then passed to it. In the event of the Customer's Insolvency any permission given under this condition 6.4 shall be automatically cancelled and the Customer (and/or any Insolvency Practitioner acting on the Customer's behalf) shall return the Goods forthwith to the Company.
- 6.5 The Company may while the owner of the Goods (and without prejudice to any other rights it may have under or by virtue of the Contract) demand the immediate return of the Goods at any time and the Customer shall forthwith comply with such demand and bear the expenses for such return.
- 6.6 If the Customer fails to return the Goods so demanded by the Company, the Company or its successors in title to the Goods and their respective employees and agents may enter onto the Customer's premises (with or without vehicles) after giving reasonable notice of intent for the purpose of removing the Goods (the cost of doing which shall be borne by the Customer) or may sell or otherwise deal with the Goods.
- 6.7 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 6.8 Where the Company is unable to determine whether any Goods are the goods in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all goods of the kind sold by the Company to the Customer in the order in which they were invoiced to the Customer.
- 6.9 On termination of the Contract, howsoever caused, the Company's (but not the Customer's) rights contained in this condition 6 shall remain in effect.

7. FAILURE TO SUPPLY OR SUPPLY OF WRONG OR DEFECTIVE WORK

- 7.1 The Customer is relying on its own skill and judgement in relation to the Goods irrespective of any knowledge which the Company or its servants or agents may possess or any representation the Company or its servants or agents may have made, as to the purpose for which the Goods are supplied or their suitability.
- 7.2 No terms as to care and skill whether express or implied shall be incorporated herein other than that the Company shall perform the Services with reasonable skill and care.
- 7.3 Subject to the conditions set out below the Company warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of [12] calendar months commencing from the date of their initial use or [12] calendar months commencing from the date of delivery, whichever is the first to expire.

The above warranty is given by the Company subject to the following conditions:

- 7.3.1 the Company shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification furnished by the Customer
- 7.3.2 the Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the

- Company's instructions (whether oral or in writing), or misuse or alteration or repair of the Goods without the Company's approval;
- 7.3.3 the Company shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;
- 7.3.4 the above warranty does not extend to parts, materials or equipment not manufactured by the Company, in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company.
- 7.4 The obligations of the Company under the Contract are limited such that in the event of a breach of the warranty in Sub-Clause 7.3 or any failure to deliver the Goods or provide any Service with reasonable skill and care, or any defect in, failure of, deviation from description, design or specification or unsuitability for any purpose of, the supply of Goods or the provision of Services, or any part thereof (whatever the degree of defect, failure, deviation or unsuitability), or in the event of any delivery by the Company of articles which are not the Goods requested (whether the same be due to any act, omission, negligence or wilful default of the Company or its servants or agents, or to faulty design, workmanship or materials or to any other cause whatsoever), the Company shall only be obliged at its option either to refund the price (if already paid) attributable to the faulty, undelivered Goods or unsupplied Services or to perform the unsupplied Service or re-perform the faulty Service or to repair the faulty Goods or to replace the faulty Goods or to supply the undelivered Goods without charge. All conditions, warranties or other terms, whether expressed or implied, statutory or otherwise, warranties or other terms, whether expressed or implied, statutory or otherwise, inconsistent with the provisions of this Condition, are hereby expressly excluded.

Without prejudice to the other Conditions, in the event that the Company is held to be liable for any loss, expenditure or damage howsoever arising in connection with the Contract, such liability shall be limited to the total charges (excluding VAT) in respect of the Goods and Services in question received by the Company from the Customer under the Contract.

- 7.5 Notwithstanding Sub-Clause 7.4, the Company shall not be liable for any failure to deliver the Goods or provision of Services, or for any defects in the Goods or Services unless the same is notified to the Company within a period of [30] days commencing from the date of delivery or performance or, in the case of non-delivery or non-performance, [30] days commencing from the agreed date for delivery of the Goods or provision of Services. The notice to the Company must specify, in the case of non-delivery or non-performance, the date on which delivery or performance should have taken place and, in the case of defects, the nature of the defect and when it was first observed.
- 7.6 Without prejudice to Sub-Clause 7.7, and notwithstanding anything contained in these Conditions (other than Sub-Clause 7.7), in no circumstances shall the Company be liable, in contract, tort (including negligence or breach of statutory duty), or otherwise howsoever and whatever the cause thereof, (i) for any economic loss of any kind whatsoever, including loss of profit, business, contracts, revenues or anticipated savings, or (ii) for damage to the Customer's reputation or goodwill or (iii) for any loss resulting from any claim made by a third party or (iv) for any special indirect or consequential damage or loss of any nature whatsoever, even if the Company has been advised of such loss or damage.
- 7.7 Nothing in these conditions excludes or limits the liability of the Company:
- 7.7.1 for death or personal injury caused by the Company's negligence; or
- 7.7.2 under section 2(3), Consumer Protection Act 1987; or
- 7.7.3 for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- 7.7.4 for fraud or fraudulent misrepresentation.
- 7.8 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

8. REPRESENTATIONS

The Company shall incur no liability to the Customer for innocent or negligent misrepresentation by virtue of any statement made by or on behalf of the Company prior to the Contract, whether orally or in any letter, document or sales literature, and the Customer shall not be entitled to rescind the Contract on the grounds of any such misrepresentation.

9. INDEMNITY

The Customer shall keep the Company and all its employees and agents indemnified from and against all costs, claims, demands, expenses, fines, penalties and all liability whatsoever which may be made against the Company, its employees or agents or which the Company, its employees or agents may sustain, pay or incur:

- 9.1 as a result whether directly or indirectly of the Customer's breach of contract, negligence, breach of statutory duty or other act or omission;
- 9.2 in respect of any claim brought against the Company by any third party arising out of or in connection with the production, sale or use of the Goods or provision of Services, or performance of the Contract and whether arising from the Company's breach of contract, negligence, breach of statutory duty or in any other way whatsoever provided that this Sub-Clause 9.2 will not require the Customer to indemnify the Company against any liability for the Company's own negligence.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 All specifications, plans, drawings, patterns, blue prints, descriptions, designs, formulations, know-how, technical information and advice and all intellectual property rights therein supplied by the Company to the Customer in connection with the Contract shall remain the property of the Company and all of the foregoing and any information derived therefrom or otherwise communicated to the Customer in connection with the Contract shall be treated by the Customer as confidential and shall not without the consent in writing of the Company be published or disclosed to any third party or made use by the Customer except to the extent necessary to implement the Contract.
- 10.2 No liability shall be accepted for the infringement of any third party Intellectual Property Rights due to any design or instruction furnished to the Company by the Customer such as to cause the Company to infringe any Patents, Registered Designs, Unregistered Designs, trademarks, Copyright or other intellectual property rights.

11. BREACH AND CUSTOMER'S INSOLVENCY

In the event that the Customer shall:-

- 11.1 default in or commit any breach of its obligations (whether under these conditions or otherwise) to the Company; or
- 11.2 enter into Insolvency; then the Company shall be entitled to determine forthwith any contract then subsisting (whether or not these conditions apply to such contract). In such circumstances the Company shall have the right to suspend or cancel the further supply of Goods or the provision of Services, and payment for all Goods or Services already supplied, provided or ordered shall become due immediately.

12. FORCE MAJEURE

The Company shall not be under any liability for any failure to perform any of its obligations under a Contract due to an act of God, war, riots, strikes and trade disputes (including by and with the Company's own employees), lock outs, fires, breakdowns, mechanical failures, disruption of energy supplies, interruption of transport, Government action or any other cause whatsoever outside the Company's control which affects the Company's business whether or not of like nature of those specified above.

13. NOTICES

13.1 Any notice to be given by one party to the other shall be in writing and delivered by hand or sent by first class post or by confirmed facsimile transmission to the other party's registered office (if the party is a company) or, in any other case to any address as set out in any document which forms part of the Contract or such other address as shall be notified by either party to the other party.

13.2 Communications shall be deemed to have been received (a) if sent by first class post 2 days (excluding Saturdays, Sundays and bank and public holidays) after posting; or (b) if delivered by hand, on the day of delivery; or (c) if sent by fax on a working day prior to 4.00p.m., at the time of transmission and otherwise on the next working day.

14. ASSIGNMENT

The Customer shall not assign or transfer or purport to assign or transfer any Contract or the benefit thereof to any other person whatsoever without the prior written consent of the Company.

15. TERMINATION

The termination of a Contract, howsoever occasioned, shall be without prejudice to any obligation or rights on the part of either party which have accrued prior to such termination and shall not affect or prejudice any provision of the Conditions which is expressly or by implication provided to come into effect on, or continue in effect after, such termination.

16. WAIVER

No waiver by the Company of any breach of these Conditions by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

17. THE AGREEMENT

17.1 These Conditions constitute the entire agreement between the parties with respect to all matters referred to herein and supersede all earlier warranties, representations or statements made by the parties (whether oral or in writing). All other understandings, agreements, warranties, conditions, terms or representations whether express or implied (whether by statute, common law or otherwise) are excluded to the fullest extent permitted by law. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

17.2 Each and every condition set forth herein (or part of a condition which is capable of subsisting independently) shall be deemed to be separate and severable and enforceable accordingly and shall not, except where the contract expressly so requires be in any way modified or restricted by reference to or inference from any other condition or conditions set forth herein. If any term or provision of this contract shall to any extent be invalid or unenforceable, the remainder of this contract shall remain unaffected and in full force and effect.

18. RIGHTS OF THIRD PARTIES

18.1 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

19. LAW

- 19.1 All contracts to which these Conditions apply shall be governed by, and construed in accordance with, English law. The parties hereto agree to submit to the exclusive jurisdiction of the English courts.
- 19.2 The Customer shall be responsible for complying with all relevant laws, bye-laws, regulations, orders, directions, codes of practice or requirements of any statutory, public, local or other competent authority or court of competent jurisdiction applicable and incidental to the installation, transport, use and operation of the Goods.