

HUISMAN GENERAL TERMS AND CONDITIONS OF SALE 2018

1. APPLICABILITY AND DEFINITIONS

In these Terms:

- 1.1 "Client" means the Party entering into the Contract with the Contractor.
- 1.2 "Client Group" means, individually and collectively, the Client, its partners, parent, subsidiary and affiliated companies, shipyard, or operators, Client's customers, clients and end-clients, vessel owners, charterers or operators, agents, representatives, other (sub-) contractors of any tier of the Client (excluding Contractor Group), and their respective employees, servants, officers and directors, and all their successors and subrogees.
- 1.3 "Completion" means the completion of the Work as set out in the Contract.
- 1.4 "Confidential Information" means all information in relation to this Contract as further set out in clause 11.
- 1.5 "Contract" means any contract or order entered into between Client and Contractor that is based on Contractor's quotation or offer or that makes reference to these Terms.
- 1.6 "Contract Price" means the compensation payable by Client to Contractor for the execution of the Work, as set out in the Contract.
- 1.7 "Contractor" means the Huisman entity set out in the Contract.
- 1.8 "Contractor Group" means, individually and collectively, Contractor, including its partners, parent, subsidiary and affiliated companies, agents, representatives, suppliers and (sub-)contractors of any tier of Contractor and their respective employees, servants, officers and directors, and all their successors and subrogees.
- 1.9 "Delivery" means delivery of the Equipment or Work as set out in clause 5.1 hereof.
- 1.10 "Equipment" means the permanent physical result of the Work and its components.
- 1.11 "Force Majeure" means any event that (a) renders Contractor unable to comply with its obligations under the Contract; (b) is beyond the reasonable control of Contractor; (c) does not result from the fault or negligence of Contractor; and (d) could not have been avoided by Contractor through the exercise of proper diligence.
- 1.12 "Insolvency Event" shall mean:
 - a) the filing of a petition or the making of an order or the passing of an effective resolution for the winding-up;
 - b) insolvency or bankruptcy under the provision of any insolvency or bankruptcy law;
 - c) institution of any proceedings under the provision of any insolvency or bankruptcy law or any law for the relief of debtors, with such proceedings not being withdrawn of cancelled within a period of thirty (30) days after institution thereof; and
 - d) the appointment of a receiver of the undertaking or property.
- 1.13 "Services" means a Work which includes, but is not limited to, engineering, advice, software updates, support, information, field work, installation, operation, assistance, testing, modifications of Client's equipment and/or repair activities regarding Equipment, apparatus, machinery, installations, and its deliverables as described in the Contract.
- 1.14 "Statutory Changes" means any changes to any applicable laws, rules, regulations or requirements entering into force from the date of entry into the Contract that apply to the Work.
- 1.15 "Party" means the Contractor or the Client as the context requires, and the term "Parties" refers to the Contractor and Client collectively.
- 1.16 "Terms" means these "Huisman General Terms and Conditions of Sale 2018", which shall apply to all inquiries, documents, Contracts, quotes and commissions in relation to the Work.
- 1.17 "Third Party" means any party who is not a member of the Client Group or Contractor Group.
- 1.18 "Warranty" means the warranties on the Work as specified in clause 7.1 hereof.
- 1.19 "Warranty Period" means the period as specified in clause 7.1 hereof.
- 1.20 "Work" means the supply of Equipment or Services as described in the Contract.

2. CONTRACT

Contractor shall perform the Work in a professional and workmanlike manner, in accordance with the technical specification, scope of work and schedule included in the Contract. References to and the applicability of any other terms and conditions other than these Terms are hereby expressly rejected and Parties agree that these Terms shall solely apply to the Contract. Any changes and deviations of these Terms are to be agreed between the Parties in writing. Unless specifically agreed otherwise, the Client's request for the Contractor to commence the Work prior to the execution of the Contract shall be deemed as an acceptance of Contractor's last quotation or offer and Terms. The Contract represents the entire agreement between the Parties and supersedes all prior agreements, representations and understandings of the parties, whether implied, expressed, written, or oral.

3. PRICES

Unless otherwise agreed in the Contract all prices exclude any i) indirect taxes such as but not limited to value added tax, goods & services tax, sales tax, service tax, excise duty, customs duties and import and export charges, whether foreign or domestic; and, ii) costs or fees for (un)loading, harbour and demurrage or storage costs or fees; and, iii) any consular fees for legalising invoices, issuance of certificates of origin, stamping of bills of lading, or other charges required by the laws of any country of transit or destination, or any fines imposed due to incorrect declarations. Charges may be added for extra preparation and packaging for Delivery. If the Contractor's costs of performing the Work are increased by reason of any act of government, classification or certification body or authority, then such increase shall be added to the Contract Price.

4. PAYMENT

4.1 Unless otherwise agreed in the Contract the terms of payment shall be 30 days from the invoice date. All payments are due in the currency specified in the Contract

and/or Contractor's invoice. Contractor may charge interest on all overdue accounts at the applicable statutory rate of interest as well as all reasonable legal fees (including lawyer's fees, appraisal fees, costs incurred for notarization/legalization of documents, etc.) and other costs incurred in the collection thereof.

4.2 Where genuine doubts arise as to Client's financial position, Contractor reserves the right to suspend such Work or any part thereof without any liability to Client, until payment and/or satisfactory security for payment has been provided. Client shall not be entitled to offset or withhold any amounts without written approval from Contractor.

4.3 In the event the Client fails to remedy a material breach or fails to fulfil any of its payment obligations hereunder within 14 days from written notice thereof by Contractor, then without further notice Contractor may suspend the Work. If the default persists after a period of 30 days after such notice, Contractor may terminate the Contract with immediate effect without any liability to Client, and Contractor may resell all Equipment purchased in relation to the Work to any Third Party. Contractor may suspend or terminate the Contract with immediate effect in case an Insolvency Event occurs for Client.

4.4 Title to the Work shall remain with Contractor until receipt of full payment of the Contract Price by Contractor.

5. DELIVERY AND COMPLETION

5.1 Unless otherwise agreed in the Contract, Delivery means delivery Free Carrier (FCA, Incoterms 2010) of the Equipment at Contractor's premises, except that loading of Client's means of transport and any transport required in connection with such loading shall be for Client's own risk and account. Risk passes to Client upon Delivery.

5.2 In the event Client fails to take Delivery of the Equipment, Contractor may, without prejudice to any of its other rights, arrange for the storage of the Equipment at the cost and risk of the Client and withhold Delivery until full payment has been received.

5.3 In the event that Contractor's performance is delayed by Force Majeure, or when such delay is due to Client's actions or omissions, the Delivery date or date for Contractor's performance shall be extended by the duration of the delay. Client shall not be entitled to cancel or terminate a Contract on the basis of such delay and each Party shall carry its own costs as a consequence of a Force Majeure-event. In case of a delay due to Force Majeure exceeds a period of 120 days, either Party may terminate the Contract. Upon such termination Client shall within thirty days thereafter pay all monies due in respect of all Work or part thereof properly performed, to the extent not already paid.

5.4 Client may not refuse or delay Delivery or Completion for any defects or deficiencies that do not hinder or prevent the normal and safe installation, commissioning, testing, use, operation or maintenance of the Equipment. Any such defects shall be listed in a punch list and remedied by Contractor within a reasonable period.

5.5 In the event the Contractor does not achieve Delivery on the agreed date of Delivery (as amended in accordance with the provisions of the Contract), Contractor shall pay to Client 0.5% of the Contract Price for each week of delay to a maximum of 5% of the Contract Price. Client's sole and exclusive, full and final remedy for late performance by Contractor is limited to such liquidated damages, in lieu of any other rights of Client under this Contract or at law. Parties agree that any such liquidated damages are not a penalty but a genuine pre-estimate of the damages which may be sustained by the Client.

5.6 The consequences of any Statutory Changes shall be for the account of Client. If execution of the Contract becomes or will become impracticable for Contractor as a consequence of such Statutory Changes, Contractor may terminate the Contract and thereupon Client shall compensate Contractor for any costs, expenses and commitments made in connection with the Contract.

6. TERMINATION BY CLIENT

6.1 Except as expressly provided otherwise in these Terms, the Client may only terminate a Contract in case the Contractor fails to effect Delivery within a period of 100 days from the date of Delivery or Completion agreed upon (as may be extended by Force Majeure or any delays caused by Client Group) or the occurrence of an Insolvency Event for Contractor. Any other termination rights are excluded, with the exception of termination rights that cannot be excluded under the applicable law. Upon such termination Client shall take over the Work as performed at that point in time in accordance with the Contract and pay Contractor as full and final satisfaction of any and all claims the following: a) all monies due in respect of all Work or part thereof properly performed (to the extent not already paid); plus, b) all documented costs (including the cancellation or transfer of supplier contracts) incurred by Contractor as a direct result of such termination.

6.2 The rights pursuant to this clause shall be exclusive and in lieu of any other remedies available to Client by virtue of this Contract or at law.

7. WARRANTY

7.1 Contractor warrants that the Work shall be free of defects in design, workmanship and materials for a period of 18 months from Delivery or 12 months from Completion, whichever period ends earlier (the "Warranty").

7.2 Subject to this clause 7, Contractor will, within the Warranty Period either repair or replace part of the Equipment, or re-perform the Services which are found to be defective and for which defect it is clear that Contractor is responsible, free of charge. Replacement parts will be delivered Ex-Works (Incoterms 2010), and Contractor may require the return of allegedly defective parts, freight pre-paid, to establish the Warranty. In case of defects in any of the Services, the Warranty is limited to reperforming the defective Services.

7.3 The Warranty is only applicable if: a) the defect occurred under normal use and service and not due to normal wear and tear or adverse weather conditions; and, b) the Equipment is installed, operated and maintained strictly in accordance with the Contractor's instructions, manuals and technical bulletins; and, c) the Equipment was properly used for the purpose which it was intended and the defect arose from faulty materials in the Equipment, and was not caused by other machinery or apparatus; and, d) Client notified Contractor in writing of the defect within 14 (fourteen) days of its discovery.

7.4 Notwithstanding the foregoing the Warranty will be void if the Equipment was either a) repaired or serviced by Client without permission by Contractor; or, b) repaired or serviced by a Third Party that was not reviewed and authorised by Contractor; or, c) replacement parts not manufactured or approved by Contractor were utilised; or, d) modifications were made to the Work which were not prior approved by Contractor in writing.

7.5 In relation to the Warranty, the following services will be delivered by Client free of charge or will be reimbursed by Client to Contractor at actual costs against documentary proof on first request a) air travel (including boarding and lodging) and other transport costs for Contractor's personnel; b) travelling and waiting man hours; c) costs for transport of parts by courier and surcharges for air transport of heavy parts; d) general assistance by Client's personnel and vessel's equipment during repairing or replacing of defective part of the Work; e) provision of crane assistance, scaffolding, special tools, etc. at any location other than at the Contractor's premises; f) import duties and/or other duties, levies, demurrage, harbour and storage fees.

7.6 Upon Delivery the liability of Contractor for any defects, deficiencies or non-conformities in the Work and use or operation of the Equipment shall be limited to punch list items referred to in clause 5.4, the obligations of this clause 7 and Client shall indemnify Contractor for any liability in excess of those obligations, regardless of the kind and irrespective of any claim in tort, under contract or otherwise at law, (including negligence, breach of contract or statutory duty), by way of indemnity or otherwise, howsoever and whatsoever caused.

7.7 The warranties set forth in this clause are sole and exclusive warranties, and are in lieu of any other terms, stipulations, conditions or warranties, whether oral, express or implied, including any statutory implied terms relating to quality, merchantability or fitness for purpose, arising out of the operation of law or otherwise. At the expiry of the Warranty Period all obligations and liabilities with regards to the Warranty for the Work shall end.

8. LIABILITIES & INDEMNIFICATIONS

8.1 Contractor Indemnities: Contractor shall release defend, protect, indemnify and hold harmless all members of Client Group for i) any illness, injury or death suffered by any member of Contractor Group personnel; and, ii) any loss or damage to any member of Contractor Group's property, the indemnities contained herein shall apply regardless of possession or control of the Contractor Group's property by the Client Group,

8.2 Client Indemnities: Client shall release defend, protect, indemnify and hold harmless all members of Contractor Group from and against any claims for i) any illness, injury or death suffered by any member of Client Group personnel; and, ii) any loss or damage to any member of Client Group's property, the indemnities contained herein shall apply regardless of possession or control of the Client Group's property by the Contractor Group. For the avoidance of doubt the vessel and its appurtenances shall be considered Client Group's property and risk at all times.

8.3 Consequential Loss: Notwithstanding anything to the contrary contained elsewhere herein, both Contractor and Client for and on behalf of themselves and their respective Group (Contractor Group or Client Group) shall release, defend, protect, and indemnify and hold harmless the other Party and its respective Group from any claims for (i) any consequential, incidental, indirect or exemplary damages of any kind or character; and/or (ii) loss of use, loss of profit, loss of revenue, loss of product, loss of or delayed production, loss of business opportunity arising out of, relating to or in connection with this Contract, Contract, the use, maintenance, and operation of the Work, and at law and no such claim shall be made by either Contractor or Client or its respective Group.

8.4 Limitation of Liability: Notwithstanding anything to the contrary contained elsewhere herein, Contractor Group's cumulative overall liability arising out of or in relation to this Contract, shall not, in any event, exceed a maximum overall amount equal to, or the lesser of 100% of the Contract Price or €2,500,000, and Client shall save, indemnify, defend and hold Contractor Group harmless for any such claims in excess of any such percentage/amount.

8.5 All exclusions, limitations and indemnities contained in this clause 8 shall apply irrespective of cause and regardless of whether or not caused or brought about by either Party's or their respective Group's negligence (including sole, joint, concurrent or otherwise), breach of warranty (whether expressed or implied), agreement, statute, strict liability or otherwise, under contract or otherwise at law, (including negligence, breach of contract or statutory duty), by way of indemnity or otherwise, howsoever and whatsoever caused and including pre-existing conditions or other theory of liability.

9. INSURANCES

9.1 The Client shall maintain in full force and effect the following insurances: a) Comprehensive General Liability insurance covering personal injury (including death) and property damage; b) Employer's liability/Workman's Compensation insurance covering Client's personnel for illness, personal injury or accidental death to the full extent required by applicable law; c) Insurances for the vessel, its appurtenances (including the Equipment) such as: Hull & Machinery, disbursement, war risks, P&I cover; d) Where the Work includes the modification, refurbishment of an existing vessel or equipment or part thereof, a Construction All Risks insurance to cover the vessel and equipment to its full value.

9.2 The Contractor shall maintain in full force and effect as a minimum the following insurances: a) Comprehensive General Liability insurance covering personal injury (including death) and property damage; b) Employer's liability/Workman's Compensation insurance covering Contractor's personnel for illness, personal injury or accidental death to the full extent required by applicable law; c) where the Work includes the construction of Equipment, a Construction All Risks insurance to cover the Equipment up to the full value of the Equipment up to the moment of Delivery. Any coverage under the insurances as set out herein shall not be deemed to waive, alter, increase or amend Contractor's liability or limitation thereof.

9.3 The policies referred to in clause 9.1 a), c) and d), and 9.2 a) and c) shall contain the appropriate waiver of rights of subrogation for each Party and its respective Group and include the other Party as additional assured.

10. CHANGES & VARIATIONS

In the event a Party requests a change to the scope of the Work and such proposed change would have an impact on the Contract Price and/or Delivery schedule of the Contract, the Contract shall be adjusted by way of a variation order to reflect the changes thereto. No variation shall be implemented without written agreement between both Parties.

11. CONFIDENTIALITY & INTELLECTUAL PROPERTY

11.1 "Confidential Information" means any and all: (1) disclosures, documents, photos, videos, animations, studies, drawings, concepts, models, inventions, specifications, patterns, know-how, commercial and/or technical information, or any intellectual property rights, relating to the Contract, the design or construction of the Equipment, Work and the price or delivery thereof and (2) any corporate, commercial or other business information of either Party's Group (Client Group or Contractor Group).

11.2 All Confidential Information relating to the design or construction of Equipment and the price or delivery thereof, furnished by any Party shall remain the sole property of the disclosing Party and is submitted in confidence upon the condition that a) all Confidential Information shall promptly be returned to the disclosing Party upon request; b) the receiving Party shall not use the Confidential Information, in whole or in part, for any purpose other than the performance of this Contract; and c) the disclosing Party shall not disclose or furnish the Confidential Information, in whole or in part, to any Third Party (except for any subcontractors or suppliers with a reasonable need to know), unless it (i) enters the public domain without breach hereof by the receiving Party; (ii) is independently developed by the receiving Party without making use of Confidential Information, as to be demonstrated by the receiving Party with documentation; (iii) is used or disclosed with the prior written approval of the disclosing Party, or; (iv) receiving Party is obliged to disclose the Confidential Information under the order, judgement or ruling of a court of competent jurisdiction.

11.3 The Parties agree that any losses occurring from breach of confidentiality are not considered an indirect or consequential loss. Also parties agree that damages alone may not be sufficient to limit or prevent the harm suffered by the Contractor and that the Contractor is entitled to seek an order for injunctive relief.

11.4 Contractor shall at all times remain the owner of any and all intellectual property rights relating to the Work and all rights, title and interest in Confidential Information or other intellectual property rights developed by Contractor (whether or not in connection with the Work) shall exclusively vest in Contractor. The Contractor shall have the sole right to file applications for patents, copyrights, trademarks or other intellectual property rights. Contractor hereby grants Client a non-exclusive, royalty free, perpetual license to use such intellectual property rights to the extent necessary for the proper use, operation and maintenance of the Equipment for its intended purpose.

12. COMPLIANCE

12.1 In carrying out its activities under the Contract, Parties shall ascertain and comply with all applicable obligations and restrictions arising out of or following from any and all relevant anti-bribery and anti-corruption legislation of the United States of America, the United Kingdom and any other country that is or may be or become relevant in respect of the Contract (together, the "Anti-Bribery Laws").

12.2 In carrying out its activities under the Contract Parties shall ascertain and comply with all applicable obligations and restrictions arising out of or following from any and all relevant sanctions and export controls legislation of the United Nations, the European Union, the United States of America and any other country that is or may be or become relevant in respect of the Contract (together, the "Trade Laws").

12.3 Client guarantees that the Equipment will be solely used for civil purposes and are not and will not be used for, or in connection with, any illicit purposes, including, but not limited to, activities involving torture or repression or other human rights violations, weapons of mass destruction or chemical, biological, radiological and/or nuclear activities.

12.4 Parties will maintain adequate internal checks and procedures to monitor for suspicious activity and ensure compliance with the Trade Laws.

12.5 Client guarantees that it will not directly or indirectly sell, deliver or provide the Equipment, or otherwise make the Equipment available, to any legal or natural person, entity, group or (government) organisation that is subject to sanctions or restrictions under the Trade Laws.

12.6 Parties shall act in conformity with the General Data Protection Regulation (EU) 2016/679.

12.7 Client will ensure that all obligations under this clause be passed on to any third party that Client contracts in connection with the Contract or uses in its performance of the Contract, or that takes over any obligation, or part thereof. Upon request by Contractor, Client shall provide statement on end-use of the Equipment or the end-user of the Equipment.

13. LAW AND DISPUTE RESOLUTION

13.1 The Contract (including all non-contractual liabilities or obligations arising therefrom) shall be governed by and construed in accordance with the laws of The Netherlands, excluding any conflicts of law principles that would direct the substantive law of another jurisdiction to apply, and parties herewith exclude the applicability of the United Nations Convention on Contracts for the International Sales of Equipment (1980) to this Contract.

13.2 Any dispute arising out of or in connection with this Contract, including all non-contractual liabilities or obligations arising therefrom or any question regarding its existence, validity or termination, which cannot be amicably resolved, shall solely be referred to the competent Court in Rotterdam, the Netherlands. No action for breach of this Contract may be brought against the Contractor more than 12 months after the cause of action has arisen.