1 APPLICABILITY AND DEFINITIONS

In these Terms:

1.1 "Contractor" means the Party entering into the Contract with the Client.
1.2 "Client Group" means, individually and collectively, the Client, its direct or indirect partners, parents, subsidiary and affiliated companies, shipyards, Client's customers, clients and clients of clients, subsidiaries, representing parties, representatives, (sub-)contractors of any tier of the Client (excluding Contractor Group), and their respective employees, servants, officers and directors, and all their successors and subrogues.
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 7.1 hereof.
1.5 "Contract" means any contract or order entered into between the Client and the Contractor that is based on the Contractor’s quotation or offer or that makes reference to these Terms.
1.6 "Contractor" means the Party executing the Work, as set out in the Contract.
1.7 "Contractor's premises" means the premises of the Contractor as set out in the Contract.
1.8 "Contractor Group" means, individually and collectively, the Contractor, including its partners, parent, subsidiary and affiliated companies, agents, representatives, suppliers and (sub-)contractors of any tier of the Contractor and their respective employees, servants, officers and directors, and all their successors and subrogues.
1.9 "Delivery" means delivery as per Section 10 of the 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 (i) delays compliance by the Contractor of its obligations under the Contract; (ii) is beyond the reasonable control of the Contractor; (iii) does not result from the fault or negligence of the Contractor; and (iv) could not have been avoided by the Contractor with due regard to prudent 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 of the Contractor or for the liquidation, bankruptcy, reorganization, dissolution, termination, sale or disposal of substantially all of the assets of the Contractor; or
   b. insolvency or bankruptcy under the provision of any insolvency or bankruptcy law; or
   c. any institution of proceedings of the Contractor under the provision of any insolvency or bankruptcy law or any law for the relief of debtors, with such proceedings not being withdrawn or cancelled within a period of thirty (30) days after institution thereof; and
   d. the appointment of a receiver or trustee of substantially all of the assets of the Contractor.
1.13 "Services" means Work which includes, but is not limited to, engineering, advice, software updates, suppliers, information, field work, installation, operation, assistance, testing, and any other services provided by the Contractor.
1.14 "Subcontract" means any subcontract, subcon, sublet, or any agreement or understanding entered into between the Contractor and an individual, company, corporation, or any other entity regarding the Services, apparatus, machinery, installations, and its deliverables as described in the Contract.
1.15 "Substitute Changes" means any changes to the Contract, including the rules, regulations or requirements entering into force from the date of entry into the Contract that apply to the Work.
1.16 "Party" means the Contractor or the Client as the context requires, and the term “Parties” refers to Contractor and Client collectively.
1.17 "Terms" means these "Huisman General Terms and Conditions of Sale 2021", which shall include all inquires, documents, Contracts, quotes and commissions in relation to the Work.
1.18 "Warranty" means the warranty applicable to the Work, as specified in clause 7.1 hereof.
1.19 "Warranty Period" means the period for which the Work is warranted, as specified in clause 7.1 hereof.
1.20 "Work" means the supply of Equipment or Services as described in the Contract.

2 CONTRACT

The 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. The Contractor shall perform the Work in a manner which conforms to any applicable standards, rules, codes, regulations, or laws, and to any other requirements of the Client. The Contractor shall comply with all laws, regulations, and codes applicable to the Work.

3 UNLESS OTHERWISE AGREED IN THE CONTRACT, all prices exclude (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) 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 fees 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, clause 6.3, force majeure, change in applicable law, or any event outside the Contractor’s control, the Client shall pay to the Contractor the increased costs of performing the Work.

4 PAYMENT

4.1 Unless otherwise agreed in the Contract, the terms of payment shall be thirty (30) days from the invoice date. All payments are due in the currency specified in the Contract or the Contractor’s invoice. The Contractor may charge interest on all overdue amounts at the applicable statutory rate of interest as well as all reasonable legal fees (including lawyer’s fees, appearances, fees, costs, court fees, expert witnesses, and other expenses) that the Contractor incurs in the collection thereof.

4.2 When any invoice does not reflect the Client’s financial position, the Contractor reserves the right to suspend the Work (or part thereof) and secure and store the Work (or part thereof) at the Client’s risk and cost and without any liability to the Client, until satisfactory security for the monies due has been provided. The Client shall not be relieved of any obligations under the Contract (other than the obligation to pay) until the Client has posted secured funds or deposited such monies with the Contractor or the Contractor has obtained security for the monies due in the amount of such work, which is in the Contractor’s discretion to incure in the collection thereof.

4.3 In the event that the Contractor suspends the Work (or part thereof), does not resell the Work and/or repair activities regarding such Work, requires the Client to pay all costs of performing the Work or any part thereof, all costs of collection, and all other amounts due to the Contractor in connection therewith in accordance with the Collection Provisions hereunder, and the Client does not comply with the Contractor’s demand within the period specified by the Contractor, the Contractor reserves the right to take any and all actions necessary to dispose of any or all interests of the Client in or to the Work (including the Work or part thereof) as the Contractor deems necessary, and to sell or otherwise dispose of the Work (or part thereof) to recover costs or fees owed by the Client to the Contractor.

5 DELIVERY AND COMPLETION

5.1 Unless otherwise agreed in the Contract, Delivery means delivery Free Carrier (FCA, Incoterms 2020) of the Equipment at the Contractor’s premises in the Netherlands, the Client’s risk and cost. Risk passes to Client upon Delivery.

5.2 In the event the Client fails to take Delivery of the Equipment, the 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 without Delivery full payment has been received.

5.3 Any failure or failure of performance of the Contractor to deliver or perform in accordance with any contract or specification or to default or give rise to any claim, if and to the extent that such failures or delays are caused by Force Majeure. The Contractor shall promptly notify the Client of any reasonable promptness of the existence of such Force Majeure and the probable duration thereof, and shall provide the Client with correct information concerning the same, from time to time. The Contractor, when experiencing Force Majeure, may suspend the performance of the Work, or the whole or part thereof.

5.4 In the event that the Contractor’s performance is delayed by Force Majeure, or by a delay not attributable to the Contractor, if and to the extent that the delay extends the duration of the Work, the Client shall be entitled to terminate the Work, or the whole or part thereof, and the Contractor shall be paid the full amount of the Work. The Contractor shall be liable for any cost or damage caused by the delay, but not exceeding the amount of the Work.

5.5 The 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 shall be remedied by the Contractor within a reasonable period.

5.6 In the event that the Contractor does not achieve Delivery on the agreed date of Delivery (as amended in accordance with the provisions of the Contract), due to the default of the Contractor and to the extent that such delay is not a delay which is attributable to the Client, the Contractor shall pay to the Client liquidated damages in an amount of zero point five percent (0.5%) of the Contract Price for each week of delay to a maximum of five percent (5%) of the Contract Price. The Client may, in its sole and exclusive discretion, stop all work or take corrective measures by the Contractor for any liquidated damages incurred in connection therewith. In the event of a delay due to Force Majeure exceeds a period of one hundred and twenty (120) days, the Client may terminate the Contract. In such an event, the Client shall, within thirty (30) days thereafter, pay all monies due in respect of all Work or part thereof properly performed, to the extent not already paid, plus all direct and indirect costs and damages, if any, including such liquidated damages, that were reasonably foreseeable at the time of the termination.

5.7 The consequences of any Statutory Changes shall be for the account of the Client. If execution of the Contract becomes unlawful as a result of any such Statutory Changes, the Contractor may terminate the Contract and the 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 the event that the Contractor fails to effect Delivery within a period of one hundred (100) days from the date of Delivery or Completion agreed upon (as may be extended by Force Majeure or any delays not attributable to the Contractor) or the occurrence of an Insolvency Event for the Contractor. Any other termination rights are excluded, including the exception of termination rights and any costs required that are not otherwise subject to the termination rights for the Contractor. The Client shall take over the Work as performed at that point in time in accordance with the Contract and pay to the Contractor, after giving full satisfaction of any and all claims, the following: (i) all monies due by a Party under the Work or take corrective measures by the Contractor; (ii) all reasonable direct costs incurred by a Third Party to have the Work completed that are in excess, in part or in whole, of the monies due of the Contractor to the Client; and (iii) all reasonable direct costs incurred by a Third Party to have the Work completed that are in excess, in part or in whole, of the monies due of the Contractor to the Client. The Client shall have the obligation to mitigate any cost necessary for the Completion of the Work. Any costs that are a consequence of the Client’s decision not to pay the Contractor for the Work performed or not to take corrective measures as required by the Contract. The Client shall not be liable for any costs incurred by a Third Party that may arise due to the Client’s failure to take over the Work.

7 WARRANTY

7.1 Subject to the terms set forth herein, the Contractor warrants that the Work shall be free of defects in design, workmanship and materials (the "Warranty") for a period of eighteen (18) months from Delivery or twelve (12) months from Completion, whichever period ends first (the "Warranty Period").

7.2 Subject to this clause 7, within the Warranty Period, the Contractor shall 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 the Contractor is responsible, free of charge. Replacement parts will be delivered as per Works, the Contractor is entitled to use any parts of the Work or part thereof, defective parts, freight pre-paid, to establish the Warranty. In case of defects in any of the Services, the Warranty is limited to re-performing the defective Services.
7.3 The Warranty is only applicable if: (i) the defect occurred under normal and proper use and service; (ii) the defect is notified to the Seller within the warranty period; (iii) no warranty was operative when the Work is installed, operated and maintained strictly in accordance with the Contractor’s instructions and procedures set out in the documentation; (iv) the work was performed for the purpose it was intended and the defect arose from faulty materials in the Work, and was not caused by other machinery or apparatus; and (v) the Client notified the Contractor in writing of its dissatisfaction within 14 days of its discovery.

7.4 Notwithstanding the foregoing, the Warranty will be void if the Work was either (i) repaired or serviced by persons or at places unauthorized or (ii) repaired or serviced without the prior written authorisation by the Contractor; or (iii) repaired by using replacement parts not manufactured, delivered or approved by the Contractor; or (iv) modified without prior approval by the Contractor.

8.5 In relation to the Warranty Work, the following additional costs and services are not covered by the Warranty: (i) any cost or damage incurred by the Contractor as a result of the Client not performing or failing to perform any work that is part of the Client’s obligations with respect to the Warranty Work; (ii) any resulting loss or damage to the vessel or equipment to its full extent; (iii) any direct or consequential loss or damage caused to the vessel by the Client or the third party, regardless of whether or not caused or brought about by either the Contractor or the Client; and (iv) any corporate, commercial or other business information; and (v) all other data which should be reasonably assumed as being confidential.

All Confidential Information contained in the documents relating to that part of the document which is submitted is subject to the provision that this document is submitted in confidence upon the condition that the receiving Party shall: (i) not use the Confidential Information, in whole or in part, for any purpose other than the performance of the Contract; and (ii) keep all Confidential Information strictly confidential and, (iii) not disclose or furnish the Confidential Information, in whole or in part, to any third party (except for the Contractor’s prior written approval, such approval not to be unreasonably withheld) or to any third party (whether or not in connection with the Work) under the Contract or the Contractor other than in accordance with the obligations of the Contract. The receiving Party shall ensure that those subcontractors or suppliers to whom Confidential Information is disclosed shall observe the provisions of this clause 11 in all respects as if they were party to the Contract and be liable for breach of any of the provisions of this clause 11 by any such person.

11.3 The Contractor’s obligations under the Contract shall be extended to Confidential Information which: (i) is to be entered into the public domain without breach hereof by the receiving Party or its Group; or (ii) is lawfully in the possession of the receiving Party prior to the possession by the Contractor of any Confidential Information; or (iii) can be shown by the receiving Party to have been independently developed and/or (iv) is acquired or developed by the receiving Party without the aid, reference, to, application or use of Confidential Information will remain, as to be demonstrated by the receiving Party with documentation; (v) is obtained by the receiving Party from any third Party that is lawfully in the possession of such information, but only if such disclosure of information to the receiving Party does not violate any confidentiality or legal obligation imposed on the receiving Party not to breach a confidential relationship with any third party to disclosing Party or, (vi) is required to be disclosed under the applicable laws, regulations or any judicial or arbitral proceeding; (vii) that the receiving Party shall, unless prohibited by law, give written notice of such required disclosure to the disclosing Party prior to the disclosure.

11.4 The Parties agree that breaches of copyright or of any other confidentiality are not considered an indirect or consequential loss and therefore shall not be excluded by clause 8.3; and that no damage which may be suffered by the receiving Party as a result of such breach shall be a basis for the receiving Party to reject any information, but only if such disclosure of information to the receiving Party does not violate any confidentiality or legal obligation imposed on the receiving Party not to breach a confidential relationship with any third party to disclosing Party or, (vi) is required to be disclosed under the applicable laws, regulations or any judicial or arbitral proceeding; (vii) that the receiving Party shall, unless prohibited by law, give written notice of such required disclosure to the disclosing Party prior to the disclosure.

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

12.4 In carrying out its activities under the Contract, the Parties shall ascertain and comply with all applicable obligations and restrictions arising out of or from following any and all relevant anti-bribery and anti-corruption legislation of the United States, the European Union, the United States and any other country that is or may be or become relevant in respect of the Contract (the “Anti-Bribery and Corruption Policy”).

12.5 In carrying out its activities under the Contract, the Parties shall comply with all applicable anti-bribery and corruption laws, regulations, and other legal requirements, and shall not engage in any conduct or engage in any transaction in relation to the Equipment in any country for which specific sanctions or restrictions are in place.

12.6 The Parties shall act in conformity with the General Data Protection Regulation (EU)2016/679. In addition, the Client shall comply with the Contractor’s “Code of Conduct and Anti Bribery and Corruption Policy”, as attached to these Terms. The Client shall independently and hold harmless the Contractor from and against all costs and damages which may occur as a result of any breach by or on behalf of the Client, including but not limited to its employees and or any third party contractors, suppliers or subcontractors engaged by the Client or the Contractor in connection with the Contract or the Contractor’s prior written approval, such approval not to be unreasonably withheld.

12.7 The Parties shall act in conformity with the applicable laws, regulations, and other legal requirements, and shall not engage in any conduct or engage in any transaction in relation to the Equipment in any country for which specific sanctions or restrictions are in place.

12.8 The Parties shall act in conformity with the General Data Protection Regulation (EU)2016/679. In addition, the Client shall comply with the Contractor’s “Code of Conduct and Anti Bribery and Corruption Policy”, as attached to these Terms. The Client shall independently and hold harmless the Contractor from and against all costs and damages which may occur as a result of any breach by or on behalf of the Client, including but not limited to its employees and or any third party contractors, suppliers or subcontractors engaged by the Client or the Contractor in connection with the Contract or the Contractor’s prior written approval, such approval not to be unreasonably withheld.

12.9 The Parties shall comply with the Contractor’s “Code of Conduct and Anti Bribery and Corruption Policy”, as attached to these Terms. The Client shall independently and hold harmless the Contractor from and against all costs and damages which may occur as a result of any breach by or on behalf of the Client, including but not limited to its employees and or any third party contractors, suppliers or subcontractors engaged by the Client or the Contractor in connection with the Contract or the Contractor’s prior written approval, such approval not to be unreasonably withheld.

12.10 The Parties shall comply with the Contractor’s “Code of Conduct and Anti Bribery and Corruption Policy”, as attached to these Terms. The Client shall independently and hold harmless the Contractor from and against all costs and damages which may occur as a result of any breach by or on behalf of the Client, including but not limited to its employees and or any third party contractors, suppliers or subcontractors engaged by the Client or the Contractor in connection with the Contract or the Contractor’s prior written approval, such approval not to be unreasonably withheld.

12.11 The Parties shall comply with the Contractor’s “Code of Conduct and Anti Bribery and Corruption Policy”, as attached to these Terms. The Client shall independently and hold harmless the Contractor from and against all costs and damages which may occur as a result of any breach by or on behalf of the Client, including but not limited to its employees and or any third party contractors, suppliers or subcontractors engaged by the Client or the Contractor in connection with the Contract or the Contractor’s prior written approval, such approval not to be unreasonably withheld.

12.12 The Parties shall act in conformity with the General Data Protection Regulation (EU)2016/679. In addition, the Client shall comply with the Contractor’s “Code of Conduct and Anti Bribery and Corruption Policy”, as attached to these Terms. The Client shall independently and hold harmless the Contractor from and against all costs and damages which may occur as a result of any breach by or on behalf of the Client, including but not limited to its employees and or any third party contractors, suppliers or subcontractors engaged by the Client or the Contractor in connection with the Contract or the Contractor’s prior written approval, such approval not to be unreasonably withheld.
In such event, the Contractor shall propose alternative wording for such provision.

13.5 Except as specifically provided elsewhere in these Terms, this Contract shall not be construed to confer any benefit on any party not a Party to the Contract (or any agreement amending the Contract) or expressed to be supplemental hereto nor shall it provide any rights to such party to enforce its provisions.

14 LAW AND DISPUTE RESOLUTION

14.1 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 the Parties hereby exclude the applicability of the United Nations Convention on Contracts for the International Sales of Goods (1980) to this Contract.

14.2 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 twelve (12) months after the cause of action has arisen.