

GENERAL TERMS AND CONDITIONS

1. INTRODUCTION

These General Terms and Conditions – Parts (the “Conditions”) shall, unless otherwise agreed in writing, apply to all sales of parts (the “Parts”) by Actomar Ltd. (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 compliance with these Conditions which is acknowledged by the Supplier (any 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 Supplier unless Supplier has agreed in writing to such change or cancellation.

2. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

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 Parts or any document or data provided by the Supplier in connection therewith shall remain the Supplier's property. The Buyer shall defend, indemnify and hold harmless the Supplier against all claims, losses and damages, including reasonable attorneys' fees, arising out of or resulting from any reuse, modification, reproduction or publication of Supplier's intellectual property documents or data.

The Supplier has the right to suspend the performance of its obligations under the Contract if it is reasonably clear from the circumstances that the Buyer will not be able to perform its obligations as stated in the Contract.

3. DELIVERY, ACCEPTANCE AND RETURNS

All references to trade terms shall be interpreted in accordance with Incoterms 2010. Unless otherwise agreed and confirmed in writing all prices are quoted “ex works” warehouse of the Supplier in accordance with Incoterms 2010 and exclude the cost of packing and insurance. Any additional charges, such as, but not limited to, freight charges, insurance premiums, fees for export, transit, import or other permits as well as for certifications shall be borne by the Buyer. 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 Buyer has notified Supplier of any shortages or damage within three (3) days following delivery of the Parts. No returns of the Parts will be permitted or allowed by the Supplier.

4. PAYMENT AND OWNERSHIP

Unless otherwise agreed, payment shall be made by bank remittance in the currency and to the bank account set forth in the Supplier's invoice, not later than on the due date specified on the invoice. Payment shall be made in full without any set off, counterclaim or deduction. The Buyer shall pay interest on overdue payments from the maturity date until the actual date of payment at the rate of three percent (3%) per month. The Buyer shall pay the Supplier all costs related to the collection of overdue amounts, including reasonable attorneys' fees. In the event any payment is more than thirty (30) days late, the Supplier shall be entitled to suspend or terminate the Contract by written notice to the Buyer, and such remedies shall not be exclusive of the Supplier's additional rights under contract or law. Title to the Parts shall pass to the Buyer only when payment in full has been received by the Supplier. The Supplier may as a precondition for delivery of Parts, request (i) advance payment and/ or (ii) that the Buyer pays or provides security covering any unpaid amount already owed to Supplier or one of its affiliates.

5. WARRANTY

5.1 The guarantee period for the goods is 6 months from the date of delivery. The Buyer shall inspect the Parts after delivery and notify the Supplier in writing of any defects, loss, shortage, excess or, in case of other delivery terms than EXW, any transit damage without undue delay and not later than within three (3) days of delivery. In event of any defects, loss, shortage, excess or transit damage the Purchaser shall immediately permit the Supplier to carry out inspection and any such investigation the Supplier finds necessary. If the Buyer fails to adhere to these procedures, any remedial costs shall be the responsibility of the Buyer. For replacement / substitute parts the guarantee period starts anew and lasts 6 months after the replacement / substitute parts are delivered to the Supplier.

The Seller reserves the right to suspend delivery of all Spare Parts on order if the Buyer fails to make payments in accordance with these terms, or those separately agreed to in writing by the parties.

5.2. The guarantee will expire prematurely if the Buyer or a third party undertakes inappropriate modification or repairs or if the way of exploitation is not in agreement with Engine Manual Instruction or the Buyer, in case of defect, does not immediately take all appropriate steps to mitigate the damage and give the Supplier the possibility of remedying such defect. The obligation of the Supplier to repair or replace defective parts shall be fulfilled by “ex works” Supplier's warehouse delivery of the goods. The forwarding and returning of the goods are to the Buyer's risk and expenses.

5.3. The Supplier shall bear only the costs of repairing or replacing of the defective goods in its works. If for reasons beyond the Supplier's control such goods cannot be repaired or replaced in the Supplier's works all additional costs arising there from shall be borne by the Buyer.

5.4. Any further claims of the Buyer, particularly compensation claims for consequential damages including loss of profit, loss of production, standstill and other indirect losses are hereby expressly excluded.

Delivery of replaced or repaired parts will be made in accordance with the original Contract delivery terms.

5.5 The Supplier shall not be liable for any defect due to or arising in connection with: (1) any materials, components, tools, designs or software provided by the Buyer; (2) negligence or willful misconduct of Buyer; (3) parts, accessories or attachments other than those supplied as Parts by the Supplier; (4) improper service work, installation or alterations carried out by the Buyer; (5) normal wear and tear; (6) use of unsuitable material or consumables by the Buyer; (7) fluctuation in the grid; or (8) any use, service or operation of the Parts which is not in conformity with manuals, instructions or specifications provided by the Supplier or which is otherwise not in accordance with normal industry practice. The Supplier's warranty obligation does not include any craneage, electricity, scaffolding, docking, diving, sub-sea work, towage costs, demounting or mounting costs and expenses of the Supplier's personnel or representatives, and all such costs and expenses shall be reimbursed by the Buyer to the Supplier when applicable. If after the Supplier's warranty investigation it is found that the Buyer does not have a warranty claim within the scope of these Conditions, then the Buyer shall be responsible for all applicable costs and expenses for such inspection, repaired or replaced components or other service work.

5.6 THIS CLAUSE 5 SETS FORTH THE ONLY WARRANTY APPLICABLE TO THE PARTS AND IS IN LIEU OF ANY OTHER WARRANTIES, GUARANTEES, OBLIGATIONS AND LIABILITIES EXPRESS OR IMPLIED INCLUDING WARRANTIES, GUARANTEES, OBLIGATIONS OR LIABILITIES AGAINST NON-CONFORMITY OR DEFECTS. BUYER HEREBY WAIVES ALL OTHER REMEDIES, GUARANTEES AND LIABILITIES, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE (INCLUDING WITHOUT LIMITATION FITNESS FOR PURPOSE, MERCHANTABILITY OR SATISFACTORY QUALITY).

6. SUPPLIER'S LIABILITY

6.1 IN NO EVENT SHALL SUPPLIER BE LIABLE FOR ANY INDIRECT, CONTINGENT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, HOWEVER CAUSED OR ARISING (INCLUDING WITHOUT LIMITATION) FOR ANY LOSS OF ACTUAL OR ANTICIPATED PROFITS OR REVENUE OR ANTICIPATED SAVINGS, PUNITIVE OR EXEMPLARY DAMAGES, THE COST OF SUBSTITUTED EQUIPMENT OR PARTS NOT ARISING FROM THE WARRANTY PROVIDED HEREIN, TOWAGE CHARGES, POLLUTION REMEDIATION COSTS, COSTS FOR 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 BUYER), DAMAGE TO ANY EQUIPMENT OR PROPERTY OTHER THAN THE PARTS DELIVERED HEREUNDER, COST OF LABOR FOR THE REMOVAL OR REINSTALLATION OF THE EQUIPMENT OR PARTS OR ANY PART THEREOF, COSTS FOR ANY ADDITIONAL TESTS (INCLUDING, WITHOUT LIMITATION, SEA TRIALS), DEBRIS REMOVAL, OR FOR LOSS OF TIME OR USE OF ANY EQUIPMENT, INSTALLATION SYSTEM, OPERATION OR SERVICE). THIS LIMITATION ON SUPPLIER'S LIABILITY SHALL APPLY TO ANY LIABILITY FOR BREACH OF SUPPLIER'S OBLIGATIONS UNDER OR IN CONNECTION WITH THE CONTRACT, WHETHER BASED ON WARRANTY, FAILURE OF OR DELAY IN DELIVERY OR OTHERWISE.

6.2 Notwithstanding any other provision of the Contract, the Supplier's aggregate liability under the Contract shall not exceed thirty percent (30%) of the Contract price.

7. EXPORT CONTROLS

7.1 The parties agree that the Parts shall be delivered subject to all applicable export controls 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, transshipped, traded, diverted or transferred, directly or indirectly, contrary to such controls or restrictions.

7.2 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 by the Supplier, the Buyer shall furnish the Supplier with all the relevant certificates relating to export control laws, regulations and restrictions, such as, but not limited to, end user certificates, in form and substance specified by the Supplier.

8. 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, war, riot, embargos, acts of civil or military authorities, fire, flood, accidents, strikes, failure of a subcontractor to provide manpower, materials or goods caused by an event that qualifies under this Clause 8, epidemics, unusually severe weather affecting either party, or causes beyond their control.

9. SECURITY AGREEMENT

The Buyer hereby grants to the Supplier a continuing security interest, and when applicable a maritime lien for necessities, 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.

10. DUTIES, TAXES, FEES AND COMPLIANCE WITH LAWS

The Buyer shall pay, where applicable, all duties, withholding and other taxes, customs fees and charges and all charges and fees by a classification or inspection society. All such documentation or approvals which are required by applicable laws, and any applicable modifications of such laws, shall be the responsibility of and paid by the Buyer.

11. GOVERNING LAW AND ARBITRATION

The Contract shall be governed by and interpreted in accordance with the laws in force at the registered office of the Supplier, excluding the conflict of law rules applicable in such jurisdiction. Any controversy, claim or dispute between the parties hereto arising out of or related to this Contract shall be submitted to the International Court of Arbitration of the International Chamber of Commerce for final and binding arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce by three (3) arbitrators appointed in accordance with the said Rules. The arbitration proceedings shall be in the English language and shall take place in the country agreed upon.