

CONDITIONS OF SALE AND SUPPLY

CONDITIONS OF CONTRACT governing all contracts for the sale or supply of Goods and/or the provision of Services by **KTL OFFSHORE PTE LTD** (the “Seller”).

In these Conditions: -

“Buyer” means the person, firm or company named in the Order at whose request the Goods and/or Services are sold to or provided by the Seller.

“Contract” means the contract for the sale and purchase or provision of the Goods and/or Services on these Conditions.

“Goods” means any goods or replacements therefor supplied to the Buyer under the Contract.

“Order” means the Buyer’s act of submitting an Order Form or Purchase Order together with, where applicable, payment of a deposit to the Seller ordering specified Goods and/or Services.

“Services” means the services (if any) described in the Order.

These Conditions shall apply to every contract entered into for the sale or supply of Goods and/or the provision of Services by the Seller and shall prevail notwithstanding any printed or other conditions contained in any correspondence, information sheet, purchase order, acceptance of estimate or quotation or otherwise brought to the Seller’s notice. No other agreement, representation, promise, undertaking or understanding of any kind unless expressly agreed to in writing by a director or authorised person on behalf of the Seller shall alter, vary, supercede or operate as a waiver of these Conditions. In the event there is any conflict between these Conditions and the provisions set out in any other document, the provisions set out in these Conditions shall always prevail.

1 **FORMATION AND PARTIES**

- (a) The Buyer's Order to the Seller is an offer to enter into a contract upon these Conditions. Acceptance occurs and the Contract is formed only when the Seller accepts the Buyer's Order in writing or when the Seller notifies the Buyer of the estimated delivery date of the Goods and/or the provision of the Services.
- (b) The Seller's employees, servants or agents are not authorised representatives for the purpose of making any representations (whether oral or otherwise) concerning the Goods and/or the Services on the Seller's behalf. In entering into the Contract, the Buyer acknowledges that it does not rely on, and waives any claim for breach of any such representations which are not expressly confirmed by the Seller in writing.
- (c) The Buyer may not assign the benefit of the Contract without the Seller's prior written approval.
- (d) The Contract is not cancellable or terminable by the Buyer without the express written approval of a director or other authorised person on behalf of the Seller. If the Seller agrees to the cancellation or termination of the Contract by the Buyer, the Buyer shall indemnify the Seller in full against all losses, costs and expenses incurred up to the time of cancellation or termination.

2 **PRICE**

- (a) All amounts invoiced to a Buyer are payable in full to KTL Offshore Pte Ltd only. Any and all taxes and deductions, including but not limited to withholding tax and/or deductions imposed by any authorities on the Buyer are payable by the Buyer solely.
- (b) Prices quoted are exclusive of Goods and Services Tax and all other applicable sales taxes unless otherwise expressly stated in writing by the Seller. Prices are inclusive of delivery in Singapore only. In all other cases, prices are ex-factory, Singapore and include export-quality packaging and crating.

- (c) All payments must be made in the currency invoiced by the Seller. Payments in any other currency will not be accepted unless the Seller's prior consent is obtained. If payments are made by telegraphic transfer, all bank charges (including those imposed by the Seller's bank) must be borne by the Buyer.
- (d) Without prejudice to the generality of these Conditions, the Seller reserves the right to vary the price of the Goods and/or the Services by any amount attributable to a change in or the insufficiency of the Buyer's instructions or to any variation in the costs of materials, labour, transport, duties, taxes, exchange rates or any costs of whatsoever nature between the date of the Contract and the date of delivery of the Goods and/or provision of the Services.

3 **DELIVERY**

- (a) Delivery dates of Goods and the provision dates for Services are estimates only and will be furnished by the Seller on acceptance of an Order. Time of delivery or provision is not of the essence of the Contract and where any delivery or provision date is provided by the Seller, it is always to be understood that the date is an estimate and the Seller will endeavor to deliver the Goods and/or provide the Services within 30 days from the date of the Buyer's purchase order (if any) or upon arrival of the ordered Goods. The Seller shall use its reasonable endeavours to deliver the Goods and/or provide the Services as mentioned above, but may suspend or delay delivery of the Goods or the provision of the Services and shall not be liable for any and all losses or damages whatsoever in the event of late delivery or non-delivery of the Goods and/or the provision of the Services or any partial delivery thereof. The Buyer shall not be entitled to refuse to accept late delivery of Goods and/or the provision of Services or treat late delivery of Goods and/or the provision of Services as a breach of the Contract.
- (b) The Seller may at its option deliver by partial delivery; each partial delivery shall constitute a separate contract on these Conditions. Failure by the Seller to deliver any one or more of the partial deliveries, or any claim by the Buyer in respect of any one or more of the partial deliveries, shall not entitle the Buyer to treat the Contract as repudiated as a whole.

- (c) Delivery of Goods shall be deemed to take place upon the Seller or its agent handing the Goods or the documents conferring title to the Goods to the Buyer or its agent at the Seller's premises or at a designated delivery location, or upon the Seller notifying the Buyer that the Goods are ready for despatch. All losses, damages and deterioration to the Goods from whatsoever cause shall be borne by the Buyer from the time of delivery.
- (d) If the Buyer should ask the Seller to delay the delivery of any Goods and/or the provision of any Services, the Seller is only obliged to consider the Buyer's request if the Buyer first signs the Seller's pro forma "Bill & Hold Letter" which the Seller shall provide. In any event, the period of delay (if agreed to by the Seller) shall entirely be at the Seller's discretion.
- (e) If the Buyer fails to collect or take possession of the Goods upon delivery, the Seller shall be entitled to treat the Contract as repudiated by the Buyer. Until the Contract is so terminated, the Seller, may at its option, either store the Goods itself or have them stored by third parties on such terms as it in its absolute discretion thinks fit. The cost of storage and any additional transportation will be added to and form part of the Contract price. If the Seller elects to treat the Contract as repudiated in accordance with these Conditions, it shall (without prejudice to its rights and remedies in respect of such repudiation) be entitled to re-sell the Goods and retain the proceeds of sale.
- (f) Deviations in the quantity of Goods delivered and/or Services performed from that stated in the Contract or these Conditions shall not give the Buyer any right to reject the Goods and/or Services or to claim damages and the Buyer shall be obliged to accept and pay for the quantity of Goods and/or Services actually delivered or performed at a pro-rated rate.

4 **LOSS DAMAGE OR SHORTFALL IN GOODS DELIVERED**

- (a) The Buyer shall inspect the Goods immediately upon delivery or upon collection, as the case may be, and shall (unless such inspection cannot be carried out and the delivery note/order is marked "not examined") subject to sub-paragraph 4(b) below, be deemed to have accepted the Goods as delivered or collected in good condition.

- (b) The Seller shall not be liable for any Goods damaged in transit or any shortfall in the quantity of the Goods delivered, discoverable on reasonable inspection, and in any event will not be liable unless the Buyer notifies the Seller, before the expiry of seven (7) days after delivery or receipt of the Goods of any alleged damage or lack of conformity with the Contract.
- (c) The Seller shall make good any proven and ascertained shortages notified to it under subparagraph 4(b) above as soon as reasonably practicable but shall not be liable for any loss whatsoever and howsoever arising from such shortfall.
- (d) The Seller's liability for Goods lost or damaged (if any and only if attributable by the Seller) shall in all circumstances be limited (at the Seller's option) to the repair or replacement cost of the Goods or crediting the Buyer with the invoice value of the Goods in question.
- (e) In all cases where damaged Goods or shortages are complained of, the Seller shall be under no liability in respect thereof unless an opportunity to inspect the Goods is offered to the Seller for confirmation before any use is made thereof or any alteration or modification is made to the Goods by the Buyer.

5 **ITEMS SUPPLIED BY BUYER**

- (a) The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of the Order (including specifications) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods and/or Services within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
- (b) The Buyer shall be liable for all drawings, specifications and instructions submitted to the Seller with the Order or pursuant to the Contract and shall indemnify and keep indemnified the Seller against any and all loss or damage directly or indirectly arising out of any error in or omission from such drawings, specifications and instructions, and all costs (including legal costs on an indemnity basis), claims, demands and expenses whatsoever in respect of (but not limited to) the infringement or potential infringement of any patent, copyright, registered design or other third

party or intellectual property right arising out of the Seller's use of such drawings, specifications or instructions.

6 **LIMITATION OF SELLER'S LIABILITY**

- (a) The Goods and/or Services are sold or provided strictly on the understanding that the Buyer has satisfied themselves as to their suitability for the required purpose. The Buyer acknowledges that all descriptions, specifications and details and any photographs or illustrations included in any catalogues, brochures, information sheet, price list or other publicity material, all quotations and confirmations and acceptances of Order or similar documents and all forecasts of performance howsoever given are approximate and are for the Buyer's general guidance only. They do not form part of the Contract nor do they constitute a description of the Goods and/or Services nor representations made by the Seller.
- (b) The Seller's liability under Condition 4 shall be accepted by the Buyer in lieu of any warranty or condition, whether expressed or implied by law, as to merchantability or fitness for any particular purpose of the Goods and/or Services and save as provided in these Conditions, the Seller shall not be under any liability whatsoever and howsoever to the Buyer (whether in contract, tort or otherwise) and the Buyer shall fully indemnify the Seller against any claims, demands, losses and damages (including legal costs on an indemnity basis) in respect thereof.
- (c) The Seller shall not in any circumstances whatsoever be liable to the Buyer for consequential, direct or indirect loss of whatsoever nature suffered by the Buyer or for special damages, loss of use (whether complete or partial) of the Goods and/or Services or loss of profit of any contract or otherwise.
- (d) Nothing in these Conditions shall be construed as limiting or excluding the Seller's liability for death or personal injury resulting solely from its own negligence.
- (e) The Seller's total liability for any one claim or for the total of all claims arising from any one or more act or omission or default by the Seller (whether arising from the Seller's negligence or otherwise) shall not exceed the Contract price.

7 **PAYMENT**

- (a) Subject to satisfactory trade, banker's and other requisite references and, where no other terms of payment have been specifically agreed in writing, the Seller's terms are cash payment in full to be made prior to delivery of the Goods and/or provision of the Services. No discount or allowance will be made unless specifically agreed to by the Seller in writing. Interest will be charged on all overdue payments at the rate of twelve per cent (12%) per annum with monthly rests and shall be calculated and accrue on a day-to-day basis from the date on which payment fell due until full payment (whether made before or after judgment has been obtained by the Seller against the Buyer).
- (b) Time for making payment by the Buyer shall be of the essence of the Contract.
- (c) The Buyer shall have no right of set-off, statutory or otherwise.
- (d) The Seller may at any time in its absolute discretion appropriate any payment made by the Buyer in respect of the Goods and/or Services to such outstanding debt as the Seller thinks fit notwithstanding any purported appropriation to the contrary by the Buyer.
- (e) The Seller reserves the right at any time and at its absolute discretion to demand security for payment before continuing with an Order or delivering the Goods or performing the Services or any instalment thereof.
- (f) If the Buyer fails to make any payment in accordance with these Conditions or fails to comply with any of the Conditions herein, the Seller may at any time in its absolute discretion (and without prejudice to all its rights) terminate the Contract and/or withhold delivery of any further Goods or the provision of any further Services to the Buyer.
- (g) Goods and Services Tax and all other applicable sales tax will (if applicable) be charged at the rate prevailing at the time of despatch of the Goods or the provision of the Services.

8 **RESTRICTED OR CONTROLLED GOODS**

- (a) In so far as the Goods or Services are to be imported or brought into any jurisdiction that is affected, restricted or controlled by law or any other applicable rules and regulations for the time being in force, the Buyer shall: -
- (i) Be solely responsible and shall ensure that it procures/obtains all necessary licences or permits from the relevant authorities to purchase or import these Goods or Services in advance;
 - (ii) not be entitled to return any such Goods delivered or to rescind or terminate any Contract in respect of them in the event that the licence or permit issued to the Buyer to purchase or import these Goods is revoked, cancelled, expires or otherwise; and
 - (iii) indemnify the Seller against any claim for any loss or damage arising from any misuse of these Goods by the Buyer or any third party.

9 **INDEMNITY**

- (a) The Buyer shall indemnify the Seller against all costs and expenses (including legal costs on an indemnity basis) incurred by the Seller in obtaining or trying to obtain payment of any or all sums of money payable hereunder or in repossessing or trying to repossess the Goods, such sums to be recoverable from the Buyer in addition and without prejudice to the Seller's rights in respect of any breach of the Contract.
- (b) The Buyer undertakes to secure all necessary permits, approvals and licences from the relevant authorities for the purchase or importation of the Goods and shall indemnify the Seller against any claim made against or any fine or other penalty imposed on the Seller for their failing to do so.

10 **ENFORCEMENT**

- (a) Should it be necessary for the Seller to enforce any of the provisions of the Contract or these Conditions, the Buyer agrees and undertakes at its own cost and expense to indemnify the Seller for all charges, costs and expenses (including legal costs on an indemnity basis) that they may incur.

11 **FORCE MAJEURE**

- (a) The Seller shall not be liable to the Buyer for any loss or damage whatsoever or howsoever occasioned if it is unable to carry out any provisions of the Contract for any reason beyond their control including (but without limitation) Acts of God, Government action or regulations (Singapore or otherwise), war, civil commotion, epidemic, fire, flood, drought, failure of power supply, lock out, strike, stoppage, arrest of vessels or other action by employees or third parties in contemplation or furtherance of any dispute, delay by suppliers, accident or shortage of materials, fuel, labour or manufacturing facilities.
- (b) The Seller shall notify the Buyer as soon as reasonably practicable after the circumstances preventing performance arise. During the continuance of such a contingency, the Seller may within its absolute discretion, withhold, reduce or suspend performance of its contractual obligations so far as they are prevented or hindered by such contingency without liability to the Buyer for any loss or damage whatsoever suffered directly or indirectly by reason of any such withholding, reduction or suspension.
- (c) If such contingency continues for more than three (3) months or where the Seller reasonably apprehends that it may continue for more than (3) months, the Seller may at its sole discretion cancel the Contract.
- (d) If the Contract is cancelled in this way, the Seller will refund any payment which the Buyer has already made on account of the Contract price (subject to the deduction of any amount the Seller is entitled to claim from the Buyer for any Goods delivered or Services provided or otherwise) and the Seller shall have no further liability to the Buyer whatsoever.

12 **SUBSTITUTION**

- (a) Should any materials or parts of the Goods or Services specified or required for completion of the Contract hereunder be unavailable for the timely satisfaction of an Order, a substitute reasonably deemed by the Seller in its sole discretion to be suitable for the intended purpose, as understood by the Seller, will be supplied if available and shall be accepted by the Buyer in full satisfaction of performance of the Seller's obligation in that respect.
- (b) In the event that the Seller is unable to obtain a substitute which the Seller deems suitable for the unavailable material or part or Goods or Services, the Seller's obligation to complete performance shall, upon notification to the Buyer, be suspended until such time as the materials or services previously unavailable or a substitute therefor as provided for above become available and any necessary adjustment to the price shall be made by the Seller.

13 **NO WAIVER**

- (a) No waiver of any of the Seller's rights under the Contract shall be effective unless made in writing and signed by a Director or other authorised person on behalf of the Seller. A waiver shall apply only to the specific circumstances in which it is given and shall be without prejudice to the enforcement of the Seller's rights in relation to different circumstances or the recurrence of similar circumstances.

14 **NOTICES**

- (a) Any notice under these Conditions shall be properly given if in writing and sent by registered post or facsimile or electronic mail to the address of the intended recipient as stated in the Contract or to such address (electronic or otherwise) as the Seller or the Buyer may from time to time notify to each other as their respective addresses for service and shall be deemed served in the case of registered post, on the expiry of five (5) days from time of posting, and in the case of facsimile or electronic mail, on the expiry of 15 minutes from completion of transmission by the sender.

15 **CONSTRUCTION AND JURISDICTION**

- (a) Singapore Law shall govern the construction and operation of the Contract and these Conditions and the parties hereto submit to the non-exclusive jurisdiction of the Courts of Singapore in respect of any dispute arising out of or in connection with the Contract and/or these Conditions. Nothing herein however shall be deemed to limit the right of the Seller to commence legal proceedings against the Buyer in any other jurisdiction as it deems fit.
- (b) If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be effected thereby.
- (c) The headings used in these Conditions are inserted for convenience only and shall be ignored in construing these Conditions.
- (d) In these Conditions, words importing the singular number shall include the plural and vice versa and words importing the neuter shall include the masculine and feminine gender and vice versa.



Mark Beretta

Chief Operation Officer

Date: 9th December, 2014



Jonathan Tan

Administrative Director

Date: 9th December, 2014