



**These Terms and Conditions apply to all Contracts for Purchase of Goods or Services entered into by James Fisher and Sons Public Limited Company or any subsidiary or related company within the James Fisher Group**

**Attention is drawn in particular to clause 6, which contains warranties and indemnities in the Company's favour in certain circumstances.**

**1. Definitions**

In these Terms and Conditions:

**"Company"** means James Fisher and Sons Public Limited Company or any subsidiary or related company within the James Fisher Group.

**"Company's Address"** means Fisher House, PO Box 4, Barrow-in-Furness, Cumbria, LA14 1HR or the usual place of business of any subsidiary or related company within the James Fisher Group.

**"Completion Date"** means the date specified in the Purchase Order by which the Supplier will fully and satisfactorily provide the Service(s), the Equipment or the Products.

**"Contract"** means the agreement between the Company and the Supplier, whereby the Supplier sells or supplies Products or Equipment or provides a Service to the Company, incorporating these Terms and Conditions.

**"Delivery Address"** means the address for delivery of Products or Equipment which shall be the Company's Address or such other address as may be agreed in Writing or specified in the Purchase Order.

**"Delivery Date"** means the date specified in the Purchase Order for the Supplier to deliver the Products or Equipment.

**"Equipment"** means the equipment, plant, machinery, tools, parts and accessories, including any instalment, part or combination of same, which the Company is to hire from the Supplier, or the Supplier is to provide Services in respect of, in accordance with the Contract.

**"Hire Period"** means the period from the time the Equipment is delivered by the Supplier to the Company until the time the Equipment is made available by the Company for collection by the Supplier at Company's Address or other such address as may be agreed in Writing.

**"Losses"** includes all actions, claims, demands, proceedings, damages, awards, payments, losses, costs, expenses, penalties, fines, compensation or other liabilities (direct, indirect, consequential or otherwise including loss of profit, business, turnover or market share), legal or professional expenses and interest thereon.

**"Price"** means the charge made by the Supplier for the provision of Services, sale of Products or hire of Equipment as further defined in the Contract.

**"Product(s)"** means any goods, materials, equipment, machinery, products or articles of whatsoever nature, which the Supplier is to supply or sell to the Company, or provide any Services in respect of, under the Contract.

**"Purchase Order"** means the order form issued by the Company to the Supplier setting out the requirements of the Company.

**"Quotation"** means the Supplier's quotation for the provision of Services, sale of Products or hire of Equipment.

**"Service(s)"** means any services or work provided by the Supplier to the Company under the Contract including but not limited to the provision of any consultancy or advisory services, or the service, maintenance, refurbishment or provision of qualified operators for the use or operation of the Products or Equipment.

**"Supplier"** means any person, firm, company, partnership, competent authority or other business entity engaged in supplying Services, hiring Equipment or providing Products to the Company under the Contract.

**"Terms and Conditions"** means the Terms and Conditions set out in this document and any other terms and conditions agreed pursuant to clause 2.1.

**"Writing"** means any form of written communication including transmission by facsimile. It shall also include electronic mail ("Email") where the parties have agreed either expressly or by a course of dealing to communicate by Email and have provided each other with correct Email addresses accordingly, save that any Email shall take effect only when received by the recipient.

**2. Application**

2.1 All business conducted by the Supplier with the Company, including any contracts, purchase orders, quotations or pre-contractual negotiations, shall be subject to these Terms and Conditions. Unless otherwise agreed in Writing or provided elsewhere in these Terms and Conditions, no variation or addition to these Terms and Conditions shall be binding unless agreed in Writing by the Company.

2.2 The headings in these Terms and Conditions are for convenience only and shall not affect their interpretation.

2.3 If any provision of these Terms and Conditions is held by any competent court, tribunal or authority to be invalid or unenforceable in whole or in part the validity of the remainder of the provision and all other remaining provisions of these Terms and Conditions shall not be affected thereby.

2.4 A Contract shall be formed when the Supplier accepts the Company's Purchase Order subject to these Terms and Conditions.

2.5 The Supplier will sell Products and/or hire Equipment and/or provide Services and the Company will pay the specified Price, in accordance with the Contract.

**3. Performance of Contract**

3.1 Unless otherwise agreed in Writing or specified in the Purchase Order, the place of performance of the Contract, including any delivery of Products or Equipment or where any Services are to be provided, shall be the Company's Address. Unless otherwise agreed in Writing, it is the Supplier's obligation and risk to deliver any Products or Equipment the subject of the Contract to the Company's Address or any other address the Company may nominate.

3.2 Where the Supplier agrees to sell or hire Products or Equipment to the Company, it is the essence of the Contract that the Supplier will deliver any Products or Equipment by the Delivery Date within normal office hours.



- 3.3 Where the Supplier agrees to provide a Service to the Company, it is the essence of the Contract that the Supplier will complete the Service by the Completion Date.
- 3.4 The Supplier must notify the Company immediately of any circumstances whatsoever which might cause non-compliance with Completion or Delivery Dates.
- 3.5 The Supplier shall provide the Company in good time with any instructions or other information required to enable the Company to accept performance of the Services and/or delivery of the Products or Equipment.
- 3.6 The Products or Equipment shall remain at the risk of the Supplier until delivery to the Company is complete (including any off-loading or stacking), when ownership, where applicable, of the Products or Equipment shall pass to the Company.

#### **4. Price**

- 4.1 The Price for the provision of Services, purchase of Products or hire of Equipment shall be that agreed between the parties and confirmed in Writing by the Company or specified in the Purchase Order.
- 4.2 Unless otherwise specified, the Price for any Services, Products or Equipment provided by the Supplier shall be inclusive of costs, charges or taxes relating to storage, loading, carriage, unloading, delivery and insurance of any Products or Equipment or any licence fees, duties, local taxes or additional costs of such nature.
- 4.3 The Company shall not accept any variation of the Price or any additional charges from the Supplier unless agreed in Writing by the Company.

#### **5. Invoicing and Payment**

- 5.1 The Supplier will issue to the Company an invoice or invoices for the Price of any Services, Products or Equipment.
- 5.2 Unless otherwise agreed, the Company will pay undisputed invoice(s) within forty-five (45) days of receipt of the invoice.
- 5.3 The Company shall have the right to set-off in law or equity against any sums due to the Supplier any sums which in the Company's opinion is due from the Supplier to the Company.

#### **6. Warranties, Representations, Risk and Indemnities**

- 6.1 The Supplier warrants and guarantees to the Company that the Products sold or supplied by the Supplier are of the best available design, of the best quality, material and workmanship, be without fault and conform in all respects with the Company's Purchase Order and any specification, drawing, requirement or other information provided to the Supplier.
- 6.2 The Company's rights under these Terms and Conditions are in addition to the statutory terms implied in favour of the Company by the Sale of Goods Act 1979 and/or the Supply of Goods and Services Act 1982, and any subsequent amending or relevant legislation.
- 6.3 The Company is entitled to rely on any statement, representation, advice and/or recommendation made by the Supplier during negotiations and/or after the date of the Contract, and such statements, representation, advice and/or recommendations shall be deemed incorporated into the Contract.
- 6.4 Where the Supplier is providing a Service to the Company, the Supplier agrees to exercise utmost care and skill in doing so.
- 6.5 Prior to delivery of any Products by the Supplier, the Company shall have the right if it so wishes to inspect and test the Products at all times, and if the results of such inspection or testing cause the Company to consider that the Products do not, or are unlikely to, conform with the Purchase Order and/or any specification, drawing or information provided to the Supplier, the Company shall inform the Supplier and the Supplier shall immediately take such action as is necessary to ensure conformity.
- 6.6 Where the Supplier is not the manufacturer of the Products or Equipment, the Supplier will transfer to the Company the benefit of any warranty or guarantee given to the Supplier in respect of such Products or Equipment.
- 6.7 The Supplier shall indemnify the Company in full against all Losses incurred by the Company as a result of or in connection with:
  - 6.7.1 defective workmanship, quality or materials;
  - 6.7.2 an infringement or alleged infringement of any intellectual property rights caused by the use, manufacture or supply of the Services, Products or Equipment;
  - 6.7.3 any claim made against the Company in respect of any Losses arising as a consequence of a breach or negligent performance or failure or delay in performance of the Contract by the Supplier;
  - 6.7.4 defective Equipment;
  - 6.7.5 any claim made against the Company in respect of any Losses arising as a consequence of the use or possession of the Equipment or the Equipment failing to perform as expected, including without limitation any explosion or other malfunction of the Equipment causing Losses; and
  - 6.7.6 any failure by the Supplier to comply with any term or terms of the Contract.
- 6.8 Without prejudice to any other right or remedy which the Company may have, if any fault or defect in any Products shall occur within twelve (12) months after the Products have been delivered, the Company shall notify the Supplier and the Supplier shall then (at the Company's option) either replace the Products or make good the Products at the expense of the Supplier and any Products so replaced or made good shall be guaranteed by the Supplier on the same terms for a further period of twelve (12) months.
- 6.9 Where the Supplier and/or its personnel, employees, contractors, sub-contractors, or any other person at the behest of the Supplier (the "Workforce"), boards any vessel or craft or enters the environs of any other property or premises owned or leased or occupied by the Company, in connection with the Contract,



- 6.9.1 the Supplier agrees to hold the Company, its employees, directors, crew, servants, agents and insurers (together the "Indemnified Parties") harmless, and to indemnify them:-
- 6.9.1.1 for any losses, damages, claims, liabilities, costs and expenses of whatsoever nature that they may sustain and/or incur as a result of any act or omission by the Workforce, and
  - 6.9.1.2 in respect of their liability for any claims of whatsoever nature which may be made against them by the Workforce, their heirs or assigns, and
  - 6.9.1.3 in respect of their liability for any claims of whatsoever nature which may be made against them by any third party arising out of any default, act or omission by the Workforce, and
  - 6.9.1.4 in respect of any and all costs and/or expenses incurred by them arising from any injury to or illness of the Workforce.
- 6.9.2 the Supplier also
- 6.9.2.1 undertakes and guarantees that all its liabilities, of whatsoever nature arising out of this clause 6.9 indemnity will be insured by the Supplier with an insurance company or facility acceptable to the Company, and further that the insurance company or facility concerned will waive its rights of subrogation against the Indemnified Parties, and
  - 6.9.2.2 agrees, in the event of any proceedings, action, arbitration and/or claim being commenced against the Indemnified Parties in respect of any and all of the matters referred above, provide the Indemnified Parties from time to time on demand with sufficient funds to defend any such proceedings.
- 7. Company's Property**
- 7.1 If the Company or its agents supply any goods, materials, equipment or the like or any specifications, drawings or such data free of charge to the Supplier for the purposes of the Contract, all such items shall be and remain the exclusive property of the Company and shall be held by the Supplier in safe custody and maintained and kept in good order and condition by the Supplier until returned to the Company.
- 8. Confidentiality and Resources**
- 8.1 All techniques, processes, inventions, equipment, drawings, designs, specifications, proposals and such information concerning the Services, Products or Equipment or relating to the Company's business of which the Supplier shall obtain knowledge or information (except to the extent that they are within or fall into the public domain other than by breach of the Contract) shall remain both during and after the completion of the business conducted under the Contract the absolute and exclusive property of the Company and the Supplier shall keep confidential and retain the same with the utmost secrecy and shall use its utmost endeavours to ensure that all its employees, servants and agents shall abide by the terms of this provision as though it were binding upon each of them and the Supplier shall not use same for its own purposes, nor shall it cause or permit anything which may damage or endanger the intellectual property of the Company or allow or assist others to do so.
- 8.2 The Supplier hereby agrees that, during the term of the Contract and for a period of twelve (12) months after expiry or termination howsoever caused, he will not solicit the Company's staff who are known by the Supplier to have been employed or engaged in the performance of the Contract. For the purposes of this clause, 'solicit' means a direct or indirect attempt to induce such person to take an engagement with such party as an employee, director, sub-contractor or independent contractor provided that this clause shall not apply to any engagement as a result of a general advertisement or recruitment campaign.
- 9. Rejection and Termination**
- 9.1 Without prejudice to any other right or remedy which the Company may have, if any Services, Products or Equipment are not supplied in accordance with the Contract, or the Supplier fails to comply with any terms of the Contract or the Company wishes to end the Contract for convenience, the Company may avail itself of any one or more of the following remedies at its discretion, whether or not part of the Services, Products or Equipment have been accepted by the Company:
- 9.1.1 to cancel the Contract by notice in Writing, without any liability on the part of the Company;
  - 9.1.2 to reject any Products (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier and require a full refund for the Products so returned to be paid by the Supplier; or
  - 9.1.3 to refuse to accept deliveries of any further Products and without any liability on the part of the Company.
- 9.2 The Company shall further be entitled to terminate the Contract forthwith by notice in Writing to the Supplier if:
- 9.2.1 the Supplier makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of solvent amalgamation or reconstruction); or
  - 9.2.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Supplier; or
  - 9.2.3 the Supplier ceases or threatens to cease to carry on business;
  - 9.2.4 where the Supplier is resident in a jurisdiction other than England and Wales, an event similar to any of those specified in the above sub-clauses occurs to or in relation to the Supplier; or
  - 9.2.5 the Supplier undergoes a change of control (where "control" for the purposes of this sub-clause 9.2.5 means the ability to direct the affairs of another whether by virtue of the ownership of shares, contract or otherwise).
- 9.3 In the event of termination by the Company pursuant to clause 9.2 above then, without prejudice to any other right or remedy available to the Company, the Company shall be under no further obligations under the Contract and any sums



already paid by the Company to the Supplier but not earned shall become repayable immediately notwithstanding any previous agreement or arrangement to the contrary and the Company shall be entitled to charge interest at the per annum rate of 2% above the base bank rate from time to time of HSBC Bank PLC from the time of such cancellation or suspension on any sums owed by the Supplier to the Company until the Company receives payment.

**10. Force Majeure**

10.1 The Company shall not be liable to the Supplier or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations due to any cause beyond the Company's reasonable control including (without limitation):

- 10.1.1 act of God, storm, flood, tempest or other weather conditions, explosion, fire or accident;
- 10.1.2 war or threat of war, civil war, hostilities, sabotage, insurrection, riot or civil disturbance, or requisition;
- 10.1.3 Governmental or local authority acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind;
- 10.1.4 import or export regulations or embargoes;
- 10.1.5 strikes, lock-outs or other industrial actions or trade disputes whether involving employees of the Company or of a third party;
- 10.1.6 failure or breakdown in equipment or machinery from power failure or other external causes.

**11. Notices**

11.1 Any notice required to be given by either party under the Contract shall be delivered or sent by pre-paid first class recorded delivery letter or facsimile addressed to the registered office of the party to be served or to such other place as may be designated by the party for the purpose of service and shall be deemed to have been served in the case of a notice delivered by hand, when delivered, in the case of a letter, forty-eight (48) hours after the time of posting, in the case of facsimile when despatched.

**12. Non-Assignment**

12.1 The Supplier shall not assign, transfer or sub-contract the Contract or any benefit, interest, right or obligation under the Contract, without the prior agreement of the Company in Writing.

**13. Waiver**

13.1 No act, omission, delay or indulgence on the part of the Company in enforcing the Contract or any of the Terms and Conditions thereof shall operate as a waiver of the Company's rights thereunder, unless in each case the Company expressly so agrees in Writing.

**14. Governing Law and Jurisdiction**

14.1 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England.

14.2 The Supplier hereby agrees for the benefit of the Company that any claims, disputes, legal actions, suits or proceedings it may have against the Company arising out of or in connection with the Contract shall be subject to the exclusive jurisdiction of the English Courts. In addition the Supplier hereby agrees that the Company shall have the right to bring any claims, disputes, legal actions, suits or proceedings it may have against the Supplier in the courts of any jurisdiction where the Supplier or any of its property or assets may be found or located, and the Supplier hereby irrevocably submits to the jurisdiction of any such court.