



TERMS AND CONDITIONS PARTS

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 any authorized member, agent or representative of Defense Maritime Solutions, Inc. (the “Supplier”) to a purchaser (the “Customer”). The Supplier’s offers are non-binding until accepted and confirmed by a purchase order issued by the Customer 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 Customer may not change or cancel any purchase order after it has been received by the Supplier unless the Supplier has agreed in writing to such change or cancellation.

2. DEFINITIONS

- A. AGREEMENT means these General Provisions for Orders under U.S. Government Contracts between Buyer and Seller.
- B. BUYER means Defense Maritime Solutions, Inc., a subsidiary of Wartsila, acting through Buyer’s authorized purchasing representative at its Ingalls or Newport News Shipbuilding divisions.
- C. DFARS means the Defense Federal Acquisition Regulation Supplement.
- D. FAR means the Federal Acquisition Regulation.
- E. ORDER means the instrument of contracting including the order form and all documents it references (including but not limited to these general provisions, plans, specifications, and regulations).
- F. MANDATORY FLOW-DOWN- means clauses from the FAR or DFAR that are explicitly required by the applicable regulations to be flowed down to subcontractors.
- G. PARTIES means Buyer and Seller collectively.
- H. PRIME CONTRACT means the U.S. Government’s contract for the acquisition of Products.
- I. PRODUCT means those goods, supplies, reports, computer software, parts list, data, materials, articles, items, parts, components or assemblies, drawings, procedures, manuals, forms, test reports, and any Services described in this Order. For purposes of the “Inspection” provision, the term “Product” also includes but is not limited to raw materials, components, and intermediate assemblies that comprise the Product.
- J. SELLER means the party with whom Buyer is contracting.
- K. SERVICES means Seller’s time and effort, including any Products, supplies, materials, articles, items, parts, components, or assembly’s incidental to the performance of the Service.

3. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

3.1 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 Customer 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 the Supplier’s intellectual property documents or data. To the extent there is a conflict between the foregoing provisions regarding confidentiality and intellectual property and any terms or conditions of any software license agreement, the terms and conditions of such software license agreement shall prevail.

3.2 Subject to Customer’s compliance with the Contract and these Conditions, Supplier grants Customer a non-exclusive license to use any software supplied with the Parts (“Software”) in connection with the normal and proper use of the Parts. If Software is supplied with the Parts, the term Parts shall be deemed to include Software whenever used in these Conditions. Customer may make copies of the Software only where essential for its lawful operation or for necessary back-up purposes. The following terms apply to the Software:(1) Customer shall not copy, modify, create derivative works from, disassemble or otherwise attempt to derive the source code; (2) supply of Software does not include updates, upgrades, maintenance, support or other additional services and any such items shall be subject to separate written agreement and additional cost; (3) the use of the Software may be subject to separate terms of use or third-party software terms as updated from time to time; (4) any onward supply of the Software to Customer’s customers or other end users, shall be subject to the applicable terms of the Contract and these conditions (or substantially equivalent terms). If any cloud-based service is supplied in connection with the Parts (“Cloud Service”) then the Customer may access the Cloud Service for the duration agreed in the Contract.

4. CYBERSECURITY PROTECTION

4.1 Unless otherwise agreed, upon delivery of any equipment provided by the Supplier, the Customer shall be solely responsible for system integrations and/or system security engineering for any equipment not provided by the Supplier. It is the Customer’s sole responsibility to protect the equipment and its logic-bearing system components (e.g. hardware, firmware, and software hereinafter referred to as the “Critical Components”) from any External Cybersecurity Threat or Internal Cybersecurity Threat, including against hardware and software vulnerabilities. In recognition of the foregoing, the Customer agrees and covenants that it shall use the degree of care appropriate to prevent unauthorized access, use, or hacking of the Critical Components provided in connection with any equipment provided by the Supplier and shall do so in a manner that is no less rigorous than any recommendations provided by the Supplier and accepted industry practices. Supplier is not liable for cyber incidents or breaches, any unauthorized access, interference, intrusion, leakage and/or theft of data or information within Customer’s Information Technology (IT) or Operational Technology (OT) systems. In the event that either party becomes aware of any IT or OT security breach or cyber incident that impacts either party’s ability to perform its duties relevant to the scope of work under the Contract, that party shall notify the other party without undue delay.

4.2 “External Cybersecurity Threat” is any threat, act, attack, or other incident which negatively affects the reliable workings of any equipment provided by the Supplier, which originated outside of the physical site housing such equipment.

4.3 “Internal Cybersecurity Threat” is any threat, act, attack, or other incident which negatively affects the reliable workings of any equipment provided by the Supplier, which originated inside of the physical site housing such equipment.

5. DELIVERY, ACCEPTANCE AND RETURNS

5.1 All references to trade terms shall be interpreted in accordance with Incoterms® 2020. Unless otherwise agreed in writing, the Parts shall be deemed to be sold “FCA”. 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 Customer 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 the Customer has notified the Supplier of any shortages or damage within three (3) days following delivery of the Parts. No returns of Parts will be permitted or allowed by the Supplier.

5.2 If the Customer anticipates that it will be unable to accept the delivery of Parts at the time set forth in the Contract, the Customer shall notify The Supplier in writing stating the reason and the time when the Customer anticipates being able to accept the delivery. The Customer shall pay the part of the Contract price that becomes due at the delivery as if the delivery had taken place. The Supplier may by notice require the Customer to accept the delivery within a final reasonable time. Any additional costs related to such delay shall be borne by the Customer.

5.3 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 Customer will not be able to perform its obligations as stated in the Contract.

6. 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 within thirty (30) days following the date of the invoice. Payment shall be made in full without any set off, counterclaim or deduction. The Customer shall pay interest on overdue payments from the maturity date until the actual date of payment at the rate of one and one quarter percent (1.25%) per month, compounded monthly. The Customer 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 Customer, 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 Customer only when payment in full has been received by the Supplier.

7. WARRANTY

7.1 The Supplier shall repair or replace, at its sole discretion, any defect in the Parts which appears during the warranty period as a result of defective material or manufacturing, provided that any replaced Part shall upon the Supplier's request be returned to the Supplier at the Supplier's cost. The Customer shall immediately take appropriate steps to prevent any defect from becoming more serious, and all warranty claims with respect to this warranty shall be made in writing without delay and not later than fourteen (14) days following discovery of such defect during the warranty period. The Customer shall have the responsibility to establish that its claim is covered by this warranty. Replaced Parts shall become the Supplier's property. Delivery of replaced or repaired Parts will be made in accordance with the original Contract delivery terms. Supplier warrants that any Software shall not contain any material non-conformance with the Supplier's technical specification for such software during the warranty period and that the Cloud Service will perform substantially in accordance with the Contract and Supplier's technical specifications for the duration of the applicable term provided in the Contract.

7.2 The warranty period for the Parts begins on the date of delivery and ends eighteen (18) months from the date of delivery. If the Parts are inspected and installed within the above mentioned eighteen (18) months by authorized Supplier personnel, the warranty period will be twelve (12) months from the date when the Parts were placed in Service or eighteen (18) months from the date of delivery, whichever occurs later. The warranty period in respect of Parts which have been repaired or replaced under the warranty shall expire six (6) months following the date when: (i) the repaired or replacement Part is placed in service; or (ii) upon the expiration of the warranty period applicable to the originally supplied Part as set forth above in this Clause 6.2, whichever occurs later. The warranty for repaired or replacement Parts shall be subject to the same terms, conditions, and limitations of liability as those applicable to the originally supplied Part. Under no circumstances shall the warranty period of any Part (whether as originally supplied or as repaired or replaced) extend beyond the date that is thirty-six (36) months following the date of commencement of the original warranty period as stipulated above in this Clause 6.2.

In case the Parts are ready for delivery, but the Supplier is not able to deliver the Parts due to reason attributable to the Customer, the warranty period as stated above in this Clause 6.2 shall commence from date the delivery should have taken place according to the Contract.

7.3 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 Customer; (2) negligence or willful misconduct of the Customer; (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 Customer; (5) normal wear and tear; (6) use of unsuitable material or consumables by the Customer; (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, expenses of the Supplier's personnel or

representatives, taxes, and duties, and all such costs and expenses shall be reimbursed by the Customer to the Supplier when applicable. If after the Supplier's warranty investigation, it is found that the Customer does not have a warranty claim within the scope of these Conditions, then the Customer shall be responsible for all applicable costs and expenses for such inspection, repaired or replaced components or other service work.

7.4 THIS CLAUSE 6 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. THE CUSTOMER HEREBY WAIVES ALL OTHER REMEDIES, WARRANTIES, GUARANTEES AND LIABILITIES, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE (INCLUDING WITHOUT LIMITATION FITNESS FOR PURPOSE, MERCHANTABILITY OR SATISFACTORY QUALITY). CUSTOMER ACCEPTS THE SOFTWARE AND CLOUD SERVICE "AS IS" AND AS AVAILABLE. SUPPLIER DOES NOT GUARANTEE THAT THE SOFTWARE OR CLOUD SERVICE WILL BE ERROR-FREE, VIRUS-FREE, UNINTERRUPTED OR FREE FROM VULNERABILITIES, OR THAT SUPPLIER WILL CORRECT ALL ERRORS. CUSTOMER ACKNOWLEDGES THAT SUPPLIER DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE CLOUD SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. SUPPLIER IS NOT RESPONSIBLE FOR ANY DOWNTIME OR OTHER PROBLEMS IN CUSTOMER'S OR ANY OTHER THIRD PARTY'S SYSTEMS. SUPPLIER IS NOT LIABLE FOR DELAYS, DELIVERY FAILURES OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

8. SUPPLIER'S LIABILITY

8.1 IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, BREACH OF WARRANTY, TORT LIABILITY (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, SHALL THE SUPPLIER BE LIABLE FOR ANY INDIRECT, CONTINGENT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, HOWEVER CAUSED OR ARISING (WHETHER ACTUAL OR ANTICIPATED) NOR FOR LOSSES OR DAMAGES (WHETHER ACTUAL OR ANTICIPATED) CAUSED BY REASON OF UNAVAILABILITY OF THE EQUIPMENT OR THE FACILITY, SHUTDOWNS OR SERVICE INTERRUPTIONS, LOSS OF USE, LOSS OF PROFITS OR REVENUE, LOSS OF SAVINGS, LOSS OF REPUTATION, INVENTORY OR USE CHARGES, COST OF PURCHASED OR REPLACEMENT POWER, INTEREST CHARGES OR COST OF CAPITAL ANY CLAIMS OF THE CUSTOMER'S CUSTOMERS, PUNITIVE OR EXEMPLARY DAMAGES, THE COST OF SUBSTITUTED EQUIPMENT, SPARE PARTS OR SERVICES OR REPLACEMENT, REMOVAL OR REINSTALLATION SERVICE WORK NOT ARISING FROM THE WARRANTY PROVIDED HEREIN, TOWAGE CHARGES, POLLUTION REMEDIATION COSTS, COSTS OF 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 THE CUSTOMER), DAMAGE TO ANY EQUIPMENT OR PROPERTY OTHER THAN THE EQUIPMENT, COMPONENTS AND PARTS DELIVERED HEREUNDER, COSTS FOR ANY ADDITIONAL TESTS, SEA TRIALS, DEBRIS REMOVAL OR FOR LOSS OF TIME OR USE OF ANY EQUIPMENT, INSTALLATION SYSTEM, OPERATION OR SERVICE, OR FOR LOSS OR CORRUPTION OF DATA.

8.2 NOTWITHSTANDING ANY OTHER PROVISION OF THE CONTRACT, IN NO EVENT SHALL THE SUPPLIER'S AGGREGATE LIABILITY TO THE CUSTOMER UNDER THIS CONTRACT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR ANY OTHER LEGAL OR EQUITTABLE THEORY, EXCEED THIRTY PERCENT (30%) OF THE CONTRACT PRICE.

8.3 Each party shall obtain a waiver of all rights of recourse and subrogation against the other party from its insurers as well as indemnify and hold the other party harmless for all claims of or by either of the parties' insurers.

8.4 The Supplier shall not be liable for any harm, injury or damages due to or arising in connection with: (1) software provided by the Customer; (2) monitoring, digital and/or cybersecurity-related systems other than those provided by the Supplier; (3) any recommendation provided as part of the Software or Cloud Service; or (4) improper service work, installation or alterations carried out by the Customer on any monitoring, digital and/or cybersecurity-related systems. "Improper Service Work" is any act or failure to act which contradicts the OEM recommended maintenance, configuration and advisable operations resulting in detrimental reliability or increased possibility of failure.

9. EXPORT CONTROLS AND TRADE SANCTIONS

9.1 The parties agree that the Parts shall be delivered subject to all applicable export controls, sanctions 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 Customer 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, sanctions, or restrictions.

9.2 The Supplier has no liability resulting from delay, cancellation or amendment of this sale resulting from export controls, sanctions, or other applicable restrictive measures.

9.3 Both parties are responsible for obtaining the appropriate export authorizations when taking on the responsibility of Exporter of Records (EOR) or Importer of Record (IOR). Both parties shall provide the other party with their respective export and import classification(s) upon written request.

9.4 These goods will not be exported, re-exported, transshipped and/or transferred to an end-user and/or end-use that is prohibited by the U.S. government to include embargoed and/or sanctioned countries, SDNs, including any person on any applicable debarred list. We agree to comply with all applicable laws and regulations regarding export-controlled items defined in the International Traffic & Arms Regulations (22 CFR 120-130) and Export Administration Regulations (15 CFR 730-774). We will not export, re-export, transfer, divert or disclose any products or proprietary information to any destination restricted or prohibited by U.S. export law without the appropriate license or approval from the U.S. government, including prior written notification and consent from DMS.

10. FORCE MAJEURE

10.1 Neither the Supplier nor the Customer 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, wars whether declared or not, any events involving armaments of war, civil wars and riots, hostilities, public disorder, acts of terrorism and severe threat of terrorism, cyber incidents, any measures taken by public authorities in connection with threat of terrorism, embargos and import or export restrictions, acts of civil or military authorities, any lawful or unlawful restrictions and actions of any public authority or government, sanctions, boycotts, fire, flood, accidents, strikes, failure of a subcontractor or sub-supplier to provide manpower, materials or goods caused by an event that qualifies under this Clause 9, undue transportation or customs clearance problems or transportation or customs clearance problems arising out of the withdrawal of the United Kingdom from the European Union or any preparatory measures therefor (“Brexit”), epidemics, unusually severe weather affecting either party, or causes beyond their control.

10.2 Once a Party is aware that its performance under the Contract is affected by Force Majeure, the affected Party shall, without undue delay, give written notice to the other Party briefly setting out relevant details of the delay.

10.3 In the event that such Force Majeure event continues uninterrupted for two (2) months after receipt of any notice in accordance with Clause 9.2 above, either Party may terminate the Contract by giving one (1) month written notice.

10.4 Any termination as a result of Force Majeure shall not affect a Party’s right to receive payment in respect of all costs incurred, as at the date of the termination notice, in pursuit of its obligations.

11. SECURITY AGREEMENT

The Customer 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.

12. DUTIES, TAXES, FEES, AND COMPLIANCE WITH LAWS

The Customer 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 Customer.

Supply out of the European Union (EU) is exempted from Value Added Tax (VAT) on the condition that the Parts are exported out of the EU within one hundred and fifty (150) days from the supply. In accordance with the EU Customs and VAT laws, the Customer must provide the Supplier with valid proof of exportation. If the Customer does not provide the Supplier with such proof within one hundred and fifty (150) days, the Supplier has the right to charge VAT according to national laws which shall be immediately remitted by the Customer.

13. GOVERNING LAW AND ARBITRATION

13.1 Unless the parties agree otherwise in writing, the Contract shall be governed by and interpreted in accordance with the laws in force in principal place of business 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 Chesapeake, Virginia.

13.2 Nothing contained in this Clause shall preclude the Supplier from bringing legal action or proceeding against the Customer for purposes of enforcement, injunctive relief or interim or remedial measures in the courts of any jurisdiction where the Customer or any of its property or assets may be found or located, and the Customer hereby irrevocably submits to the jurisdiction of any such court.

14. ENTIRE AGREEMENT

These Conditions, plus the additional agreed upon terms of the Contract (relating only to price, time and location for delivery, technical specifications, and quantity of Parts to be delivered) contain the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings relating to such subject matter. Any service work to be provided by the Supplier to the Customer shall be in accordance with the Supplier's General Terms and Conditions – Service Work (latest version then in effect). If a provision of these Conditions is at variance with necessary requirements of applicable law, then these Conditions shall be deemed to be amended to the minimum extent necessary to comply with such applicable law. No terms, conditions, representations, warranties, or covenants contained in any correspondence, catalogue, or in any other form shall be applicable unless incorporated herein by express written agreement of the parties hereto.

15. DATA PROTECTION

Supplier's personal data processing activities are set out in Supplier's Privacy Notice which is available at: <https://www.wartsila.com/legal-privacy/privacy> and incorporated herein by reference. The parties agree that in relation to any personal data shared between them, unless otherwise provided in the General Data Protection Regulation (EU 2016/679) ("GDPR"), or agreed between the parties, both are acting as data controllers as described in GDPR.

16. LIMITATION OF LIABILITY

16.1 ALL CASES OF BREACH OF THE CONTRACT AND THE RELEVANT CONSEQUENCES AS WELL AS ALL RIGHTS AND REMEDIES AVAILABLE TO THE COMPANY ARE EXHAUSTIVELY DEFINED AND COVERED BY THE EXPRESS TERMS OF THE CONTRACT.

16.2 THE SELLER SHALL NOT BE LIABLE UNDER ANY CIRCUMSTANCES, AND IRRESPECTIVE OF THE CAUSE OF ACTION, FOR INDIRECT OR CONSEQUENTIAL LOSSES, SUCH AS – BUT NOT LIMITED TO – COMMERCIAL OR ECONOMIC LOSSES, LOSS OF PRODUCTION, LOSS OF USE, LOSS OF REVENUE, LOSS OF PROFIT, DELAY AND BUSINESS INTERRUPTION AND OTHER SIMILAR CAUSES OR LOSSES, WHETHER DIRECT OR INDIRECT. FURTHER, THE SELLER IS NOT LIABLE FOR LOSS OF TIME, LOSS OF EMPLOYMENT OR OPPORTUNITY TO UTILIZE THE GOODS SUPPLIED, COSTS OF SUBSTITUTED EQUIPMENT, TOWAGE CHARGES, POLLUTION CLEAN-UP COSTS, DOCKING OR DIVING COSTS, DAMAGE TO ANY GOODS, BUYER'S PROPERTY OR OTHER ASSETS, DEMOUNTING OR MOUNTING COSTS OR/AND COSTS OF SEA TRIALS OR OTHER TESTS AND INSPECTIONS.

16.3 THE LIMITATIONS OF LIABILITY CONTAINED IN THIS LIMITATIONS AND EXCLUSIONS OF LIABILITY ARTICLE HOWEVER DO NOT APPLY WHERE SUCH LOSSES ARE CAUSED BY A BREACH OF DUTY ON THE PART OF THE STATUTORY REPRESENTATIVES OR DIRECTORS OF THE SELLER CONSTITUTING UNLAWFUL INTENT, WILLFUL MISCONDUCT OR GROSS NEGLIGENCE.

16.4 INSOFAR AS EITHER PARTY HAS BEEN HELD LIABLE IN RESPECT OF LOSSES OR LIABILITY EXCLUDED OR LIMITED BY THIS LIMITATIONS AND EXCLUSIONS OF LIABILITY ARTICLE BY THE OTHER PARTY, THEIR INSURERS OR THIRD PARTIES, THIS OTHER PARTY WILL INDEMNIFY THE PARTY HELD LIABLE TO THE EXTENT OF ANY SUCH LIABILITY, INCLUDING INTEREST AND COSTS.

16.5 IN ANY EVENT, AND WHATEVER THE CAUSE OF ACTION, SELLER'S MAXIMUM TOTAL LIABILITY TO THE BUYER PURSUANT TO AND IN CONNECTION WITH THE CONTRACT – INCLUDING THE OBLIGATION TO PAY PENALTIES, LIQUIDATED DAMAGES AND REGARDLESS OF CAUSE, DEGREE OF FAULT, NEGLIGENCE, BREACH OF CONTRACT OR OTHERWISE – IS LIMITED TO 67.45 PERCENT (67.45%) OF THAT PART OF THE CONTRACT PRICE WHICH RELATES EXCLUSIVELY TO THE INDIVIDUAL GOODS IN RESPECT OF WHICH THE CAUSE OF SELLER'S LIABILITY HAS ARISEN.

16.6 ALL TECHNICAL INFORMATION AND/OR ADVICE PROVIDED BY PARTY, ITS RESPECTIVE PERSONNEL OR SUBCONTRACTORS WHICH IS OUTSIDE THE SCOPE OF THE GOODS AS SET OUT IN THE CONTRACT, OR PRIOR TO THE CONTRACT AND NOT BY INCLUDED IN THE CONTRACT, IS INTENDED FOR INFORMAL AND CONFIDENTIAL INFORMATION PURPOSES ONLY, AND SUCH PARTY ASSUMES NO LIABILITY FOR THE CONSEQUENCES OF THE OTHER PARTY'S ACTIONS, OMISSIONS OR DECISIONS MADE OR BASED ON SUCH INFORMATION OR ADVICE OR FOR ANY LOSSES SO CAUSED.

16.7 THE SELLER IS NOT LIABLE FOR ANY ACTS, OMISSION OR WORK CARRIED OUT OR ASSISTANCE PROVIDED BY THE BUYER OR BY ANY THIRD PARTY, EVEN THOUGH CARRIED OUT WITH ACTUAL OR ATTRIBUTABLE ASSISTANCE OR KNOWLEDGE OF THE SELLER.

16.8 THE SELLER SHALL NOT BE LIABLE FOR ANY DAMAGE AND ANY DIRECT OR INDIRECT LOSSES CAUSED BY ANY MODIFICATIONS TO ANY PART OF THE GOODS NOT AUTHORIZED IN WRITING BY THE SELLER, OR CAUSED BY ANY EQUIPMENT, GEAR OR TOOL FURNISHED BY THE BUYER AND USED BY SELLER'S PERSONNEL.

16.9 THE BUYER SHALL INDEMNIFY THE SELLER FOR ANY THIRD-PARTY CLAIMS RELATING TO THE GOODS UNDER THIS CONTRACT OR TO A FAILURE BY THE BUYER TO PERFORM ITS OBLIGATIONS UNDER THIS CONTRACT OR UNDER ANY AGREEMENT WITH THIRD PARTIES OR ANY OTHER CAUSES OF ACTION ARISING IN TORT/DELICT, PRODUCT LIABILITY OR OTHERWISE. THE SELLER SHALL GIVE THE BUYER WRITTEN NOTICE OF ANY RELEVANT CLAIM RECEIVED BY THE SELLER AND GIVE ALL NECESSARY ASSISTANCE AT THE BUYER'S EXPENSE.

16.10 THE SELLER IS NOT LIABLE FOR ANY LOSS OR DAMAGE TO THE GOODS OR OTHER PROPERTY OF THE BUYER OR ANY OTHER THIRD PARTY RELATED TO INCOMPATIBILITY OR INABILITY OF THE GOODS TO OPERATE OR COMMUNICATE OR CONTROL, OR TO BE CONTROLLED BY, ANY OTHER EQUIPMENT NOT FORMING PART OF THE SUPPLIES MADE UNDER THIS CONTRACT.

16.11 THE BUYER SHALL OBTAIN A WAIVER OF ALL RIGHTS OF RECOURSE AND SUBROGATION AGAINST THE SELLER FROM ITS INSURERS AS WELL AS INDEMNIFY AND HOLD SELLER HARMLESS FOR ALL CLAIMS OF OR BY EITHER OF THE PARTIES' INSURERS."

17. ENVIRONMENTAL, HEALTH AND SAFETY RESPONSIBILITIES

17.1 The Customer shall maintain safe working conditions at the work site, including, without limitation, implementing appropriate procedures regarding arsenic, asbestos, lead or any other waste material or hazardous substances as defined by any legislation or international convention relevant or applicable to the Service Work provided ("Hazardous Materials") and confined space entry affixing labels or plates containing warnings and/or safety and operation procedures and instructions as required by applicable laws and regulations. Moreover, the Customer shall be responsible for coordinating with other contractors working at the work site to avoid conflict, hazards or interference with the Service Work performed by the Contractor. If the Service work will be performed in a work site where other potentially conflicting activities are executed at the same time, the Customer shall implement sufficient measures to ensure health and safety for all parties. The Customer shall timely advice the Contractor in writing of all health, safety, security and environmental requirements procedures and instructions applicable at the work site. Without limiting the Customer's responsibilities under this Clause, the Contractor has the right, but not the obligation to, from time to time, review and

inspect applicable health, safety, security and environmental documentation, procedures, and conditions at the work site.

17.2 If, in the Contractor's reasonable opinion, the health, safety, welfare or security of personnel or the work site is, or is apt to be, imperiled by security risks, terrorist acts or threats, the presence of or threat of exposure to Hazardous Materials or unsafe working conditions or environment (whether or not specific to the site), the Contractor and his representatives have the same responsibility and authority as the Customer to stop the Service Work. The Contractor may, in addition to other rights or remedies

available to it, (i) evacuate some or all of its personnel from the work site, (ii) suspend performance of all or any part of the Contract, and/or (iii) remotely perform or supervise the Service Work. Any such occurrence shall be considered an excusable event without any liability to the Contractor. The Customer shall reasonably assist in any such evacuation. All reasonable additional costs incurred by the Contractor as a consequence of the suspension and any subsequent resumption or completion of the Service Work shall be reimbursed by the Customer.

17.3 Operation of the Customer's equipment is the responsibility of the Customer. The Contractor has no responsibility or liability for the pre-existing condition of the Customer's equipment or the work site.

Prior to the Contractor starting any work at the work site, the Customer will provide documentation that identifies the presence and condition of any Hazardous Materials and/or contaminated substances, elements or waste of any kind that are restricted by applicable laws or regulations, existing in or about the Customer's equipment or the work site that the Contractor may encounter while performing under this Contract. The Customer shall disclose to the Contractor industrial hygiene and environmental monitoring data regarding conditions that may affect the Contractor's work or personnel at the work site. The Customer shall immediately inform the Contractor of changes in any such conditions.

17.4 The Customer will make its medical facilities and resources at the work site available to the Contractor's personnel who need medical attention. If there are no medical facilities or resources available, the Customer will assist in bringing the Contractor's personnel requiring medical attention to the nearest available medical facility. The Customer represents and warrants to the Contractor and agrees to ensure that the work site, surrounding environment, all equipment provided or otherwise made available to the Contractor's representative in connection with the Service Work rendered in connection with this Contract and all products and equipment serviced or otherwise worked on by the Contractor's representatives in connection with this Contract, shall at all times be safe, suitable and sufficient for the designated tasks, free of Hazardous Materials and/or contaminated substances, risks of infectious disease or outbreak of illness, elements or waste of any kind that are restricted by applicable laws or regulations and hazardous to the health or safety of the Contractor's representatives. In the event that the Customer is in breach of any such representation, warranty or covenant, the Contractor may immediately cease performance under this Contract and the Customer shall be liable for the full amount of the fees due under this Contract for all services provided through the date of such termination.

17.5 The Contractor shall notify the Customer if the Contractor becomes aware of: (i) conditions at the work site differing materially from those disclosed by the Customer; or (ii) previously unknown physical conditions at work site differing materially from those ordinarily encountered and generally recognized as inherent in Service Work of the character provided for in the Contract; or (iii) work assignment extends beyond the acceptable limit of twelve (12) hours or the applicable legal limit of work hours, whichever is

shorter, in a single work shift. If any such conditions cause an increase in the Contractor's cost of, or the time required for, performance of any part of the Service Work under the Contract, an equitable adjustment in price and schedule and the Contractor's rest cycle shall be made.

17.6 If the Contractor encounters Hazardous Materials in the Customer's equipment or at the work site that require special handling or disposal, the Contractor is not obligated to continue Service Work affected by the hazardous conditions. In such an event, the Customer shall eliminate the hazardous conditions in accordance with applicable laws and regulations so that the Contractor's Service Work under the Contract may safely proceed, and the Contractor shall be entitled to an equitable adjustment of the price and schedule to compensate for any increase in the Contractor's cost of, or time required for, performance of any part of the Service Work. The Customer shall properly store, transport, and dispose of all Hazardous Materials introduced, produced, or generated in the course of the Contractor's Service Work at the work site. The Customer shall be responsible for all costs and expenses related to the management, handling, clean-up, removal and/or disposal of all Hazardous Materials and/or contaminated substances, elements or waste of any kind

as defined by applicable laws and regulations or applicable to the Service Work supplied. The Customer shall indemnify the Contractor for any and all claims, damages, losses, fines, penalties and expenses arising out of or relating to any unsafe working conditions, hazardous conditions, Hazardous Materials and/or contaminated substances, elements or waste of any kind that are restricted by applicable laws or regulations which are or where: (i) present in or about the Customer’s equipment or the work site prior to the commencement of the Contractor’s Service Work; (ii) improperly handled or disposed of by the Customer or the Customer’s employees, agents, contractors or subcontractors; or (iii) brought, generated, produced or released on the work site by parties other than the Contractor.

18. FAR/DFARS CLAUSES/PROVISIONS.

A. The FAR and DFARS clauses listed below are incorporated by reference and made part of this Order with the same force and effect as though set forth in full text. The parties hereby agree that any clauses not designated as MANDATORY FLOW-DOWNS are deemed unenforceable, void, and shall be regarded as self-deleting from this agreement and any related Order.

B. The terms “Contractor” means “Seller,” “Contracting Officer” means “Buyer,” “Contract” means this Order and “Government” means “Buyer or the Government.” However, the words “Government” and “Contracting Officer” do not change when a right, act, authorization, or obligation can be granted or performed only by the Government or the Prime Contract contracting officer or duly authorized representative.

C. Unless a clause or parenthetical specifies or references a monetary threshold, thresholds for Truthful Cost and Pricing Data (referred to as “TCPD,” and formerly known as TINA), the Simplified Acquisition Threshold (SAT), and the Micro Purchase Threshold (MPT) are those found in the definitions at FAR 2.101. Applicable thresholds are those in effect in the FAR on the date of Order award unless otherwise indicated.

D. Whenever the FAR or DFARS clauses include a requirement for dispute resolution in accordance with the “Disputes clause,” the dispute shall be disposed subject to the provision entitled “Disputes” in this Order.

E. The full text of a clause may be accessed electronically at <https://www.acquisition.gov/>.

F. Defense Maritime Solutions, Inc (“DMS”) in Attachment X : DMS FAR and DFAR Acceptance List provided supersedes and flows down to the purchase order with the following text:

“This Order acknowledges that only those FAR and DFAR clauses required by regulation to be flowed down to subcontractors "Mandatory Clauses" will be enforced. All non-Mandatory Clauses are considered unenforceable, automatically nullified, and void.”

19. AUDIT

At Buyer’s election, a third-party reputable auditor may audit pertinent information, not including cost or pricing data (IAW Quality ISO9001, Environmental ISO14001, Health & Safety ISO45001, and Customer-Specific Requirements). The third-party auditor is subject to Seller’s approval. The audit shall be clearly restricted to the issue in question. All communication between Buyer and the third-party auditor is “verification only,” meaning that only the auditors’ reports will be provided to the Buyer. A copy of all communications between Buyer and the third-party auditor are to be sent to Seller immediately as they occur.

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|------------------------|---|
| On Behalf of “Company” | On Behalf of Defense Maritime Solutions, Inc. |
| Date: | Date: |
| By: | By: |
| Name: | Name: |
| Title: | Title: |