GENERAL TERMS AND CONDITIONS

1. DEFINITIONS

In these General Terms and Conditions of Contract (hereinafter referred to as the "Terms and Conditions"), the following terms shall have the following meaning:

1.1 “Agreement” means the Contract and these Terms and Conditions.

1.2 “Supplier” means the supplier of Services under an Agreement;

1.3 “Customer” means the party with whom the Supplier entered into an Agreement;

1.4 “Contract” means the acceptance and/or confirmation of the written quotation issued by the Supplier or any returned quotation subsequently issued by the Supplier with the Supplier’s Service price list as updated from time to time for any equipment, rental and/or services, with appendices, between the Supplier and the Customer;

1.5 "Services" means any services like machine alignment, installation, commissioning, technical assistance, inspection, advice, repair, overhaul and/or maintenance that the Supplier has undertaken to provide as more particularly described in the Contract;

1.6 "Contract Price" means the price to be paid to the Supplier in connection with the provision of Services under the Agreement;

1.7 "Performance" means the provision of Services by the Supplier; and

1.8 “Personnel” means all personnel either directly or indirectly employed or hired by the Supplier, including representatives of the Supplier.

1.9 “Equipment” means any equipment that the Supplier has undertaken to supply / lease to the Customer, more particularly described in the Contract.

2. GENERAL

2.1 The Agreement can be amended and supplemented only if such amendment or supplement has expressly been agreed upon as such in writing.

2.2 The Agreement replaces all prior oral and written agreements with respect to the subject matter of the Agreement.

2.3 Supplier's offers are without engagement.

2.4 The Supplier shall be entitled to subcontract or assign any part of its rights and obligations out of the Agreement.

3. OBLIGATIONS OF THE CUSTOMER

3.1 The Customer warrants that the Supplier will be enabled to commence and effect Performance of the Supplier's works immediately upon arrival of Supplier's Personnel and without interruption or hindrance. For this purpose, the Customer shall, before the arrival of Supplier's Personnel, make all the arrangements necessary, whether or not expressly agreed upon, to ensure that the work can commence at the agreed date and time and can be carried out without interruption or hindrance.

3.2 In case the Performance takes place at the premises of the Customer, the Customer shall take all measures prescribed by law and/or any other reasonable measures necessary for the prevention of accidents at his premises. The Customer shall inform the Supplier at least 7 days before commencement of any work in writing of the valid safety precautions and shall ensure that his personnel responsible for safety matters is present during the times that Performance is to take place. The Supplier is entitled to refuse or suspend Performance if the safety of his Personnel is not sufficiently guaranteed.

3.3 In addition to Clause 3.2, the Customer shall, at no charge, provide the Supplier with all assistance the Supplier reasonably requires, such as, but not limited to, skilled and unskilled personnel, the necessary devices, implements and auxiliary means, in particular the tools for the assistant personnel and lift and hoisting gear of sufficient capacity (including operating staff), scaffolding etc., as well as cleaning, packing and lubricant materials. Furthermore, the Customer shall supply heating, lighting, water and electricity and their connections in sufficient capacity and quantity as well as welding gas and other working requirements in so far as these are required for Performance and are not to be provided by the Supplier under the terms of the Agreement. The equipment made available by the Customer shall be safe and in perfect condition.

3.4 The Customer warrants that all documents and licences required in connection with the stay of the Supplier's Personnel in the country and at the premises of the Customer shall be available at the time of arrival of the Personnel.

3.5 The Customer shall, at no charge, provide the Supplier with any information reasonably required in connection with the Agreement in a timely manner, such as, but not limited to, relevant technical documentation, logs, inspection reports and licences.

3.6 The Customer shall keep any information received from the Supplier strictly confidential, and shall use such information solely for the proper performance of the Agreement. All information provided by the Supplier shall be returned by the Customer to the Supplier on the Supplier's first request.

4. INTELLECTUAL PROPERTY RIGHTS

All intellectual property rights, including but not limited to, all drawings, designs, (technical) documentation, details on work processes provided by the Supplier, building specifications, computer programs, as well as the carriers on which such rights are laid down and other intellectual property rights associated with any ideas, concepts, techniques, inventions, processes, works of authorship, or trade secrets developed or created by the Supplier, solely or jointly with others, during the course of performing the Services for the Customer ("IP rights"), which are provided to the Customer for the purposes of facilitating the Services or otherwise come to the knowledge of the Customer, will at all times remain vested in, and the property of, the Supplier and will be returned to the Supplier upon first request or immediately upon fulfilment of the contractual obligations of both the Customer and the Supplier.

5. TERMS FOR PERFORMANCE

5.1 The place of Performance shall be stated in the Agreement. In case the Agreement does not specify a place of Performance, such place shall be determined by the Supplier at its discretion after consulting the Customer.

5.2 The estimated period of Performance based on the information provided by the Customer shall be stated in the Contract. The Customer agrees and acknowledges that the estimated time or period of Performance is subject to change due to unforeseen circumstances. The Supplier will inform the Customer of any such change to the period of Performance.. If Performance is to take place during a specific and fixed period of time by the expiry of which Performance is deemed to be completed, any such period will not commence until all contractual obligations of the Customer have been met, all payments due have been made, security desired by the Supplier has been put up and/or any other preconditions have been fulfilled.

5.3 In case the Agreement does not specify the time of Performance, such time shall be determined by the Supplier at its discretion after consulting the Customer. However, as far as the Agreement sees to the provision of Services, the date of Performance mentioned in the Agreement shall be an estimate only. The Supplier shall make every reasonable effort to effect Performance at the said date.

5.4 If Performance is delayed due to (i) any act or omission of the Customer or (ii) the Customer failing to perform any of the obligations mentioned in Clauses 3 and 4 of these Terms and Conditions, the Supplier is entitled to extend the time of Performance with a reasonable period which is at least equal to the additional period of time caused by such delay. Furthermore, it is expressly agreed that the Supplier shall have the right to extend the time of Performance in the event that (i) the Supplier has not received the advance payment (or another contractual payment) as stipulated in the Agreement, or (ii) the Customer has not provided security that complies with the requirements in the Agreement or breached any of the terms herein.

5.5 Any additional costs arising from delay which is attributable to the Customer, shall be borne by the Customer.

5.6 In case the Supplier fails to perform in time due to reasons solely attributable to the Supplier, a grace period of two weeks (“Grace Period”) shall apply.

6. PROVISION OF SERVICES

6.1 Performance shall be considered completed when either:

- the Supplier has notified the Customer that the provision of Services has been completed;
- eight days have elapsed from the time the Supplier notified the Customer as above and the Customer has neglected to inspect the Services provided within this time and/or failed to notify Supplier in writing of its approval or rejection; or
- the Customer commences, without the approval of the Supplier and during the term of Performance, the use or the operation of the equipment on which the Services were provided.

6.2 Unless expressly otherwise agreed upon in the Agreement, Services shall be provided during a working week which shall be in accordance with normal industry practice.

6.3 Hours worked outside these normal working hours, on Sundays or on official holidays will be charged separately as overtime.

6.4 Supplier's Personnel will be guided, if possible, by the operational conditions at the Customers premises and by the climatic conditions of the country.

6.5 During Performance, the Supplier is entitled to replace the Personnel delegated by him with other qualified Personnel.

6.6 In case of accidents or illness of Supplier's Personnel, the Customer shall provide the necessary (professional) assistance.

6.7 Any waiting time for which the Supplier is not responsible will be charged to the Customer as normal working time.

6.8 Additional Work includes if (i) the Supplier is required to perform more work and/or render a higher performance for the Services than agreed between him and the Customer on entering into the Agreement, (ii) additional or other materials are required than those agreed on with the Customer on entering into the Agreement, (iii) changes are made to the specifications, whether or not tacitly (changes to the specifications, the work or the conditions for the execution of the work) or (iv) if ensuing from these Terms and Conditions; ("Additional Work").

6.9 Additional Work may be agreed between the Supplier and the Customer in a separate Additional Work Order, or if the Supplier performs such Additional Work at the request of, or with the prior consent of, the Customer. If the agreed Performance is expanded or adjusted due to an action or omission on the part of the Customer, this would also be deemed Additional Work. The Supplier is never required to comply with a request for Additional Work by the Customer. In the absence of an explicit agreement between the Supplier and the Customer for Additional Work or for Additional Work otherwise authorised by the Supplier, the Supplier retains the right to Performance in accordance with what was initially agreed with the Customer on entering into the Agreement.

6.10 Additional Work is paid for by the Customer in accordance with the customary fees applied by the Supplier, the payment of which the Customer is required to make to the Supplier prior to the execution of that work, unless otherwise agreed between the Supplier and the Customer.

6.11 Should, for whatever reason, one or more cost-increasing circumstances occur after the formation of the Agreement for which the Supplier is not exclusively and fully accountable ("Cost-increasing Circumstances"), the Supplier shall be entitled to increase the Contract price proportionally to the Cost-increasing Circumstance(s) in question, even if such cost increase(s) ensue(s) from (a) foreseeable circumstance(s). Cost-increasing Circumstances are compensated by the Customer in accordance with the customary fees applied by the Supplier.

6.12 All consequences of Additional Work and of Cost increasing Circumstances, whether relating to (i) the time at or the period within which Performance is required, (ii) the Contract price or (iii) otherwise, are always at the risk and to the account of the Customer.

6.13 The fact that (a request for) Additional Work or Cost increasing Circumstances occurs/occur during the execution of the Agreement can never constitute a ground for the Customer on which to terminate or otherwise end the Agreement.

7. RENTAL OF EQUIPMENT

7.1. The Customer agrees to pay such deposit and rent, in such amounts and manner, and at such times, as are set forth in invoice attached hereto.

7.2. The Supplier shall deliver the rental Equipment upon receiving from the Customer a payment of the rent and deposit.

7.3. Upon delivery of the Equipment to the Customer, the Customer shall notify the Supplier, in writing, of any items of Equipment rejected due to a nonconformity or defect, which notice shall include a specific description of such nonconformity of defect. If the Customer has not furnished the Supplier with written notification of rejection due to nonconformity or defect within ONE (1) day after delivery of Equipment, the Customer shall be deemed to have accepted the Equipment for rent hereunder and as being in good working order.

7.4. The Customer is responsible for loss, damage or destruction of the Equipment, including but not limited to losses while in transit, while loading and unloading, while at any and all locations, while in storage and while on your premises, except that you are not responsible for damage to or loss of the Equipment caused by our sole negligence or wilful misconduct.

7.4.1. If any of the Equipment is damaged, lost stolen, or destroyed, or if any person is injured or dies, or if any property is damaged as a result of its use, maintenance, or possession, the Customer will promptly notify the Supplier of the occurrence, and will file all necessary accident reports, including those required by law and those required by applicable insurers. The Customer, it's employees, and agents will cooperate fully with the Supplier and all insurers providing insurance under this Agreement in the investigation and defense of any claims. The Customer will promptly deliver to the Supplier any documents served or delivered to the Customer, it's employees, or agents in connection with any claim or proceeding at law or in equity begun or threatened against the Customer or/and the Supplier.

7.5. The acceptance of the return of leased Equipment is not a waiver of claims the Supplier may have against the Customer, nor is it a waiver of claims for latent or patent damage to the leased Equipment

8. TRANSFER OF RISK

8.1 In so far as no special agreement is made, the risk of the accidental destruction or deterioration of the Services as a whole or of self-contained parts will be transferred to the Customer at the moment the Supplier notifies the Customer of the completion of the provision of the Services. If a trial run or sea trial are agreed upon, the transfer of risk shall take place upon completion of successful trial run or sea trial.

8.2 Objects and materials made available by the Customer, will be taken in charge by the Supplier in accordance with the scope of agreements made for this purpose. The risk of accidental destruction or deterioration of these objects and materials shall remain with the Customer; for damage to these objects and materials for which the Supplier is responsible, Clause 6 shall apply.

8.3 Should the provision of Services or the trial run or sea trial be interrupted, stopped or delayed for reasons beyond Supplier's control, the risk of accidental destruction or deterioration of the Services provided shall be transferred to the Customer during the period of the interruption, stoppage or delay.

9. LIQUIDATED DAMAGES

9.1 In the event that the Equipment or any part thereof or the Services are not delivered or performed within the time(s) specified in the Agreement, the Grace Period or any extension thereof as may be granted by the Customer, the Customer shall be entitled to claim liquidated damages of 0.5% for each completed week of delay, calculated on the value of the Equipment or Services so delayed. Liquidated damages shall in no case exceed 5% of the value of the delayed Equipment or Services. Liquidated damages shall only be due if the Customer proves that the delay caused damage and the amount of the loss suffered can be substantiated accordingly. Liquidated damages shall be the Customer's sole and exclusive remedy for damages and/or losses incurred as a result of delay in Performance. Damages other than the said liquidated damages are explicitly excluded.

9.2 Should the situation described in Clause 9.1 of these Terms and Conditions continue in excess of a period of 12 (twelve) consecutive months, the Customer shall be entitled to terminate the Agreement on expiry of that period.

10. FORCE MAJEURE

10.1 In case of any occurrence, either foreseeable or not, beyond the reasonable control of the Supplier or any of his sub-Suppliers, which prevents the Supplier from effecting Performance ("Force Majeure"), the date of Performance will be extended with at least the period of Force Majeure. Cases of Force Majeure are including but not limited to, fire, war or warlike acts, riots, insurrection, mobilisation, floods, earthquakes and other natural disasters, epidemics, quarantine measures, strikes, lockouts, requisitioning, restriction of foreign currency transfer, transport restrictions, and restrictions in the issue of permits for the Personnel, importation and exportation of goods, tools and/or materials.

10.2 Should the situation of Force Majeure described in Clause 10.1 of these Terms and Conditions continue in excess of a period of 6 (six) consecutive months, either the Customer or the Contractor shall be entitled to terminate the Agreement on expiry of that period. Termination by the Customer within the meaning of this Clause 10.1 can only be effected as from the moment at which the respective period expires.

10.3 This Clause 10 however does not relieve the Customer from its obligations to make payment of all amounts due to the Supplier under the Agreement and in accordance with these Terms and Conditions.

11. WARRANTY

11.1 The Supplier warrants Performance to the best of its abilities. Any additional warranty with respect thereto is explicitly excluded.

11.2 Any warranty (the "Warranty") to be provided by the Supplier shall be strictly limited, at its discretion, to either repair or replace at its works or at local premises and during normal working hours, defects due to poor workmanship, assembly or installation, provided these defects have been reported to the Supplier in writing within 7 days from the communication by the Supplier to the Customer that the Services have been completed.

11.3 In the event the Services or part thereof do not conform to the requirements under the Agreement, the Supplier may undertake whatever measure it deems fit to rectify the shortcomings in the Services. The warranty obligation does not include consequential costs, including but not limited to, electricity, scaffolding, assisting work, docking, demounting, mounting and travel and boarding costs of Supplier's Personnel. For the avoidance of doubt, the Supplier shall not be liable for any costs related to the hire in the event of loss of time, breakdown or damages to the Equipment, or by any other cause preventing the full working of the vessel.

11.4 If the warranty obligation has to be carried out at a location outside Singapore, the Supplier bears only the costs of working time required under normal conditions, as would be incurred when the warranty obligation would have been carried out in Singapore. The Customer shall bear the costs for travelling, travelling time, waiting time, day and night allowances, and tariff expenses as well as costs that are to be borne by the Supplier according to this Clause 11.

11.5 No warranty obligation will be enforceable by the Customer until the Supplier has received payment of the Contract Price in full.

11.6 Claims by the Customer for damage to the object(s) upon which the Services were performed, are governed by Clause 12 of these Terms and Conditions.

12. INDEMNITY AND LIMITATION OF LIABILITY

12.1 The Customer hereby fully indemnifies the Supplier and holds the Supplier harmless from and against any third party claim, such as, but not limited to, tax claims, civil claims, social security laws related claims and/or claims for damages, whether or not imposed by a government body or any party affiliated with the government, included and/or from and against any other third party claim, insofar as these claims relate to the Agreement, future agreements and/or other contractual documents or shall be based upon the law and/or any other (legal) ground or theory.

12.2 In no event shall the Supplier be responsible or liable to the Customer in contract, tort or on any other ground or legal theory, howsoever and whatever the cause thereof, for any direct, indirect, consequential or any other losses, damages, costs or expenses, all including but not limited to, loss of time, loss of profit or earnings or demurrage directly or indirectly incurred.

12.3 The contractual liability and each Warranty and obligation to rectify a shortcoming under Clause 11 of these Terms and Conditions of the Supplier, is limited to compliance with the Warranty stated in Clause 11 of these Terms and Conditions and does not extend to rectification of, or compensation for, any other or further material damage or property damage or immaterial and/or consequential damages or losses ensuing from such a shortcoming. All such damages are subject to the provisions of Clause 12.2 of these Terms and Conditions.

12.4 Supplier's liability shall be strictly limited to (1) the amount of the Contract Price, calculated at an average use of manpower and facilities, or (2) the amount which is paid out under Supplier's public liability insurance policy, whichever is the lesser.

12.5 Every claim against the Supplier, except those which the Supplier has expressly acknowledged in writing, expires by the mere lapse of 12 months after its arising.

13. PAYMENT TERMS

13.1 Unless explicitly otherwise agreed upon, payments shall be made cash on delivery or by payment to a bank account designated by the Supplier in accordance with the terms indicated on the Contract and without any deductions, compensation for debts or withholding of any nature.

13.2 Upon reasonable request of the Supplier, the Customer shall provide sufficient security for the total Contract Price. If the Customer does not meet any such request of the Supplier, the Supplier shall have the right to wholly or partially terminate or suspend the Agreement by a written notification to the Customer.

13.3 Any objections of whatever kind to invoiced amount shall be submitted to the Supplier in writing within 14 days of the date of the invoice, failing which the invoiced amount shall be deemed to have been accepted by the Customer.

13.4 If the Customer fails to perform any of the above payment obligations, the Customer shall pay to the Supplier interest on the amount overdue at 1.5 per cent per month or part of a month. In addition the Supplier may, after having notified the Customer in writing, suspend Performance until payment in full is received with respect to the Agreement and/or the above payment terms. All the extra-judicial and judicial costs of debt collection incurred by the Supplier shall be for the Customer's account, whereby a minimum of 15 per cent of the outstanding amount shall be payable by the Customer.

14. SUSPENSION AND TERMINATION OF AGREEMENT

14.1 If the Customer does not fulfil one or more of its obligations in time or adequately, or if there are good reasons to fear that the Customer is or shall not be able to fulfil its contractual obligations towards the Supplier, or if the Customer is declared bankrupt, requests (temporary) moratorium or proceeds to liquidate its business, as well as when its assets are attached in whole or in part, the Supplier at its sole discretion either has the right to suspend its performance under the Agreement or to rescind the Agreement in whole or in part by means of a written declaration and without prior notice of default, and always without prejudice to any rights to which the Supplier is entitled with respect to compensation for costs, damage and interest.

14.2 The Customer is authorized to rescind or terminate the Agreement only in the case referred to in Clauses 9.2 and 10.2 of these Terms and Conditions, and in such case only after payment to the Supplier of all amounts owed to the Supplier at that time, whether or not payable and including payments for all obligations entered into by the Supplier with third parties regarding the Performance at the moment of such rescission. The Customer waives any and all other rights it has or might have to rescind, terminate, or annul the Agreement, be it in whole or partially and whether in court or extra-judicial, or to have the competent court change any of the effects of the agreement.

15. NO ASSIGNMENT OR PLEDGE OF RIGHTS OR CLAIMS UNDER THE AGREEMENT

15.1 Save in case of the Supplier's prior approval in writing, which shall not unreasonably be withheld, the Customer shall not be permitted, either in whole or in part, to assign to others the Contract or any of his rights as against the Supplier thereunder. All costs related to any such assignment in accordance with this Clause 15.1, including all costs of the Supplier itself, shall be borne by the Customer.

15.2 Save in case of the Supplier's prior approval in writing, which shall not unreasonably be withheld, the Customer shall not be permitted to pledge to any third party or otherwise encumber any of his rights or claims as against the Supplier under the Agreement or otherwise.

15.3 A person who is not a party to the Agreement has no right under the Contracts (Rights of Third Parties) Act (Chapter 53B) to enforce any term of the Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

16. GOVERNING LAW AND JURISDICTION

16.1 The Agreement shall be governed by and construed in accordance with the laws of Singapore.

16.2 Any disputes arising out of or in connection with the Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore Chamber of Maritime Arbitration ("SCMA **Rules"**) for the time being in force at the commencement of the arbitration, which rules are deemed to be incorporated by reference in this Clause. The arbitration award shall be enforceable before a court of competent jurisdiction.

16.3 The Tribunal shall consist of three arbitrators, who shall be appointed in accordance to the SCMA Rules. The seat of arbitration shall be the Republic of Singapore. The language of the arbitration shall be English language.

16.4 In cases where neither the claim nor the counterclaim exceeds the sum of United States Dollars One Hundred and Fifty Thousand (USD 150,000), the arbitration shall be conducted before a single arbitrator in accordance with the SCMA Small Claims Procedure current at the time when the arbitration proceedings are commenced.

16.5 Nothing in this Clause shall prejudice the parties' rights to seek injunctive relief or preservative relied or security in aid of arbitration from any relevant courts in any jurisdiction.

17. NOTICES

Any notice to be served on either of the parties by the other shall be in English and in writing and shall be sent by hand, registered post, courier or facsimile. Such notice shall be deemed to have been received by the addressee within seven (7) days of posting (if by registered post or within twenty-four (24) hours (if sent by facsimile to the correct facsimile number of the addressee) or upon receipt if sent by hand or courier.

18. CONFLICT OF TERMS

Except as otherwise provided in the Agreement, if any provision contained in the Agreement is in conflict with, or inconsistent with, any provision in any other document, including but not limited to any purchase order issued by the Customer, the provisions in the Agreement shall prevail.

19. ENTIRETY OF AGREEMENT

The Agreement embodies all the terms and conditions agreed upon between the parties as to the subject matter of the Agreement and supersedes and cancels in all respect all previous representations, warranties, agreements, and undertakings, if any, made between the parties with respect to the subject matter therein whether such be written or oral.

20. SEVERABILITY

If any provision of the Agreement is declared invalid by any tribunal or competent authority, then such provision shall be deemed automatically adjusted to conform to the requirements for validity as declared at such time and as so adjusted, shall be deemed a provision of the Agreement as though originally included. If the provision invalidated is of such a nature that it cannot be so adjusted, the provision shall be deemed deleted upon the Agreement as though the provision had never been included, in either case, the remaining provisions of the Agreement shall remain in full force and effect.

21. NO WAIVER OF RIGHTS

The failure of any party to enforce at any time any of the provisions herein shall not be construed to be a waiver of such provisions or a waiver of the right of such party thereafter to enforce any such provisions. No waiver by a party of any right hereunder shall be deemed as a waiver of any other right.

22. HEADINGS

The headings herein are for reference purposes only and shall not be taken into consideration in the interpretation or construction of the Agreement.