1. INTRODUCTION

These General Terms and Conditions – Parts (2020) (the “Conditions”) shall, unless otherwise agreed in writing, apply to all sales of parts (the “Parts”) by any authorized member, agent or representative of the Wärtsilä Group (the “Supplier”) to a purchaser (the “Buyer”). The Supplier’s offers are non-binding until accepted and confirmed by a purchase order issued by the Buyer in compliance with these Conditions which is acknowledged by the Supplier (such acknowledgment will be in writing), which will form an integral part of the Contract. The Buyer 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. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

2.1 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 Buyer shall defend, indemnify and hold harmless the Supplier against all claims, losses and damages, including reasonable attorneys’ fees, arising out of or resulting from any reuse, modification, reproduction or publication of 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.

2.2 Notwithstanding anything to the contrary, companies belonging to Wärtsilä Group shall have the right to collect data from sensors, instruments, monitors, data collectors, industrial control or SCADA devices located at Buyer’s sites or on the equipment delivered and use such data, including but not limited to, to support and develop its products, solutions and services. Data may be transferred within Wärtsilä Group and to third parties who act for or on its behalf for processing the data. Companies belonging to Wärtsilä Group shall own any enrichment, report or derivative work developed or derived from such data. The rights granted hereunder shall survive any termination or expiration of the Contract.

3. CYBERSECURITY PROTECTION

3.1 Unless otherwise agreed, upon delivery of any equipment provided by the Supplier, the Buyer shall be solely responsible for system integrations and/or system security engineering for any equipment not provided by the Supplier. It is the Buyer’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 Buyer 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.

3.2 “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.

3.3 “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.

4. DELIVERY, ACCEPTANCE AND RETURNS

4.1 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 Buyer shall be deemed to have accepted the quantity and quality of the Parts delivered by the Supplier as being in accordance with the Contract unless the Buyer 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.

4.2 If the Buyer anticipates that it will be unable to accept the delivery of Parts at the time set forth in the Contract, the Buyer shall notify the Supplier in writing stating the reason and the time when the Buyer anticipates being able to accept the delivery. The Buyer 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 Buyer to accept the delivery if it is within a reasonable time. If any additional costs related to such delay shall be borne by the Buyer.

4.3 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 Buyer will not be able to perform its obligations as stated in the Contract.

5. 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 delivery of the Parts. Any deductions related to the supply of the Parts shall be made in full without any set off, counterclaim or deduction. The Buyer shall pay interest on overdue amounts, including reasonable attorneys’ fees. In the event any payment is more than thirty (30) days late, the Supplier shall be entitled to suspend or terminate the Contract by written notice to the Buyer, and such suspension or termination shall take effect immediately. All costs related to the delivery of 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 Buyer’s cost. The Buyer 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 Buyer 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.

5.1 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 aforementioned eighteen (18) months by an authorized member, agent or representative of the Wärtsilä Group personnel, the warranty period shall 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 be extended 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 them due to any reason attributable to the Buyer, the warranty period as stated above in this Clause 6.2 shall commence from the date the delivery should have taken place according to the Contract.

5.2 The Supplier shall not be liable for any defect due to or arising in connection with: (1) any materials, components, tools, designs or software provided by the Buyer; (2) negligence or wilful misconduct of the Buyer; (3) parts, accessories or attachments other than those supplied as Parts by the Supplier; (4) improper service work, installation or alterations carried out by the Buyer; (5) normal wear and tear; (6) use of unsuitable material or consumables by the Buyer; (7) fluctuation in the grid; or (8) any use, service or operation of the Parts which is not in conformity with manuals, instructions or specifications provided by the Supplier or which is otherwise not in accordance with normal industry practice. The Supplier’s warranty obligation does not include any craneage, electric, scaffolding, 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 Buyer to the Supplier when applicable.

5.3 If it is found that the Buyer does not have a warranty claim within the scope of these Conditions, then the Buyer shall be responsible for all costs and expenses for such inspection, repaired or replaced components or other service work.

6. WARRANTY

6.1 The Supplier shall provide assurance to the Buyer that the Parts shall be fit for the purpose for which they were sold and shall be free from defects in materials, design and workmanship, and comply with the written specifications, data and drawings, including all applicable standards, laws and regulations. The warranty shall cover the repair or replacement of all faulty components or any other service work which is necessary 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 Buyer 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.

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6.4 If it is found that the Buyer does not have a warranty claim within the scope of these Conditions, then the Buyer shall be responsible for all costs and expenses for such inspection, repaired or replaced components or other service work.

6.5 If the above Clause 6.6 applies 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-COMFORMITY OR DEFECTS. THE BUYER
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).

7. SUPPLIERS LIABILITY

7.1 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, SHUTDOWN OR SERVICE INTERRUPTIONS, LOSS OF USE, LOSS OF PROFITS OR OTHER BUSINESS INCOME, DAMAGE TO ANY VESSEL, ENGINE ROOM OR POWER PLANT SITE, YARD OR OTHER PROPERTY (INCLUDING DAMAGE TO GOODS OWNED BY THE BUYER), 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.

7.2 NOTWITHSTANDING ANY OTHER PROVISION OF THE CONTRACT, IN NO EVENT SHALL THE SUPPLIERS AGGREGATE LIABILITY TO THE BUYER UNDER THIS CONTRACT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED THIRTY PERCENT (30%) OF THE CONTRACT PRICE FOR THE EQUITY, INSTALLATION WORK, DAMAGE TO ANY VESSEL, ENGINE ROOM OR POWER PLANT SITE, YARD OR OTHER PROPERTY. The Supplier has no liability resulting from delay, cancellation or 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.

9.1 Neither the Supplier nor the Buyer shall be liable for any failure or delay in performing its obligations hereunder, or for any loss or damage resulting therefrom, resulting from an event of force majeure ("Force Majeure") which includes without limitation acts of God, wars whether declared or not, any events involving ammunitions of war, civil wars and riots, hostilities, public disorder, acts of terrorism and severe threat of terrorism, any measures taken by public authorities in connection with threat of terrorism, embargoes and import or export restrictions, acts of civil or military authorities, and any other unlawful restrictions and actions of any public authority or government, sanctions, boycotts, strikes, 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.

9.4 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.

10. SECURITY AGREEMENT

The Buyer hereby grants to the Supplier a continuing security interest, and when applicable a maritime lien for necessities, in and to the Parts, together with all goods into which the Parts are attached at any time, and all products and proceeds derived from the sale or lease thereof as security for the payment in full of such Parts.

11. DUTIES, TAXES, FEES AND COMPLIANCE WITH LAWS

The Buyer shall pay, where applicable, all duties, taxes, customs fees and charges and all other taxes, fees, levies and other governmental charges or fees by a classification or inspection society. All such documentation or approvals which are required by applicable laws, and any applicable modifications of such laws, shall be the responsibility of and paid by the Buyer. 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 Buyer must provide the Supplier with valid proof of exportation. If the Buyer 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 Buyer.

12. GOVERNING LAW AND ARBITRATION

UNLESS THE PARTIES AGREE OTHERWISE IN WRITING, THE CONTRACT SHALL BE GOVERNED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE FINNISH MACEDONIAN AND ACROPHONIC GREEK TONGUE. ANY ACTION OR PROCEEDING AGAINST THE BUYER FOR PURPOSES OF ENFORCEMENT, INJUNCTIVE RELIEF OR INTERIM OR REMEDIAL MEASURES IN THE COURTS OF ANY JURISDICTION WHERE THE BUYER OR ANY OF ITS PROPERTY OR ASSETS MAY BE FOUND OR LOCATED, AND THE BUYER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT.

13. 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) and the terms and conditions of any software license agreement executed in writing by the Supplier and the Buyer and pertaining to software or other data provided in connection herewith ("License Agreement") 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 Buyer 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.