

WÄRTSILÄ GENERAL TERMS AND CONDITIONS PARTS (2019-GE)

1. INTRODUCTION

These General Terms and Conditions – Parts (2019) (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 Wäartsilä 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 (any such acknowledged purchase order, a “Contract”). These Conditions shall 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 Service Work 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 Wäartsilä 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 support and develop its products, solutions and services. Data may be transferred within Wäartsilä Group and to third parties who act for or on its behalf for processing the data. Companies belonging to Wäartsilä 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® 2010. 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 within a final reasonable time. 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 twenty (20) days following the date of the invoice. Payment shall be made in full without any set off, counterclaim or deduction. The Buyer 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 Buyer 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 Buyer, 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 Buyer only when payment in full has been received by the Supplier. The Supplier may as a precondition for delivery of Parts, request: (i) advance payment; and/or (ii) that the Buyer pays or provides security covering any unpaid amount already owed to the Supplier or one of its affiliates.

6. WARRANTY

6.1 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 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.

6.2 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 Wäartsilä 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 Buyer, 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.

6.3 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 Buyer; (2) negligence or willful 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, 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 Buyer to the Supplier when applicable. If after the Supplier’s warranty investigation 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 applicable costs and expenses for such inspection, repaired or replaced components or other service work.

6.4 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 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. SUPPLIER'S 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, 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 BUYER'S BUYERS 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 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 SUPPLIER'S 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.

7.3 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.

7.4 The Supplier shall not be liable for any harm, injury or damages due to or arising in connection with: (1) software provided by the Buyer; (2) monitoring, digital and/or cybersecurity-related systems other than those provided by the Supplier; or (3) improper service work, installation or alterations carried out by the Buyer 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.

8. EXPORT CONTROLS AND TRADE SANCTIONS

8.1 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 Supplier's country, the United Nations, the European Union and the United States of America. The Buyer acknowledges that the Parts and all related technical information, documents and materials may not be imported or exported, re-exported, transhipped, traded, diverted or transferred, directly or indirectly, contrary to such controls, sanctions or restrictions.

8.2 The Buyer confirms that the Parts supplied will be used solely for peaceful purposes. The Buyer further confirms that the Parts will not be used in connection with, or for purposes associated with any chemical, biological or nuclear weapons, missiles or any other vehicles or vessels capable of delivering such weapons, or in support of any terrorist activity, or in connection with any other military end use. Nor will the Parts be re-sold if it is known or suspected by the Buyer that it is intended to be used for such purposes. Upon request by the Supplier, the Buyer shall furnish the Supplier with all the relevant certificates relating to export control laws, regulations, sanctions and restrictions, such as, but not limited to, end-user certificates, in form and substance specified by the Supplier.

8.3 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. FORCE MAJEURE

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, 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, any measures taken by public authorities in connection with threat of terrorism, embargos, acts of civil or military authorities, fire, flood, accidents, strikes, failure of a subSupplier 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 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. 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, 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 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

12.1 The Contract shall be construed in accordance with, governed by, and interpreted under the law of Finland.

12.2 All disputes arising out of or in connection with the Contract shall be settled through friendly consultation between the Parties. In case no agreement can be reached through consultation, the dispute shall be submitted exclusively to arbitration for final settlement in accordance with the Rules of Arbitration of the International Chamber of Commerce with three (3) arbitrators appointed in accordance with the said Rules. The arbitration proceedings shall be conducted in English language. The place of arbitration shall be Helsinki, Finland.

12.3 Nothing contained in this Clause shall preclude the Supplier from bringing any legal suits, action or proceeding against the Buyer 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) 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.