

Calenberg General Terms and Conditions (“T&Cs”)

Version: 01.01. 2015

1 SCOPE OF WORK

1.1 The Callenberg entity (“**Supplier**”) identified in the quotation (“**Quotation**”) shall provide to the purchaser identified in the Quotation (“**Purchaser**”) the product(s) (“**Plant**”) and service(s) (“**Works**”) specified in the Quotation and, if applicable, the related technical specification (“**Technical Specification**”).

1.2 These T&Cs incorporate the following:

- (a) these terms and conditions set out in clauses 1 to 12;
- (b) the Quotation and Technical Specification;
- (c) any additional documents which the parties expressly agree in writing are to be subject to these T&Cs (“**Additional Documents**”); and
- (d) Orgalime SI 14 General Conditions for the Supply and Installation of Mechanical, Electrical and Electronic Products (“**Orgalime SI 14**”) and the Orgalime SW 01 General Conditions for Computer Software (“**Orgalime SW 01**”) (collectively the “**Orgalime Terms**”). Copies of the Orgalime Terms are available on request from the Supplier.

1.3 Any purchase order (“**Purchase Order**”) issued by the Purchaser for Plant and Works is a contractual offer, subject to these T&Cs. The Supplier may commence supply upon receipt of a Purchase Order and may confirm the Purchase Order to the Purchaser in writing within seven (7) days of receipt of the Purchase Order. A Contract is formed by the supply of the Plant and/or Works, or the issue of a confirmation by the Supplier, whichever is the earliest.

1.4 These T&Cs (together with the documents referred to in clause 1.2 above) shall be considered to be a Contract for the purposes of the Orgalime Terms. The defined terms in the Orgalime Terms shall have the same meaning when used in these T&Cs, unless specified otherwise.

1.5 In the event of any conflict, ambiguity or inconsistency between the documents referred to in clause 1.2, then the following order of precedence applies (a) these terms and conditions; (b) the Quotation; (c) the Technical Specification; (d) Additional Documents; (e) Orgalime SI 14 (as modified as described herein); and (f) Orgalime SW 01 (as modified as described herein). The foregoing is the exhaustive list of documents forming the Contract and no other terms and conditions proposed by the Purchaser (such as those appended to a subsequent purchase order) shall apply to the supply of the Plant and Works.

1.6 The clauses in Orgalime SI 14 described as ‘tests before shipment’ (clauses 6 to 9) and ‘taking-over tests’ (clauses 31 to 36) shall only be applicable when expressly agreed in writing by the parties. Where the Supplier is only providing services to the Purchaser pursuant to these T&Cs and not Plant, any reference to ‘Works’ in the Orgalime Terms shall be deemed to be to the relevant services only. For the avoidance of doubt, where the Supplier will be supervising installation or commissioning conducted by or on behalf of the Purchaser, such supervision will be considered to be the extent of the Works being conducted by the Supplier and the sections of Orgalime SI 14 which relate to preparation or installation of Plant by the Supplier will not be applicable. In addition, if the Contract is for the supply of Plant without associated Works, only the sections in Orgalime SI 14 which relate to the supply of the Plant will be applicable in the

relevant Contract and the sections which relate to the installation of the Plant or activities to be undertaken following supply shall not be applicable, including, but not limited to, the clauses entitled ‘preparatory work and working conditions’ (clauses 10 to 18) and ‘taking-over’ (clauses 37 to 39), but without prejudice to the warranty provisions in clause 4 of these T&Cs below.

2 DELIVERY AND INSURANCE

2.1 The Supplier shall use its reasonable endeavours to provide the Plant and/or Works in accordance with the time schedule agreed by the parties.

2.2 Delivery of Plant (“**Delivery**”) shall, unless specified otherwise in the Quotation, be made EXW Incoterms 2010 with the location for the Purchaser to collect the Plant to be as specified in the Quotation. The Purchaser will collect the Plant within the timescale specified in the Quotation or if no timescale is specified, within a reasonable timescale following notice from the Supplier that the Plant is ready for collection.

2.3 Works (excluding Plant) shall be provided at or from the location set out in the Quotation.

2.4 The Supplier may use substitute equipment with materially equivalent qualities in place of the Plant where necessary to meet the agreed time schedule and/or the Supplier’s cost constraints.

2.5 The parties shall ensure that they have in place insurance policies on such terms, with such insurers and with a level of cover, which is customary for a prudent first class buyer or provider of Plant and/or Works (as applicable). The Purchaser will ensure that its insurance policies are sufficient to cover loss or damage to any goods (including, but not limited to, Plant) belonging to the Supplier within Purchaser’s possession or control. The Purchaser will provide the Supplier with copies of its applicable insurance certificates on request.

3 CONTRACT PRICE AND PAYMENT TERMS

3.1 The price for the Plant and Works (“**Contract Price**”) and payment terms shall be as outlined in the Quotation.

3.2 The Contract Price is exclusive of any applicable sales, use, value added, excise and other similar taxes, fees and surcharges that are legally or by custom borne by a purchaser of goods or services and any applicable customs duties and the like, all of which shall be borne by the Purchaser.

3.3 The Supplier shall have no liability to pay any tax, duty, levy or charge of any kind imposed by any tax authority by reason of the provision of the Plant or Works (other than tax on its overall net income, profits and gains imposed in the jurisdiction in which the Supplier is tax resident). Where the Supplier incurs expenses or is subject to any claims in relation to such payments, the Purchaser shall at all times fully indemnify the Supplier and hold it harmless in respect of all penalties, claims, damages, losses, costs and expenses (including but not limited to legal expenses) whatsoever arising incurred in connection with such taxes, duties, levies, charges or similar items of expenditure.

3.4 All payments shall be made by the Purchaser within thirty (30) days from the date of invoice unless stated otherwise in the Quotation or otherwise agreed in writing by the parties. The payment for the Plant and Works shall be made in the currency in which the Contract Price is quoted in the Quotation and

- otherwise in accordance with the Orgalime SI 14 (save as varied herein).
- 3.5 The Purchaser shall pay all sums due without any deduction or withholding of, or in respect of, any tax, unless required by law.. If any such deduction or withholding is required, the Purchaser shall pay to the Supplier such additional amount as will ensure that the Supplier receives the same total amount that it would have received if such withholding or deduction had not been required. The Supplier should be notified immediately of any deduction or withholding, the legal basis for, and the amount of, such deduction or withholding, and the Purchaser should provide the Supplier with an official receipt of the amount deducted or withheld and paid to a tax authority, or, if the tax authority does not issue such receipts, sufficient evidence of such withholding or deduction and payment.
- 3.6 For the purposes of Clause 51 of Orgalime SI 14, the reference to the “rate of the main refinancing facility of the European Central Bank” shall be deemed to be a reference to the “Official Bank Rate of the Bank of England”. If Works are delayed or cancelled for any reason other than the Supplier’s negligence or default, the Purchaser shall pay to the Supplier, on demand, the Supplier’s personnel charges (calculated using the full day-rate for the affected personnel ("**Day Rate**")) and out of pocket expenses incurred in relation to the Works, including, but not limited to all sums payable to the Supplier’s subcontractors. The Day Rate shall be applied for the whole period of the delay and, where the Works are cancelled, shall apply until the final day that the Works would have been completed unless the Supplier can redeploy such personnel (which it will use reasonable endeavours to do), in which case the rate will be applicable until such personnel are redeployed.
- 4 **WARRANTY AND LIABILITY FOR DEFECTS**
- 4.1 Clauses 55 to 71 of Orgalime SI 14 shall be applicable to the Plant and Works except as varied below.
- 4.2 Clause 59 of Orgalime SI 14 shall be deemed to be replaced as follows (and Clause 61 of Orgalime SI 14 shall be construed accordingly): unless an alternative warranty period is set out in the Quotation, Plant shall be materially free from defects in design, materials and workmanship for a period of twelve (12) months from Delivery; and Works shall be materially free from defects in workmanship for a period of twelve (12) months from performance.
- 4.3 The provisions of clauses 4.1 and 4.2 shall not apply to any non-proprietary software of the Supplier. The Supplier will use its reasonable endeavours to pass on to the Purchaser the benefit of any warranty provided by the third party software owner to the extent that it is reasonably able to do so.
- 4.4 In addition to the exclusions of liability stated in Clauses 56 to 59 of SI 14, the Supplier shall not be liable for any defects in the Plant and/or Works to the extent that (a) the defect has been caused by non-compliance with the reasonable instructions of the Supplier;(b) the Plant has not been appropriately stored or transported by any party other than the Supplier or its subcontractors; or (c) in relation to Works only, where any part of an installation or commissioning has been conducted by anyone other than the Supplier or any Supplier approved subcontractor.
- 4.5 Notwithstanding Clause 62 of Orgalime SI 14, where a valid warranty claim is made in relation to Plant, the Supplier will, in its sole discretion, decide whether to repair or replace the relevant component or item of Plant and the location where such repair or replacement is to take place. Where the Supplier concludes that a warranty repair or replacement requires the Supplier and/or its subcontractors to have access to a ship, such warranty repair or replacement will be carried out in a port approved by the Supplier and the parties will cooperate to find a mutually convenient time and location to complete such repair or replacement.
- 4.6 The Purchaser shall at its own cost arrange for any dismantling and reassembly of equipment other than the Plant (and/or Works), to the extent necessary to repair any defects. In cases where the Supplier agrees to a warranty repair or replacement at an offshore location, the Purchaser shall arrange and pay for the transportation of personnel and equipment from a mutually agreed land based location to the repair site and return, stay at the repair site and all costs associated with any heavy lifting operations or any work to be performed below the waterline.
- 4.7 Only the Purchaser may make a claim against the Supplier in relation to the Plant and Works. The Purchaser may not assign or transfer the benefit of the warranty to any third parties. In the event any ship owner/operator makes any warranty claim against the Supplier, the Supplier may refer that ship owner/operator to direct its claim to the Purchaser for the Purchaser to handle. Any warranty claim from a ship owner/operator which is accepted by the Supplier will be deemed to have been made by the Purchaser and on the Purchaser’s behalf.
- 4.8 The Purchaser will notify the Supplier immediately in writing in relation to any defect in any safety critical system or component supplied by the Supplier and will provide (or procure the provision of) unhindered access to the critical system and/or component to the Supplier and its subcontractors to assess and rectify any defect with such safety critical system and/or component.
- 4.9 All other warranties, conditions or terms relating to fitness for purpose, quality or condition of the Plant and Works, however arising, which are not stated in this clause 4 are excluded to the fullest extent permitted by law.
- 5 **TERM, TERMINATION, CONSEQUENCES OF TERMINATION**
- 5.1 The Contract may be terminated by a party with immediate effect if the other party:
- (a) commits a material breach of its obligations under the Contract and such breach is (i) not capable of remedy; or (ii) is capable of remedy but is not remedied within a period of thirty (30) days’ following receipt of notice in writing requiring it to do so;
 - (b) is declared bankrupt, becomes insolvent, is unable to pay debts or enters into an arrangement with its creditors; or
 - (c) has a petition presented, an order made or a resolution passed for its liquidation (otherwise than for the purposes of a solvent amalgamation or reconstruction), administration, bankruptcy or dissolution or if an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer is appointed to

the other party and/or over all or any part of the assets of the other party.

5.2 Termination or expiry of a Contract shall not prejudice any of the parties' rights and remedies which have accrued as at termination or expiry.

6 LIMITATION OF LIABILITY

6.1 Subject to clause 6.4, under no circumstances shall the Supplier be liable to the Purchaser in contract, tort (including negligence), statute, misrepresentation, restitution or otherwise, for any of the following types of loss or damage arising under or in relation to these T&Cs or any Contract:

(a) any loss of profits, business, contracts, anticipated savings, goodwill, or revenue, any wasted expenditure, or any loss or corruption of data (regardless of whether any of these types of loss or damage are direct, indirect or consequential); or

(b) any indirect or consequential loss or damage whatsoever, even if the Supplier was aware of the possibility that such loss or damage might be incurred.

6.2 Subject to clause 6.4, and any lower cap specified in the Orgalime Terms which shall be applicable in the circumstances specified, the Supplier's total aggregate liability whether in contract, tort (including negligence), statute, misrepresentation, restitution or otherwise arising out of or in relation to the performance or contemplated performance of any Contract shall be limited to 50% (fifty per cent) of the total Contract Price.

6.3 The Purchaser is responsible for its own relationship with its customers (such as ship owners). Accordingly, subject to clause 6.4, the Supplier shall have no liability under or in relation to these T&Cs or any Contract to customers of the Purchaser. To the extent permitted by law, the Purchaser will indemnify the Supplier and its affiliates against all claims made against the Supplier by any customer of the Purchaser.

6.4 Nothing in these T&Cs shall limit or exclude the liability of either party for death or personal injury caused by its negligence, fraudulent misrepresentation or fraudulent concealment or for any other liability which cannot be limited or excluded by applicable law.

7 CONFIDENTIALITY

7.1 Each party undertakes to keep confidential and not to disclose to any other person (except where necessary to perform the Contractor required by law) any information of a confidential nature which it receives from the other party under or in relation to the Contract. For the avoidance of doubt, the terms of the Contract and its commercial terms are confidential and Supplier shall be entitled to share information with its affiliates.

8 INTELLECTUAL PROPERTY RIGHTS

8.1 The Supplier or its licensors shall retain ownership of any and all Intellectual Property Rights in relation to all parts of the Plant and Works supplied pursuant to these T&Cs. Except as expressly set out in this clause 8, the Supplier does not grant to the Purchaser any licence to Intellectual Property Rights. For the purposes of this clause 8, "Intellectual Property Rights" shall mean trademarks, patents, copyright, names, knowhow, database rights, styles and designs used in relation to the

supplied Plant and Works (whether or not registered or capable of registration), and shall include all goodwill associated therewith.

8.2 Subject to clause 8.3 and the Purchaser complying with the terms of the relevant Contract, the Supplier hereby grants to the Purchaser a non-exclusive, non-transferrable (except as described in clause 8.5) royalty free licence to use the Intellectual Property Rights contained within the Plant or Works (and any related item delivered with the Plant or Works such as instruction manuals, drawings, commissioning and handover documents) solely for the purposes of receipt of the Works and use of the Plant for the purpose provided.

8.3 The Supplier's proprietary software which is supplied to the Purchaser is licensed pursuant to Orgalime SW01. All other software is licensed on terms specified by the third party owner of that software. Where required, the Purchaser may have to enter into a direct licence with the third party owner of the software prior to its use of such software.

8.4 The Purchaser shall only use software provided by the Supplier for the purpose for which it is supplied. In addition, and except to the extent permitted by law or otherwise permitted by the Supplier, the Purchaser shall not (and shall not permit any third party to) copy, adapt, reverse engineer, decompile, disassemble, modify or adapt such software.

8.5 Any licence granted hereunder may be transferred to any subsequent purchaser of the Plant, subject to the same restrictions on the Purchaser being placed on the subsequent purchaser with the Purchaser being liable for compliance by such subsequent purchaser to such restrictions.

9 GENERAL

9.1 These T&Cs (and the documents incorporated herein as described in clause 2) shall constitute the entire agreement between the parties in relation to the subject matter, and replaces and extinguishes all prior agreements, draft agreements, arrangements, undertakings or collateral contracts of any nature made or proposed by the parties, whether oral or written, in relation to such subject matter. Each party acknowledges that in entering into a Contract it is not relying on, and shall have no rights or remedies (whether in tort (including negligence), under statute or otherwise) in respect of any statements, collateral or other warranties, assurances, undertakings or representations (whether innocently or negligently made) by the other party in relation to the subject matter of these T&Cs or any Contract, except for those rights and remedies available under these T&Cs. Nothing in this clause excludes liability for fraud.

9.2 Any changes to these T&Cs or to the Contract must be in writing and must be signed by both parties before such changes shall become effective.

9.3 Neither Party shall assign or novate the Contract without the other Party's prior written approval which shall not be unreasonably withheld or delayed.

9.4 Except in relation to the indemnity in clause 6.3, which shall be enforceable by the Supplier's affiliates, a person who is not a party to these T&Cs or any Contract may not enforce any of their provisions under the Contracts (Rights of Third parties) Act 1999. The consent of any other third party is not necessary for any variation (including any release or compromise in whole or

in part of any liability) or termination of these T&Cs or any Contract.

9.5 If any provision, or part of a provision, of these T&Cs (or any of the documents referred to in clause 2, above) is found by any court or authority of competent jurisdiction to be illegal, invalid or unenforceable, that provision or part-provision shall be deemed not to form part of the Contract and the legality, validity or enforceability of the remainder of the provisions of the Contract shall not be affected, unless otherwise stipulated under applicable law.

9.6 Clauses which expressly or impliedly are intended to survive termination or expiry of the Contract will survive including, but not limited to clauses 5.2, 6 and 7.

10 ETHICAL STANDARDS

10.1 Each party shall at all times comply with (and ensure that all persons employed or engaged by it comply with) all anti-corruption legislation, rules and regulations of any applicable jurisdiction including but not limited to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the UK Bribery Act 2012 and the US Foreign Corrupt Practices Act 1977 (“**Anti-corruption Legislation**”)

10.2 If, in connection with any Contract, either party or any of its agents, sub-contractors or employees breaches clause 10.1, the other party may terminate the Contract by written notice with immediate effect. Any termination pursuant to this clause 10 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues to the terminating party.

11 COMPLIANCE WITH ASSET CONTROL LAWS AND FINANCIAL SANCTIONS

11.1 The parties will comply with any applicable anti-terrorist financing and asset control laws, regulations, rules and orders, including but not limited to the U.S. Department of Treasury, Office of Foreign Assets Control (“OFAC”) regulations and the European Union sanctions or restrictive measures.

11.2 Supplier shall be entitled to suspend the performance of its obligations under the Contract without liability where, in the reasonable judgement of the Supplier, such performance may expose the Supplier or its affiliates to any sanction or prohibition imposed by any state, supranational or international governmental organisation or to any impeding effects of such sanctions or prohibitions. If performance of the Contract is suspended for more than three (3) months, Supplier shall be entitled to terminate the Contract without liability. In the event of termination pursuant to this clause, Supplier shall be compensated for all work performed up to the date of termination and Purchaser shall use best endeavours to avoid any delays in making such payments.

12 GOVERNING LAW AND ARBITRATION

12.1 Clause 79 of Orgalime SI 14 shall be replaced with the following provisions. These T&Cs (including, but not limited to the documents referred to in clause 2, above) and any dispute or claim arising out of or in connection thereof or their subject matter or formation (including any dispute or claim relating to non-

contractual obligations) shall be governed by and construed in accordance with English law.

12.2 Clause 78 of Orgalime SI 14 shall be replaced with the following provisions. The parties agree that if there is any dispute arising in connection with any Contract (including, but not limited to these T&Cs and including any dispute or claim relating to non-contractual obligations) the parties shall first attempt to resolve the dispute by negotiation. If the parties are unable to resolve any such dispute within 45 days of commencing negotiations, such dispute may be referred by either party to and finally resolved by arbitration under the London Maritime Arbitrators Association (“LMAA”) terms current at the time when the arbitration proceedings are commenced, except that where neither the claim nor any counterclaim exceeds the sum of US\$50,000 the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure. The number of arbitrators shall be three, except that the reference shall be to one sole arbitrator where the LMAA Small Claims Procedure applies. The seat, or legal place, of the arbitration shall be London, England. The language to be used in the arbitration shall be English. Nothing stated in this clause shall preclude the right of either Party to seek security or interim orders from any court of competent jurisdiction as may be necessary