

Calenberg Repair Terms and Conditions (“T&C”)

Version: 19.11 2015

1 SCOPE OF WORK

1.1 The Callenberg entity (“**Contractor**”) identified in the quotation (“**Quotation**”) shall provide to the purchaser identified in the Quotation (“**Customer**”) the repair service(s) (“**Works**”) specified in the Quotation in relation to the specified equipment (“**Equipment**”) and, if applicable, in accordance with 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&C (“**Additional Documents**”); and
- (d) Orgalime R02 General Conditions for the Repair of Machinery and Equipment (“**Orgalime R02**”), a copy of which is available on request from the Contractor.

1.3 Any purchase order (“**Purchase Order**”) issued by the Customer for Works is a contractual offer, subject to these T&Cs. The Contractor may commence work upon receipt of a Purchase Order and may confirm the Purchase Order to the Customer in writing within seven (7) days of receipt of the Purchase Order. A Contract is formed by the supply of the Works, or the issue of a confirmation by the Contractor, 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 Orgalime R02. The defined terms in Orgalime R02 shall have the same meaning when used in these T&C, 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 R02 (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 Customer (such as those appended to a subsequent purchase order) shall apply to the supply of the Works.

2 DELIVERY, PERFORMANCE AND INSURANCE

2.1 The scope of the Works is as set out in the Quotation. Accordingly, clause 3 and the first sentence of clause 19.1 of Orgalime R02 are not applicable. Clause 4.1 of Orgalime R02 shall only be applicable if it is agreed that the Contractor will provide fault tracing.

2.2 The Contractor shall use its reasonable endeavours to provide the Works in accordance with the time schedule agreed by the parties. For the avoidance of doubt, time shall not be of the essence in relation to the Works.

2.3 The Customer will ensure that the Contractor is provided with all necessary access to the location required to conduct the Works including, but not limited to, where the Works are to be carried out in a third party shipyard. The Contractor shall not be liable for any delays which result from the non-provision of such access.

2.4 In addition to the payable amounts specified in Orgalime R02, and notwithstanding clause 4.4 of Orgalime R02, if the Works are delayed or cancelled for any reason other than the

Contractor’s negligence or default, the Customer shall pay to the Contractor, on demand, the Contractor’s personnel charges and out of pocket expenses incurred in relation to the Works, including, but not limited to all sums payable to the Contractor’s subcontractors. When calculating the Contractor’s own personnel charges in relation to delayed or cancelled Works, the full day-rate for the affected personnel shall be used. Such rate shall be applied for the whole period of the delay and, where the Contract is cancelled, shall apply until the final day that the Works would have been completed unless the Contractor 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.

Clause 13 of Orgalime R02 will not be applicable. Unless the parties have expressly agreed in writing that another testing regime will be applicable, when a repair is completed, the Contractor will provide the Customer with reasonable evidence that the repair has been completed and will provide the Customer with copies of the available test reports.

Title to any parts provided by the Contractor as part of the Works shall be retained by the Contractor until such time as the relevant parts have been paid for or (where there is no specific charge for the parts) until the Works have been paid for in full.

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 Works (as applicable). The Customer will ensure that its insurance policies are sufficient to cover loss or damage to any property belonging to the Contractor within Customer’s possession or control. The Customer will provide the Contractor with copies of its applicable insurance certificates on request. In addition, except where caused by the Contractor’s negligence or default, the Customer will be responsible for any damage caused to the Contractor’s or any third party’s premises by any Equipment.

3 CONTRACT PRICE AND PAYMENT TERMS

3.1 The price for the Works (“**Contract Price**”) and payment terms shall be as outlined in the Quotation, and accordingly clause 20 of Orgalime R02 shall not be applicable

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 Customer.

3.3 The Contractor 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 Works (other than tax on its overall net income, profits and gains imposed in in the jurisdiction which the Contractor is tax resident). Where the Contractor incurs expenses or is subject to any claims in relation to such payments the Customer shall at all times fully indemnify the Contractor 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 Customer 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 Works shall be made in the currency in which the Contract Price is quoted in the Quotation and otherwise in accordance with the Orgalime R02 (save as varied herein and the Quotation).

3.5 The Customer 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 Customer shall pay to the Contractor such additional amount as will ensure that the Contractor receives the same total amount that it would have received if such withholding or deduction had not been required. The Contractor should be notified immediately of any deduction or withholding, the legal basis and the amount of such deduction or withholding, and the Customer should provide the Contractor 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. .

3.6 For the purposes of clause 21 of Orgalime R02, 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”.

4 WARRANTY AND LIABILITY FOR DEFECTS

4.1 Clauses 22 to 25 of Orgalime R02 shall be applicable to the Works except as varied below.

4.2 In addition to the exclusions of liability of the Contractor stated in Orgalime R02 the Contractor shall not be liable for any defects in the Works to the extent that (a) the defect has been caused by non-compliance with the reasonable instructions of the Contractor; (b) the Equipment has not been appropriately stored or transported by any party other than the Contractor or its subcontractors; or (c) the defect is caused by installation or commissioning of the Equipment following completion of the Works which has been conducted by anyone other than the Contractor or any Contractor approved subcontractor.

4.3 Notwithstanding anything else in Orgalime R02, where a valid warranty claim is made in relation to Works, the Contractor will, in its sole discretion, decide whether to repair or replace the relevant item and the location where such repair or replacement is to take place. Where the Contractor concludes that a warranty repair or replacement requires the Contractor 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 Contractor and the parties will cooperate to find a mutually convenient time and location to complete such repair or replacement.

4.4 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 Contractor 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. .

4.5 Only the Customer may make a claim against the Contractor in relation to the Works. The Customer 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 Contractor, the Contractor may refer that ship owner/operator to direct its claim to the Customer for the Customer to handle. Any warranty claim from a ship owner/operator which is accepted by the Contractor will be deemed to have been made by the Customer and on the Customer’s behalf.

4.6 The Customer will notify the Contractor immediately in writing in relation to any defect in any safety critical system or component supplied by the Contractor and will provide (or procure the provision of) unhindered access to the critical system and/or component to the Contractor and its subcontractors to assess and rectify any defect with such safety critical system and/or component.

4.7 All other warranties, conditions or terms relating to fitness for purpose, quality or condition of the Works, howsoever 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 Notwithstanding clause 19 or Orgalime R02 and clause 2.4 above, if, in the Contractor’s reasonable opinion, the Works have been delayed for an excessive period, the Contractor may terminate the Contract.

5.3 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 Contractor be liable to the Customer 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 Contractor 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 Orgalime R02 which shall be applicable in the circumstances specified, the Contractor'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. For the purposes of this clause 6.2, where Works are to be conducted on a time and materials basis, the Contract Price shall be deemed to be the full amount for completion of the Works in accordance with the Contract.
- 6.3 The Customer is responsible for its own relationship with its customers (such as ship owners). Accordingly, subject to clause 6.4, the Contractor shall have no liability under or in relation to these T&Cs or any Contract to customers of the Customer. To the extent permitted by law, the Customer will indemnify the Contractor and its affiliates against all claims made against the Contractor by any customer of the Customer.
- 6.4 Nothing in these T&Cs or Orgalime R02 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 Contract or 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 this Agreement and its commercial terms are confidential and the Contract shall be entitled to share information with its affiliates.
- 8 **INTELLECTUAL PROPERTY RIGHTS**
- 8.1 The Contractor or its licensors shall retain ownership to any and all Intellectual Property Rights in relation to all parts of the Works supplied pursuant to these T&C. Except as expressly set out in this clause 8, the Contractor does not grant to the Customer 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 Works (whether or not registered or capable of registration), and shall include all goodwill associated therewith.
- 8.2 Subject to the Customer complying with the terms of the Contract, the Contractor hereby grants to the Customer a non-exclusive, non-transferrable (except as described in clause 8.3) royalty free licence to use the Intellectual Property Rights contained within the Works (and any related item delivered with the Works such as instruction manuals, drawings, commissioning and handover documents) solely for the purposes of receipt of the Works and use in relation to the Equipment.
- 8.3 Any licence granted hereunder may be transferred to any subsequent purchaser of the Equipment, subject to the same

restrictions on the Customer being placed on the subsequent purchaser with the Customer being liable for compliance by such subsequent purchaser to such restrictions.

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.
- 9.2 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.
- 9.3 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.
- 9.4 Neither Party shall assign or novate the Contract without the other Party's prior written approval which shall not be unreasonably withheld or delayed.
- 9.5 Except in relation to the indemnity in clause 6.3, which shall be enforceable by the Contractor'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.
- 9.6 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.
- 9.7 Clauses which expressly or impliedly are intended to survive termination or expiry of the Contract will survive including, but not limited to clauses 2.4, 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 0, 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 Contractor shall be entitled to suspend the performance of its obligations under the Contract without liability where, in the reasonable judgement of the Contractor, such performance may expose the Contractor 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, Contractor shall be entitled to terminate the Contract without liability. In the event of termination pursuant to this clause, Contractor shall be compensated for all work performed up to the date of termination and Customer shall use best endeavours to avoid any delays in making such payments.

12 **GOVERNING LAW AND ARBITRATION**

12.1 Clause 32 of Orgalime R02 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 or in connection thereof or their subject matter or formation (including any dispute or claim relating to non-contractual obligations) and disputes relating to any Contract shall be governed by and construed in accordance with English law.

12.2 Clause 32 of Orgalime R02 shall be replaced by 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.