

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

English Language Version

Version 01.12.2016

1. Parties

The Callenberg entity (“**Supplier**”) identified in the quotation (“**Quotation**”) will 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 attached to the Quotation (“**Technical Specification**”).

2. Condition to A Binding Purchase Contract

The Purchase Contract shall consist of the Purchase Order, these T&Cs, the latest revision of Supplier’s Quotation and the mutually agreed Technical Specification. Any purchase order (“**Purchase Order**”) issued by the Purchaser for Plant and Works is a contractual offer, subject to these T&Cs. Acceptance of delivery without prior express objection to these T&Cs will constitute Purchaser’s assent.

3. Delivery and Price

Unless stated otherwise in the Purchase Contract, the Plant will be delivered, and priced, Ex Works (interpreted according to the latest effective version of Incoterms) at the site as specified in the Purchase Contract (“**Delivery**”), provided, however, that Supplier retains the title to Plant and the title will not be transferred to Purchaser until its full payment of the prices under Purchase Contract to Supplier. Where applicable, Works (excluding the Plant) will be provided at the location set out in the Purchase Contract (“**Work Site**”). The prices under Purchase Contract are exclusive of all taxes, surcharges, fees and other charges, which will be borne by Purchaser, unless otherwise expressly specified in Purchase Contract.

4. Payment

- (a) All payments will be made by Purchaser within thirty (30) days from the date of invoice unless otherwise expressly provided in Purchase Contract. Purchaser will pay to Supplier a default interest at the rate of 0.05% of the overdue payment for each day of delay.

- (b) Where payment shall be made by a Letter of Credit, Purchaser shall provide Supplier with an irrevocable Letter of Credit from a reputable bank within the time period specified in the Quotation and where such period is not specified, within ten (10) working days from the date of the Purchase Order. Supplier shall not be obliged to order any materials or commence any Works until the Letter of Credit is received and Purchaser acknowledges that any delay to the issue of the Letter of Credit will delay the delivery schedule.

5. Warranty

Plant will be materially free from defects in design, materials and workmanship for a period of twelve (12) months from Delivery unless otherwise expressly specified in the Purchase Contract; and Works will be materially free from defects in workmanship for a period of twelve (12) months from performance unless otherwise expressly specified in the Purchase Contract, in each case the twelve-month time period being referred to as the “**Warranty Period**”. Subject to the provisions below of this Clause 5, Supplier will remedy defect(s) or non-conformity to the Technical Specification (“**Defect(s)**”) in Plant and Works resulting from faulty design, materials or workmanship provided by Supplier which appears within the Warranty Period:

- (a) Supplier will not be liable for Defects arising out of (i) materials provided or a design stipulated or specified by Purchaser, (ii) Purchaser's failure to comply with Supplier's reasonable instruction(s) or the requirements under applicable laws on use, maintenance or repair of Plant and/or Works; (iii) in relation to Works only, installation or commissioning that was conducted by anyone other than the Supplier or its subcontractor, (iv) that Plant has not been appropriately stored or transported by any party other than Supplier, or (v) circumstances which arise after handover of Plant or Works to Purchaser, e.g. Defects due to alterations carried out without Supplier's consent in writing; Supplier will neither be liable for normal wear and tear nor for deterioration;
- (b) Supplier will only be liable for Defects which appear under the conditions of operation provided for in Purchase Contract or Technical Specification and under proper use of the Works;
- (c) To the extent permitted under applicable laws, Supplier's liability will be limited to Defects in Plant and Works which appear within the Warranty Period;
- (d) Notwithstanding anything to the contrary in the Purchase Contract, the remedies under this Clause 5 of Purchaser will be available ONLY IF Purchaser gives Supplier written notice of the Defect(s) no later than the end of the second week immediately after expiry of the relevant Warranty Period; if no Defect is found for which Supplier is liable, Supplier will be entitled to compensation for the costs it incurs as a result of the notice;
- (e) When a Defect in a part of the Plant is remedied, Supplier will be liable for Defects in the repaired or replaced part under the same terms and conditions as those applicable to the original Works for an additional period of twelve (12) months. For the remaining parts of the Works the Warranty Period will remain unchanged;
- (f) Remedial Works will be carried out at the Work Site, unless otherwise agreed between Purchaser and Supplier;
- (g) With respect to Plant, if in Supplier's view the Defect(s) can be remedied by replacement or repair of a defective part and if dismantling and re-installation of the part do not require special knowledge, Supplier may demand that the defective part is sent to a destination specified by Supplier. Purchaser will at its own cost arrange for any dismantling and reassembly of equipment other than Plant (and/or Works), to the extent necessary to repair any Defect;
- (h) Purchaser will at his own expense provide Supplier and its designated subcontractors with access to Plant and/or Works and arrange for any intervention in equipment (other than Plant and Works) to the extent that this is necessary to remedy Defect(s);
- (i) Defective parts which have been replaced will be made available to Supplier and will be its property;
- (j) The provisions of this Clause 5 will not apply to any nonproprietary software of Supplier. Supplier will use its reasonable endeavours to pass on to Purchaser the benefit of any warranty provided by the third party software owner to the extent that it is reasonably able to do so, and that is all responsibility of Supplier to Purchaser in respect of software;

- (k) **Notwithstanding anything to the contrary in the Purchase Contract, the warranty set out in this Clause 5 is exclusive and is in lieu of all other warranties in relation to Plant and Works, whether written or oral, implied or statutory, including without limitation any warranty with respect to hidden defects, merchantability or fitness for an intended purpose or particular use;**
- (l) Purchaser may not assign or transfer the benefit of the warranty to any third party; in the event any ship owner/operator makes any warranty claim against Supplier, Supplier may refer that ship owner/operator to direct its claim to Purchaser for the Purchaser to handle. Any warranty claim from a ship owner/operator which is accepted by Supplier will be deemed to have been made by Purchaser and on Purchaser's behalf; and
- (m) Purchaser will notify Supplier immediately in writing in relation to any Defect in any safety critical system or component supplied by Supplier and will provide (or procure the provision of) unhindered access to the critical system and/or component to Supplier and its subcontractors to assess and rectify any Defect with such safety critical system and/or component.

6. Limitation of Liability

- (a) **To the extent permitted under applicable laws, under no circumstances will Supplier be liable to Purchaser, whether in contract, tort (including negligence), statute, misrepresentation, restitution or otherwise, for (i) any loss of any customer of Purchaser; (ii) 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 (iii) any indirect or consequential loss or damage whatsoever, whether foreseeable or not when Purchase Contract is entered into; and**
- (b) **To the extent permitted under applicable laws, notwithstanding anything to the contrary in these T&Cs or in the Purchase Contract, Supplier's maximum liability to Purchaser under the Purchase Contract and these T&Cs and otherwise in connection with Plant and Works hereunder will never exceed fifty percent (50%) of the total price under the Purchase Contract.**

7. Intellectual Property Rights

- (a) Supplier or its licensors will retain ownership of any and all intellectual property rights contained in or otherwise in relation to Plant and Works supplied by Supplier and any part thereof. Unless otherwise expressly agreed by Supplier, Purchaser will not (and will not allow any other party to) copy, adapt, reverse engineer, decompile, disassemble or modify such intellectual property rights.
- (b) Subject to Purchaser complying with the Purchase Contract and these T&Cs, Supplier hereby grants to Purchaser a non-exclusive, royalty free license to use the intellectual property rights contained within Plant or Works solely for the purposes of receipt of Works and use of Plant for the purpose provided; such license is not transferable except for the transfer to a subsequent purchaser of Plant provided the purchaser will comply with the provisions of this Clause 7.
- (c) Certain intellectual property rights contained in Plant or Works may be owned by a third party licensor. Where requested by Supplier, Purchaser may need to enter into a direct license with the third party licensor.

8. Confidentiality

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

9. Force Majeure

- (a) Neither party will be liable to the other party for failing to fulfill its obligations under the Purchase Contract as a result of circumstances beyond its reasonable control, including without limitation fire, explosion, accident, strike, lockout, flood, drought, embargo, war (whether declared or not), riot, act of God or the public enemy, action of any governmental authority, general shortage of material or transportation, or the delay or non-performance of a subcontractor due to the above reasons.

- (b) The party wishing to claim relief by reason of any of the aforesaid events shall without undue delay give the other party notice in writing of the cause and estimated duration of the delay.

10. Termination

- (a) The Purchase Contract may be terminated by a party with immediate effect if the other party: (i) commits a material breach of its obligations under the Purchase Contract and such breach is (A) not capable of remedy; or (B) 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; (ii) is declared bankrupt, becomes insolvent, is unable to pay debts or enters into an arrangement with its creditors; (iii) has a petition presented, an order made or a resolution passed for its liquidation, bankruptcy or dissolution; or (iv) violates Clause 11 or 12. The other party shall indemnify the terminating party against all losses incurred to it due to such termination.

- (b) For the purposes of this Clause 10, Purchaser's material breach shall include but not be limited to (i) not making payment or issuing the Letter of Credit according to the agreed schedule and (ii) not taking delivery of the Plant according to the agreed schedule.

- (c) In the event that Purchaser terminates the Purchase Contract for reasons not attributable to the Supplier or Supplier terminates the Purchase Contract due to Purchaser's material breach, Purchaser shall pay Supplier for all costs incurred up until the time of termination and any additional costs which may arise as a result of the termination including any sub-supplier cancellation costs or fees.

- (d) Termination of the Purchase Contract shall not prejudice any of the parties' rights and remedies which have accrued as at termination. Clauses 8, 10(c), 10(d), and 13 will survive the termination of the Purchase Contract.

11. Ethical Standards

Each party shall at all times comply with (and ensure that all persons employed or engaged by it comply with) all anticorruption legislation, rules and regulations of any applicable jurisdiction, whether foreign or domestic.

12. Compliance With Asset Control Laws and Financial Sanctions

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 regulations and the European Union sanctions or restrictive measures.

13. General

- (a) The Purchase Contract (including these T&Cs, and the Quotation and Technical Specification if so specified in the Purchase Contract) constitutes the only and entire agreement between Supplier and Purchaser regarding the subject matter of the Purchase Contract. In case of any discrepancy between the terms of the aforesaid documents, the terms of these T&Cs will prevail. In case of any discrepancy between the terms of the Quotation, Purchase Contract and Technical Specification, the terms of the Purchase Contract will prevail. Any amendment to the Purchase Contract must be signed by both parties in writing.
- (b) None of the rights and obligations under the Purchase Contract (including these T&Cs, and the Quotation and Technical Specification) may be assigned by either party without the prior written consent of the other.
- (c) The Purchase Contract (including these T&Cs, and the Quotation and Technical Specification) will be governed by and construed in accordance with the laws of the People's Republic of China (for the purpose hereof only, exclusive of Hong Kong, Tai Wan and Macau), without any reference to the UN Convention on Contracts for the International Sale of Goods.
- (d) Any dispute arising from the Quotation, Purchase Contract, Technical Specification or these T&Cs, if not resolved between the parties within sixty (60) days of commencement of consultation between the parties on the dispute, will be settled by arbitration by the China International Economic and Trade Arbitration Commission ("CIETAC") in Chinese in Shanghai, the PRC in accordance with the arbitration rules thereof effective then. The arbitral award(s) will be final and binding upon the parties.

CalLENBERG GENERAL TERMS AND CONDITIONS (“T&Cs”) FOR CHINA**CHINESE LANGUAGE VERSION**

Version 01.12.2016

CalLENBERG 条款与条件 (“条款与条件”)**1. 双方**

报价单 (“**报价单**”) 中列明的 Callenberg 实体 (“**供应商**”) 将向报价单中列明的买方 (“**买方**”) 提供报价单以及报价单所附的相关技术规范 (如适用) (“**技术规范**”) 中列明的产品 (“**设施**”) 和服务 (“**工程**”)。

2. 达成有约束力买卖合同的条件

买卖合同应包括订单、本条款与条件、最新版本的供应商报价单以及双方一致同意的技术规范。买方发出的关于设施和工程的任何订单 (“**订单**”) 均为受限于本条款与条件的合同要约。买方进行的交货验收时未事先明确反对本条款与条件则构成买方对本条款和条件的同意。

3. 交货与价格

除非买卖合同另有规定，设施的交付及定价应在买卖合同中规定的地点采用工厂交货 (Ex Works) (根据最新版本的有效的国际贸易术语解释) (“**交货**”)，但是在买方向供应商全额支付买卖合同项下的价款之前，供应商保留对设施的所有权并且该所有权不得转移给买方。在适用的情况下，工程 (不包括设施) 将在买卖合同中规定的地点 (“**施工地点**”) 提供。买卖合同项下的价款不包括将由买方承担的所有税费、附加费、费用和其他收费，除非买卖合同另有明确规定。

4. 支付

(a) 买方应在发票日期后三十 (30) 天内支付所有款项，除非买卖合同另有明确规定。每逾期一天，买方将按照逾期金额的 0.05% 向供应商支付违约罚息。

(b) 如果通过信用证支付，买方应在报价单中规定的时限内向供应商提供由信誉良好的银行开具的不可撤销信用证，若报价单中未规定时限，则买方在订单签署日期后十 (10) 个工作日内提供由信誉良好的银行开具的不可撤销信用证。供应商在收到信用证之前无义务订购任何材料或开始任何工程，并且买方确认知悉延迟开具信用证将导致推迟交货时限。

5. 质保

设施将在交货后十二 (12) 月内在重大方面不存在设计、材料和工艺方面的任何缺陷，除非买卖合同另有明确说明，工程将在完成后十二 (12) 个月内在重大方面不存在工艺方面的任何缺陷，除非买卖合同另有明确说明。前述各情况下的十二个月期限称为“**质保期**”。受限于本第 5 条在下文的规定，在质保期内，对于因供应商提供的设计、材料或工艺存在瑕疵而导致设施和工程出现缺陷或不合符设施和技术规范 (“**缺陷**”) 的情况，供应商应负责补救：

- (a) 对于因下列原因导致的缺陷，供应商不承担任何责任：(i)买方提供的材料或买方规定或指定的设计；(ii)买方未遵守关于使用、维护或维修设施和/或工程的供应商的合理指示或适用法律要求；(iii)由供应商或其分包商之外的任何实体对工程进行安装或调试（仅适用于工程）；(iv)除供应商之外的任何人士未适当保存或运输设施；或(v)在向买方移交设施或工程后发生的情况，例如，未经供应商书面同意进行改动而导致的缺陷；供应商对于正常磨损或老化不承担任何责任；
- (b) 供应商将仅对在买卖合同或技术规范中规定的操作条件下以及在合理使用工程的情况下出现的缺陷承担责任；
- (c) 在适用法律允许的范围内，供应商的责任将仅限于设施和工程在质保期内出现的缺陷；
- (d) 尽管买卖合同有任何相反规定，只在买方在不晚于质保期到期后第二周结束的时间向供应商发出书面的缺陷通知的情况下，买方才可以享有本第 5 条项下规定的救济；如果未发现应由供应商负责的缺陷，供应商将有权就因收到通知而产生的费用获得补偿；
- (e) 在对设施某一部分出现的缺陷进行补救后，供应商应根据适用于原始工程的相同条款和条件对所维修或替换部分中出现的缺陷承担责任，所维修或替换部分的质保期应再延长十二（12）个月。对于工程的剩余部分，质保期保持不变；
- (f) 除非买方和供应商另有约定，补救工程将在施工地点进行；
- (g) 就设施而言，如果供应商认为可以通过替换或维修有瑕疵的部分对缺陷进行补救，并且拆卸和重新安装该部分不需要专业技能，则供应商可以要求将有瑕疵的部分发送至供应商指定的地点。在维修任何缺陷所需的范围内，买方将自行承担费用安排除设施（和/或工程）之外的任何设备的拆卸和重新组装；
- (h) 在补救任何缺陷所需的范围内，买方将自行承担费用向供应商及其指定的分包商提供接触设施和/或工程的机会并安排任何设备（除设施和工程之外）的介入；
- (i) 已被替换的有缺陷部分将提供给供应商并将归其所有；

- (j) 本第 5 条的规定不适用于任何非供应商专有的软件。供应商将尽其合理努力在其能够合理行事的范围内将第三方软件所有权人提供的任何保证的利益传递给买方，并且供应商向买方承担的与软件相关的所有责任仅限于此；
- (k) 即便买卖合同有任何相反规定，本第 5 条中规定的保证是排他的，并替代关于设施和工程的所有其他保证，无论书面或口头、默示或法定，包括但不限于关于隐藏缺陷、适销性或适合预期用途或特定目的的任何保证；
- (l) 买方不可以向任何第三方转让或让于关于质保的利益；如果任何船舶所有人/运营人针对供应商提起任何质保索赔，供应商可以让船舶所有人/运营人针对买方提出索赔，并由买方负责处理该等索赔。供应商接受的船舶所有人/运营人提出的任何质保索赔均应被视为由买方并代表买方作出；和
- (m) 买方将立即向供应商书面告知供应商提供的任何与安全相关的关键系统或组件出现的任何缺陷，并将向供应商及其分包商提供（或促使提供）接触该关键系统和/或组件的机会而不受限制，以便其评估并纠正该等安全相关的关键系统和/或组件中存在的任何缺陷。

6. 责任限制

- (a) 在适用法律允许的范围内，供应商在任何情况下均无须就以下损失向买方承担任何责任，无论产生于合约、侵权（包括疏忽）、法规、虚假陈述、损害赔偿或其他原因：(i)买方流失任何客户的损失；(ii)任何利润、业务、合同、预期结余、商誉或收入的损失、任何浪费的开支、或任何数据丢失或毁坏（无论该等损失或损害是直接、间接或结果性的）；或(iii)任何间接或结果性损失或损害，无论在签订买卖合同时是否可以预见；和
- (b) 在适用法律允许的范围内，即便本条款与条件或买卖合同有任何相反规定，供应商向买方承担的在买卖合同、本条款与条件项下以及以其他方式与设施和工程相关的责任最多不得超过买卖合同总价款的百分之五十（50%）。

7. 知识产权

- (a) 供应商或其许可方将保留供应商提供的设施和工程及其任何部分中包含的或与之相关的所有知识产权的所有权。除非供应商另行明确同意，买方不得（且不得允许任何其他方）复制、改写、反向工程、反编译、反汇编或修改该等知识产权。
- (b) 在买方遵守买卖合同和本条款与条件的前提下，仅为接收工程和将设施用于规定用途之目的，供应商在此向买方授予一项免费使用设施或工程中包含的知识产权的非排他性许可；该许可不可转让，但向设施的后续购买者进行的转让除外，前提是该购买者应遵守本第 7 条的规定。

- (c) 设施或工程中可能包含某些归第三方许可方所有的知识产权。在供应商提出要求时，买方可能需要与第三方许可方直接订立许可文件。

8. 保密

每一方均承诺对其接收的买卖合同项下或关于买卖合同或其履行的具备保密性质的任何信息保密，且不向任何其他方披露该等信息（为履行买卖合同而披露的情况除外）。为避免疑义，买卖合同的条款是保密的，且供应商有权与其关联方分享信息。

9. 不可抗力

- (a) 任何一方若因其合理控制范围之外的情况而无法履行其在买卖合同项下的义务，该方无须就该等不履行向另一方承担责任，该等情况包括但不限于火灾、爆炸、事故、罢工、停工、洪水、干旱、禁运、战争（无论是否宣战）、暴乱、自然灾害或公敌、任何政府行为、物资或交通工具普遍短缺、或分包商因上述原因延迟或无法履约。
- (b) 因发生上述任何事件而希望主张宽免的一方应立即向另一方发出书面通知，说明延迟履约的原因和预计持续时间。

10. 终止

- (a) 在一方发生下列任何情况时，另一方可以立刻终止买卖合同：(i)该方对其在买卖合同项下的义务构成重大违约，且该等违约(A)无法补救，或(B)可以补救，但未在收到要求补救的书面通知后三十（30）天内进行补救；(ii)该方宣布破产、资不抵债、无法偿还债务或与其债权人达成安排；(iii)该方就其清算、破产或解散提出请求、发出命令或通过决议；或(iv)该方违反第 11 或第 12 条。该方应向终止一方赔偿其因终止而产生的所有损失。
- (b) 就本第 10 条而言，买方的重大违约应包括但不限于(i)未按照约定时限付款或开具信用证，和(ii)未按照约定时限对设施进行提货。
- (c) 如果买方非因供应商的原因终止买卖合同，或供应商因买方重大违约终止买卖合同，买方应向供应商偿付供应商截止买卖合同终止时产生的所有成本以及因买卖合同终止可能产生的额外成本，包括任何次级供应商的取消成本或费用。
- (d) 买卖合同的终止不应影响截止终止时双方已产生的任何权利和救济。第 8、10(c)、10(d)和 13 条应在买卖合同终止后继续有效。

11. 道德标准

每一方应始终遵守（并确保其雇用或聘请的所有人员遵守）任何适用法域（无论国内或国外）的所有反腐败法律、法规和条例。

12. 遵守资产控制法律和金融制裁

双方应遵守任何适用的反恐融资和资产控制法律、法规、规定和命令，包括但不限于，美国财政部海外资产控制办公室（“海外资产控制办”）的规定以及欧盟的制裁或限制措施。

13. 一般条款

- (a) 买卖合同（包括本条款与条件、报价单和技术规范，若在买卖合同中列出）构成供应商和买方之间关于买卖合同主题事项的唯一及完整协议。如果上述各项文件的条款之间存在任何矛盾，应以本条款与条件为准。如果报价单、买卖合同和技术规范的条款之间存在任何矛盾，应以买卖合同的条款为准。对买卖合同的任何修订必须经双方签署书面文件。

- (b) 未经一方的事先书面同意，另一方不得转让其在买卖合同（包括本条款与条件、报价单和技术规范）项下的任何权利和义务。

- (c) 买卖合同（包括本条款与条件、报价单和技术规范）应受中华人民共和国（仅就本条款与条件而言，不包括香港、台湾和澳门）法律管辖并依其解释，并且无须参考《联合国国际货物销售合同公约》。

- (d) 若报价单、买卖合同、技术规范或本条款与条件之间产生的任何争议在双方就该争议开始协商后六十（60）天内未解决，则该争议应提交至中国国际经济贸易仲裁委员会（“贸仲委”）在中国上海根据届时有效的仲裁规则通过中文予以解决。仲裁裁决应具有终局性并对双方具有约束力。