

1 DEFINITIONS

- 1.1 "Seller" means Southern Marine AS and / or Southern Marine Consult AS
- 1.2 "Buyer" means the person placing an Order with Seller.
- 1.3 "Default" means any act, representation or omission by Seller, its officers, employees or agents, or which is done, made or not done (as the case may be) as a result of any act, representation or omission of any of them (whether deliberate or negligent), in connection with or in relation to this agreement as a result of which Seller is legally liable to Buyer or any third party whether in contract, tort or otherwise. A number of Defaults which together result in or contribute to substantially the same loss or damage shall be treated as one Default occurring on the date of the occurrence of the last such Default.
- 1.4 "Products" means the hardware or software the subject of the Order placed with Seller.
- 1.5 "Conditions" means these terms and conditions which will govern the supply of the Products and Services.
- 1.6 "Order" means the order placed by Buyer with Seller for the supply of the Products or Services.
- 1.7 "Contract" means the documents for the supply of the Products or Services concluded by the placing of an Order, which is accepted in writing by Seller.
- 1.8 "Services" means any training, consultancy or other service provided by Seller.

2 PERSONAL DETAILS AND DATA PROTECTION

- 2.1 The personal details of Buyer including name, address, telephone number, email address and credit card and transaction details and those of its representatives (Personal Data) are held by Seller for account and order administration, marketing, to facilitate better communications and for security purposes .
- 2.2 It is the responsibility of Buyer to ensure that its Personal Data are accurate and up to date and to inform Seller of any changes that need to be made.
- 2.3 By becoming a Buyer, accessing the Seller's web site or requesting information from Seller, Buyer CONSENTS to its Personal Data being processed electronically by Seller.

3 SCOPE OF CONTRACT

- 3.1 Neither Buyer nor Seller will be bound by any variation or waiver of the Conditions or of the quantity, design, specification, or arrangements for delivery, for any Products specified in any Contract unless and until agreed by both parties in writing.
- 3.2 Any terms and conditions used by Buyer in the course of its business or contained in Buyer's Order, which is at variance with these Conditions will not apply to any Contract if not in writing accepted by the Seller.
- 3.3 Unless otherwise stated all quotes given by Seller are based on price lists in force on the date of issuance and will expire thirty (30) days after the date on which they are given.
- 3.4 Orders may not be transferred by Buyer.
- 3.5 Seller sells Products and provides the Services as principal only, to the intent and with the effect that no other person or persons shall have any rights or obligations or be entitled or liable to sue or be sued, under the contracts it enters into.

4 DELIVERY

- 4.1 Delivery of the Products will be arranged by Seller on or as close as possible to Buyer's requested delivery date subject to Seller's existing priorities and schedules. Buyer will be advised of Seller's estimated time or date for delivery, which is an estimate only and may be cancelled or revised at Seller's option. The Products comprised in any Order may be delivered and invoiced in instalments, at Seller's discretion.
- 4.2 Deliveries of Products will be made in accordance with the delivery terms (INCOTERMS) stated in the Contract . Any additional costs caused by a change of delivery address will be borne by Buyer.
- 4.3 Seller will have no liability to Buyer in the event of non-delivery of the whole or any portion of the Products or failure to supply all or part of the Services caused directly or indirectly by any cause beyond Seller's control.
- 4.4 Unless Buyer informs Seller of a discrepancy between the Products ordered and the Products received by Buyer within three (3) working days of the delivery, the delivery will be deemed to have been in accordance with the Order.
- 4.5 The Services will be provided in accordance with Seller's quotation.

5 PAYMENT AND PRICE

- 5.1 The price stated in Seller's quotation for Products excludes the cost of delivery (which will be invoiced to Buyer, if applicable) and any value added or other tax duty or charge which may be imposed upon the production, storage, sale, transportation, import or export of the Products. Any such tax, duty or charge shall be for the account of Buyer. The price quoted will remain applicable until delivery of the Products provided that this is within six (6) months of the date of the Order.
- 5.2 The price stated in Seller's quotation for the Services excludes Value Added Tax and any other tax which may be imposed on the Services.
- 5.3 Payment of the price of the Products or Services comprised in each Order will be made in currency as stated in quotation
- 5.4 Unless Seller approves Buyer for credit terms, payment shall be made when the Order is placed by cheque, credit card or direct credit transfer or in cash on delivery.
- 5.5 If Seller approves Buyer's credit application, payment shall be due no later than thirty (30) days after the date of Seller's invoice. Seller reserves the right to cancel Buyer's credit terms at any time.
- 5.6 Seller is entitled to interest on any unpaid invoices from the due date until payment at mora interest in force according to Norwegian legislation.
- 5.7 No discounts will be granted for early payment.
- 5.8 If Buyer does not comply with the payment terms Seller may at its discretion suspend or cancel deliveries of Products and the supply of Services.

6 RISK AND CANCELLATION

- 6.1 The risk in the Products will pass to Buyer upon delivery according to the agreed terms.
- 6.2 Buyer shall be entitled to return any unwanted Products (except bespoke Products) to Seller at its cost within thirty (30) days of delivery subject to payment of a restocking charge equivalent to 10% of the price of the returned Products and to Buyer having obtained a return material authorization from Seller in advance of any such returns.

7 TITLE

- 7.1 No title to the Products shall pass to Buyer until all monies due from Buyer to Seller on any account have been received by Seller:
- 7.2 Seller retains title to all software and documentation included in the Products, all media on which such software is delivered to Buyer, and to all material supplied or used as part of the Services.
- 7.3 If Buyer fails to make any payment to Seller when it is due, Seller shall be entitled to request that Buyer promptly return to Seller any Products title of which has not passed to Buyer so as to discharge any sums owed by Buyer to Seller under any Contract.

8 WARRANTIES AND REPRESENTATIONS

- 8.1 The following clause specifies the extent to which Seller will be liable for Default. Its principal terms are a financial limit on Seller's liability (except for death or personal injury), the liability of Seller only for certain defined losses and a time limit applicable to both parties for the enforcement of claims. Seller's entire liability and Buyer's sole remedies, whether in contract, tort or otherwise, shall be as set out in this clause.
- 8.2 Except as expressly provided in this clause, all conditions, representations and warranties (express or implied, statutory or otherwise) are excluded to the extent permitted by law including without limitation any implied warranties or conditions as to quality fitness for purpose or quality of service.
- 8.3 Subject to the terms of this clause Seller warrants to Buyer that:
- 8.3.1 Hardware Products are free of defects in materials and workmanship that materially affect their performance for a limited period of time from the date of delivery as follows: non-hardware Products one (1) year and hardware Products two (2) years
- 8.3.2 The Services will be performed using reasonable care and skill.
- 8.4 Seller agrees to repair or replace (at Seller's option) all Products which fail to conform to the relevant warranty set out in clause 8.3 provided that:
- 8.4.1 Notification of the defect is received by Seller within the warranty period specified above;
- 8.4.2 Allegedly defective Products are returned to Seller with Seller's prior authorisation within thirty (30) days of the defect becoming apparent;
- 8.4.3 the Products have not been altered or subject to misuse, incorrect installation, maintenance, neglect, accident or damage by excessive current or used with incompatible parts.
- 8.4.4 Replacement Products shall have the benefit of the applicable warranty for the remainder of the applicable warranty period.
- 8.5 Allegedly defective Products returned to Seller in accordance with 8.4.2 will if found by Seller on examination not to be defective be returned to Buyer and a charge made for examination and testing.
- 8.6 The above warranty shall not apply to any software if:
- 8.6.1 The software is not used in accordance with these Conditions or the instructions of Seller or the manufacturer;
- 8.6.2 The software is altered, modified or converted by Buyer or a third party;
- 8.6.3 A program error in the product results from a malfunction of a third party's or Buyer's equipment or software not supplied by Seller.
- 8.6.4 If the Product is a software product, faults may from time to time occur and Seller neither warrants nor represents that such Product will be virus free or error free or that use of the Product will be uninterrupted.
- 8.7 Seller does not warrant that any Products will operate in all selected combinations, or that operation of any such Products will meet Buyer's requirements.
- 8.8 Seller shall not be liable for any loss incurred after either the date on which Seller corrects any Default or twelve (12) months after the date of the Default to the extent that Seller affords Buyer a reasonable opportunity to mitigate its losses, damage, liabilities or expenses by providing alternative or additional Products.
- 8.9 Seller will not be liable for loss or damage of economical character, of data, claim from third Party or delayed delivery.
- 8.10 Seller's entire liability for actual damages in respect of any one Default shall not, in any event exceed the total purchase price for the Products which are directly related to the Default.
- 8.11 Except in respect of payments due under this agreement no action may be brought by either party against the other more than one (1) year after the cause of action has accrued.
- 8.12 Each of the limitations and exclusions set out above is to be construed as a separate limitation or exclusion, applying and surviving even if for any reason one or other of the limitations or exclusions is held inapplicable or unreasonable in any circumstances, and shall remain in force despite termination of this agreement.

9 INFRINGEMENTS

- 9.1 Seller shall settle and/or defend at its own expense and fully pay any resulting final awards and/or final settlements arising from any claim, demand, suit or action against Buyer or its affiliated companies to the extent such claim, demand, suit or action alleges that the Products or Services as supplied by Seller, or the use of the Products infringes upon any patent or any trademark or copyright or trade secret of any third party, provided that (1) Buyer promptly informs Seller in writing of any such claim, demand, action or suit, (2) Seller is given control over the defence thereof and Buyer cooperates in the defence at Seller's expense and (3) Buyer will not agree to the settlement of any such claim, demand, action or suit prior to a final judgment thereon without the prior written consent of Seller. . Buyer shall have the right to select its own counsel to participate in any such defence at Buyer's sole expense, but in close cooperation with Sellers counsel.
- 9.2 The foregoing indemnification shall not apply to any claim of infringement based on Buyer's modification of Products. Notwithstanding the foregoing, Seller shall have no obligation under this Section for any claims of infringement by the Products outside the geographical boundaries of Norway, the United States, Canada, Mexico, Japan, Australia, Switzerland, or the European Union.
- 9.3 Seller's total aggregate liability for infringements according to this Agreement shall not exceed the aggregate of all amounts paid to Seller by Buyer under the Contract.

10 GENERAL

- 10.1 Seller will not be prejudiced or restricted by any indulgence or forbearance extended to Buyer and no waiver of any breach will operate as a waiver of any subsequent breach.
- 10.2 Buyer will not assign its rights under the Conditions without the prior written consent of Seller.
- 10.3 Any notice given under the Conditions will be duly served on Buyer if it is left at or sent by first class post to its address last known to Seller or on Seller if it is left at or sent by first class post to its address last known to Buyer. It will be assumed that any notice sent by post will be delivered on the fifth working day after posting.
- 10.4 Any dispute between the parties that may arise in connection with, or as a result of the Contract and which cannot be settled by mutual agreement, shall be settled by arbitration in Kristiansand, Norway in accordance with Norwegian law., The arbitration proceedings shall be conducted in accordance with Chapter 32 of the Norwegian Civil Procedure Code