

# **TRADE CONDITIONS**

*From 01.01.2016*

*These conditions set out the rights and duties of both ship suppliers and those purchasing from ship suppliers, and are formulated by the **INTERNATIONAL SHIP SUPPLIERS & SERVICES ASSOCIATION**. Approved by the ISSA Assembly, April 2015. These Conditions supersede the 2003 Edition.*

## Definitions

<u>"Vendor"</u>	shall mean the ISSA member contracting to supply Goods or Services;
<u>"Purchaser"</u>	shall mean the person placing an order in respect of Goods or Services and where such person acts as agent of or otherwise for a third party ("the Principal"), such person and the Principal and the vessel to which Goods or Services are provided shall jointly and severally be the Purchaser;
<u>"Goods"</u>	shall mean any and all items ordered by the Purchaser and/or supplied by the Vendor for use on board a vessel or an offshore oil rig or similar, or incidental to the operation of the aforesaid;
<u>"Services"</u>	Shall mean any and all services ordered by the Purchaser and/or supplied by the Vendor to a Vessel or an offshore oil rig or similar, or incidental to the operation of the aforesaid;
<u>"Vessel"</u>	Shall mean the vessel or vessels to which Goods or Services are supplied or intended to be supplied by the Vendor. The Purchaser will declare the name of the Vessel to the Vendor.
<u>"Contract"</u>	shall mean any agreement between a Vendor and a Purchaser pursuant to which Goods or Services are supplied or are intended to be supplied.

## General

1. Unless otherwise expressly agreed in writing the following conditions shall apply to all contracts, orders and deliveries. Any conflicting purchasing conditions (or similar) of the Purchaser shall be deemed to have been rejected by the Vendor unless expressly accepted in writing.

## Orders/Deliveries

2a. The Purchaser shall communicate as soon as reasonably practicable to the Vendor his order or orders.

2b. Provided the prevailing circumstances reasonably permit, the Vendor shall supply and deliver to the Purchaser the Goods or Services as ordered at the time and place stipulated by the Purchaser insofar as the Vendor has agreed to do so and such Goods or Services are available at the agreed port or port-area.

3a. The Vendor's responsibility for transport of the Goods shall end at the nearest point to the ship that the delivery vehicle(s) may, with the necessary authority, reach ("the Point of Delivery"). The cost of transportation of Goods to the Point of Delivery shall be agreed in advance or otherwise charged at cost to the Vendor.

3b. Should the Vendor expressly agree to transport/handle the Goods beyond the Point of Delivery as defined in paragraph 3a the costs of such additional delivery/handling shall be agreed in advance.

3c. If delivery is requested outside the normal hours of the agreed port or port-area or on Saturdays, Sundays or religious or national or legal holidays, expenses incidental to such delivery shall be payable by the Purchaser as additional costs. Transport Costs shall be invoiced and payable by the Purchaser.

3d. The Goods shall be deemed delivered on the arrival of the Goods at the stipulated time at the Point of Delivery. The responsibility, cost and risk of unloading the delivery vehicle(s) and delivering on board are for account of the Purchaser. Risk in the Goods (but not property therein) shall, in all respects, pass to the Purchaser upon delivery.

3e. The Purchaser shall pay to the Vendor any costs or expenses incidental to any waiting period beyond a reasonable time.

3f. All orders and receipt notes will be signed by the master or his authorised representative.

3g. Where the Vendor is requested to deliver Goods other than to the Vessel responsibility rests with the Purchaser to ensure that the person responsible for accepting delivery gives a full and proper receipt for the Goods delivered. Signed receipt by that party shall constitute acceptance of delivery by and to the Purchaser.

## Prices

4a. Subject to the following provisions of this Condition 4, in respect of the Goods or Services supplied by the Vendor, the Vendor shall charge to the Purchaser the prices current at the relative port or port-area at the time of delivery.

4b. Where requested to do so the Vendor shall submit a quotation to the Purchaser. Where the Purchaser accepts that quotation, the Vendor shall charge the Purchaser the sum quoted, subject to any necessary adjustment for reasonable variations in the quantities actually delivered.

4c. Where the Purchaser seeks to place an order for only some of the items for which Vendor has quoted, the Vendor shall be at liberty to decline the request to supply.

4d. The Vendor may, if requested by the Purchaser, send to the Purchaser a list stating the prices of Goods and the period for which such prices are to apply. If such a list has expired and not been renewed, Condition 4a shall apply. Goods which cannot be offered at a price fixed in advance shall be clearly so marked on any such list and in this case Condition 4a shall apply.

4.e Where the Vendor gives the benefit of a quantified discount (whether in percentage terms, in a stated sum or otherwise) the Purchaser's entitlement to such discount is strictly conditional upon payment of the Vendor's invoice within the agreed payment period.

Where payment is not made within the agreed period the Vendors invoices shall be deemed to be adjusted to exclude any such discounts.

## Quality/Packing

5. The Goods shall be of standard or prime quality as rated at the time and place of delivery. The Goods shall be supplied in the packing customary at the time and place of delivery. At the time of placing his order, the Purchaser shall inform the Vendor of any special packing requirements in view of the destination of the ship and/or Goods. Any additional expenditure incurred in complying with such requirements shall be chargeable to and payable by the Purchaser.

6a. Returnable packing material and containers supplied by the Vendor shall be clearly marked as such on the receipt-note and shall be returned by the Purchaser to the Vendor as soon as reasonably practicable.

6b. Returnable packing material and containers shall be charged separately at the prices current at the time and place of delivery. The amounts so charged shall be refunded by the Vendor to the Purchaser, provided such packing material and containers are returned undamaged within a reasonable period.

## Claims

7. Subject only to Condition 8 below, by taking delivery of the Goods and signing the accompanying receipt-note, the Purchaser shall be deemed to have approved and accepted the Goods in every respect.

8. Any claims with regard to the conformity or quality of the delivered Goods must be notified in writing to the Vendor within 8 days from delivery and in the absence of such notification the Purchaser shall be deemed to have approved and accepted the Goods in every respect. Exception is made in the case of fresh products and perishable Goods, for which claims must be notified in writing at the time of delivery or as soon as practicable thereafter. Where a claim is made in accordance with the provisions of this paragraph and where such claim is accepted by the Vendor the Purchaser shall be entitled to a refund of the price of the affected Goods upon inspection of said goods by

the Vendor or as otherwise agreed in writing by the Parties.

9. In the event of a claim pursuant to paragraph 8 the Purchaser shall be required to prove that, since delivery, the Goods were continuously handled, treated and stored by the Purchaser as a prudent administrator in keeping with the nature of the Goods and their propensity to deteriorate and that any alleged deficiency is not attributable to the Purchaser's fault or negligence. The Purchaser shall be required to make the Goods under claim available for inspection.

10. Save for claims for death or personal injury any damages/compensation shall be strictly limited to a refund of the price paid to or charge by the Vendor the affected Goods or Services. The Vendor shall not under any circumstances whatsoever including the Vendor's negligence be liable for any claim for consequential loss, damage or injury arising out of the supply, or late supply or failure to supply, of any Goods or Services. The Vendor shall not be liable for the financial consequences arising from any delay to the Vessel or any period that the Vessel may be off-hire or otherwise unable to earn.

11. Any complaint by the Purchaser with regard to the Vendor's invoice will be absolutely barred unless lodged in writing by the Purchaser with the Vendor at the Vendor's usual business address within 8 days of delivery of the invoice.

## **PAYMENT**

12a. Terms of payment – the Purchaser has 14 days net to arrange payment.

12b. Notwithstanding paragraphs 7 to 11 herein the Purchaser shall not be entitled to withhold payment of any sums after they have become due in the ordinary course for payment by reason of any claim, right of set-off or counterclaim which the Purchaser may allege or for any reason whatsoever.

12c. If payment is not made within the stipulated period the Purchaser shall pay the Vendor interest on all overdue or unpaid sums at a rate of 1.75% per month or part thereof, or the equivalent to the commercial prime lending rate customarily charged at

the time by the Vendor's bank in the Vendor's country, whichever may be the higher. Interest shall be calculated from the due date until actual date of payment.

12d. Regardless of any allocation stipulated by the Purchaser upon making any payment, the Vendor shall be entitled to apply payments received from the Purchaser in any way that it considers appropriate, including allocation firstly to interest that has accrued in accordance with 12c or costs incurred in accordance with 12e.

12e. The Vendor shall be entitled to recover from the Purchaser any and all costs and/or expenses which may be incurred by the Vendor in recovering or seeking to recover from the Purchaser any overdue or unpaid sums whether or not formal legal steps (including but not limited to the arrest of a Vessel) have been undertaken. Such costs include both internal costs and costs and expenses incurred to external advisers, lawyers or debt collectors instructed for such purpose. Such costs shall be payable by the Purchaser to the Vendor upon demand on a full indemnity basis and may be included in the claim for which a Vessel is arrested.

12f. Where the Vendor has granted credit to the Purchaser and the Purchaser default in payment or any sums due by the Purchaser the Vendor shall be entitled to give immediate notice of the withdrawal of credit, entitling the Vendor to treat all unpaid charges for Goods and Services provided to the Purchaser as due for immediate payment. Interest shall accrue on such sums from the date of the notice, and the Vendor shall be entitled to take immediate legal action to recover the sums due.

12g. Notwithstanding delivery and the passing of risk, property in and title to the goods shall remain with the Vendor until the Vendor has received payment of the price of (a) all Goods and/or Services the subject of the Contract and (b) all other Goods and/or Services supplied by the Vendor to the Purchaser under any contract whatsoever. Payment of the full price shall include, without limitation, the amount of any interest or other sum payable under the terms of this and all other contracts between the seller and buyer.

## HANDLING OF THIRD PARTY GOODS

13a. The Vendor may agree to handle Purchaser's own goods (hereafter "Purchaser's Goods"), including arranging custom's clearance, inland or international carriage, storage and delivery to a nominated Vessel. In the absence of any contrary terms agreed between the Vendor and Purchaser in relation to such activity this Condition 13 sets-out the terms upon which such Services are provided.

13b. When the Vendor instructs any third party in connection with the clearance, handling or movement of Purchaser's Goods it does so strictly as agent for the Purchaser and the Purchaser authorizes the Vendor to act as its agent and to contract on the usual terms of those third parties.

13c. The Purchaser is responsible for fully and accurately declaring, describing and documenting the contents of any package or packages passed to the Vendor for handling, such declaration, description and documentation being appropriate for the place at which the Vendor is required to handle the Purchaser's Goods.

13d. All Purchaser's Goods shall be properly and adequately packaged for the period of transit and storage envisaged. The Vendor shall not be responsible for inspecting said packaging, or taking any remedial steps in relation to deficiencies. The Vendor shall not be responsible for inspecting the condition of the contents of any packages for loss or damage. The Purchaser shall remain at all times responsible for compliance with the ISPS Code as concerns the acceptance of goods on board vessels.

13e. Where the Purchaser's Goods require particular handling or care the Vendor shall only be required to provide such handling and care if it has agreed in writing to do so, in advance of the Goods being consigned to them.

13f. It is envisaged that the Vendors charges shall be agreed in advance of goods being consigned to them. Where no such agreement is in place the Vendor shall be entitled to charge a reasonable sum, consistent with similar work for similar clients.

13g. The Purchaser shall insure the Purchaser's Goods for all carriage and storage risks during the period that they are under the custody, care or control of the Vendor on terms that the insurer waives any rights of subrogation or recourse against the Vendor. The Vendor has no obligation or requirement to insure Purchaser's Goods.

13h. The Vendor shall not be liable for loss or damage to Purchaser's Goods otherwise than by its own negligence or default. Any claims in respect of Purchaser's Goods lost or damaged whilst in the custody of third parties instructed on behalf of the Purchaser by the Vendor shall be made directly to the relevant third party, who details the Vendor shall provide.

13i. Where the Vendor is liable in respect of Goods lost or damaged then its liability shall be strictly limited to 2 SDRs per kilo of the weight of the Purchaser's Goods lost or damaged, and such limits shall apply in all cases including loss or damage caused by the Vendor's breach of contract or negligence. The Vendor shall not be liable for any other losses, claims or damages and for the avoidance of doubt shall not be liable for losses arising from a failure to deliver or a delay in delivery of the Purchaser's Goods, including losses arising from delay to the vessel, including detention, demurrage or periods off-hire.

13j. The Vendor shall have a right of general lien over Purchaser's Goods and any documents related thereto in respect of any sums due from the Purchaser, whether related to the Purchase's Goods under lien or any other Contracts.

13k. Where Purchaser's Goods are (i) held under lien; or (ii) held for a period of more than 60 days without instructions for their delivery or forwarding the Vendor shall be entitled to sell or dispose them, upon 5 days' notice to the Purchaser of an intention to do so, and may apply the proceed to any sums due from the Purchaser.

13l. The Purchaser shall immediately upon written demand from the Vendor fully indemnify the Vendor for all costs, expenses, penalties, fines, taxes, duties or other dues arising from the handling and delivery of Purchaser's Goods including those arising from the

Purchaser's incorrect or false declaration of the content of any package.

## Force-Majeure

14. If the Vendor is unable to make delivery, or to make delivery in good time, owing to force majeure (which shall include all or any circumstances or conditions for which the Vendor cannot be held responsible and as a consequence whereof it is not reasonably possible to make delivery in good time or at all) then the Vendor's obligation to deliver shall cease or if appropriate be suspended for the duration of such force majeure.

## MARITIME LIEN

15. Goods are sold and delivered on the credit of the Vessel supplied, as well as the credit of the Purchaser, and the Purchaser agrees and warrants on behalf of the Vessel and its owner that the Vendor shall have and may assert and maritime lien against the Vessel supplied in accordance with the laws of the Southern District of California, USA

## Law/Jurisdiction

16a. Subject always to clause 16d any dispute arising out of or in connection with any Contract subject to these Conditions, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in England and governed by the Arbitration Act 1996. Any such arbitration proceedings shall be before a sole arbitrator who shall be appointed by the claimant, who shall be a shipping lawyer qualified to practice law in England.

16b. Notwithstanding the commencement of arbitration proceedings the Vendor shall be entitled to commence proceedings in any other jurisdiction or before any court in order to obtain security for its claim, including security for interest due and legal costs to be incurred.

16c. Notice of arbitration shall be validly served if sent to one or more of the email addresses, fax numbers or physical addresses used or identified by the Party

served during the course of their prior business dealings.

16d. The Vendor shall be entitled at any time prior to the commencement of arbitration proceedings pursuant to clause 16a to commence substantive proceedings against the Purchaser, its assets including the Vessel or any sister or associated vessel in the court of any jurisdiction where the Purchaser may be located, domiciled or present or where any assets, including its Vessel or sister or associated vessel may be located. In the Event that the Vendor exercise that option then neither Party shall be entitled to commence arbitration proceedings and disputes must be submitted to the court at which the Vendor has commenced proceedings.

16e. All contracts entered pursuant to these Conditions shall be subject to the laws of the Southern District of California, USA. The United Nations Convention on Contracts for the International Sale of Goods (Vienna UNCITRAL Convention on International Trade Law, also known as the Vienna Treaty) is excluded from application.