



ATLAS MARINE VALVES GENERAL CONDITIONS OF CONTRACT

With effect from 1st October 2018 ("the Effective Date") and until further revision these General Conditions of Contract ("GCC") shall apply to the exclusion of all other standard sale or purchasing terms to all Contracts for the sale of Parts and the provision of Services between Atlas Marine Valves & Equipment Ltd of Turkey or Atlas Marine Valves Singapore Pte Ltd of Singapore and a Buyer.

1. DEFINITIONS

Throughout these GCC the following expressions shall have the following meanings:

- 1.1 "Agent" means any entity acting on behalf of the Buyer or the Vessel and/or both.
- 1.2 "Buyer" means the legal entities identified on the Order Confirmation buying the Parts.
- 1.3 "Contract" means a Contract between the Seller and the Buyer for the purchase of Parts.
- 1.4 "Designated Bank Account" means the bank account identified in the invoice related to the Contract as the account designated by the Seller for receipt of payment.
- 1.5 "INCOTERMS" means the 2010 INCOTERMS published by the International Chamber of Commerce.
- 1.6 "Order Confirmation" means a written acceptance issued by the Seller in response to an order from the Buyer.
- 1.7 "Parts" means any spare parts, equipment or other products supplied by the Seller pursuant to a Contract.
- 1.8 "Price" means (i) the price (or the method of calculation of the price) stated in the Order Confirmation for the Parts; and (ii) any applicable taxes, VAT or other duties whether or not identified in the Order Confirmation; and (iii) any delivery costs.
- 1.9 "Seller" means either Atlas Marine Valves & Equipment Ltd of Turkey or Atlas Marine valves Singapore Pte. Ltd as identified in the Order Confirmation as selling its Parts.
- 1.10 "Vessel" means the ship or rig to which the Parts or Services are to be provided.

2. FORMATION OF A CONTRACT

- 2.1 A Contract shall not be formed until an order from a Buyer has been accepted by the Seller. Acceptance will be communicated by the Seller's Order Confirmation being issued to the Buyer, but in the absence of an Order Confirmation being issued by the Seller acceptance may be communicated by the Seller's unequivocal conduct including but not limited to delivery of Parts. In all cases such acceptance shall be on terms that these GCC are incorporated into the Contract, whether or not the GCC are expressly referred to.
- 2.2 Any error or inconsistency between the Order Confirmation and the Buyer's requirements must be identified by the Buyer to the Seller in writing within one business day.
- 2.3 In the event of a conflict between an Order Confirmation and these GCC the Order Confirmation shall prevail to the extent of the conflict only but in all other respects these GCC shall apply. No variation to these GCC shall be binding unless agreed in writing by the Seller.
- 2.4 Where a party acting as an Agent for the Buyer, whether disclosed or undisclosed, procures a Contract then any such Agent with actual or constructive notice of the existence of these GCC shall be jointly and severally liable for all the obligations of the Buyer under a Contract and shall be a principal party to that Contract.

3. SUPPLY OF PARTS

- 3.1 Subject to clause 3.2 where the Buyer requests the supply of specific Parts then it shall be the Buyer's sole responsibility to specify the correct Parts for their requirements and to ensure that the Parts quoted by the Seller matches the required specification. The Seller shall be under no obligation to check that the Parts specified by the Buyer are suitable for the Buyer's requirements.

- 3.2 Where the Buyer seeks advice from the Seller as to their requirements then the Buyer shall be under an obligation to disclose all relevant information.
- 3.3 The Seller is not obliged to sell original manufacturers parts. Significant monetary savings and improved delivery times can be achieved by utilising substitute non-original parts. Unless the Buyer specifically requests original manufacturer parts AND the Seller specifically states on its Order Confirmation that the parts offered are original manufacturer parts then the Seller is entitled to supply non-original parts.
- 3.4 Where it is agreed that a Class Certificate will be supplied then this will be at the Buyer's expense, and the cost may be shown as a separate charge or incorporated into the price of the Parts. The Seller bears no responsibility for the accuracy of any Class Certificate and in obtaining the same shall be acting as the Buyer's agent.

4. SELLERS WARRANTIES

- 4.1 All Parts supplied by the Seller shall be of satisfactory quality and where selection of the Parts is made by the Seller then the Seller shall use reasonable skill and care in its selection of such Parts taking account of the matters described to it by the Buyer.
- 4.2 The Seller shall not be responsible to the Buyer for any breach of the Vessel's existing equipment manufacturers' warranties in favour of the Buyer by reason of the use of non-original manufacturer parts.
- 4.3 Whilst the Seller shall use reasonable endeavours to meet any delivery dates for the provision of Parts time shall not be of the essence and delivery dates agreed by the Seller and however expressed shall be estimates only and shall not be binding on the Seller.
- 4.4 Save for the warranties expressly provided for in this clause 6 all warranties and implied terms contained within the Sale of Goods Act 1979 (as amended) or otherwise implied by operation of law are excluded.
- 4.5 The United Nations Convention on Contracts for the International Sale of Goods (the Vienna Convention) is excluded from application.

5. DELIVERY

- 5.1 The Order Confirmation shall stipulate the Buyer and Seller obligations in relation to the carriage and delivery of Parts. Where the Order Confirmation is silent the Parts shall be sold on an Ex-Works (INCOTERMS) basis.
- 5.2 The Buyer is responsible for obtaining necessary permits and complying with all regulations applicable to the receipt, handling and use of Parts to be supplied and a failure to do so shall entitle the Seller to terminate the Contract. The Buyer shall indemnify the Seller for all consequences, losses and or damages (including fine and penalties) suffered by the Seller as a result of the Buyer or the Vessel or its crew failing to observe any such regulations or obtain any such permits.

6. PRICE / PAYMENT / RISK AND PROPERTY

- 6.1 The Buyer shall pay the Price in accordance with the terms of the Contract.
- 6.2 The Buyer shall be liable for any taxes including VAT or other duties arising from the supply of the Parts or Services to the Buyer.
- 6.3 Risk in the Parts shall pass as prescribed by the INCOTERMS applicable to the Contract.
- 6.4 Title to Parts shall pass when all sums due from the Buyer to the Seller have been fully paid.
- 6.5 The Seller shall not insure the Parts during their transport.
- 6.6 Unless otherwise stated in the Order Confirmation payment shall be made in United States Dollars by bank-to-bank transfer net of bank fees to the Designated Bank Account. Payment to any other account shall not discharge the Buyer from its payment obligations.
- 6.7 Payment of the Price shall be made in full without any withholding by reason of any set-off, counter-claim or for any other reason, whether relating to the Contract or past agreements or Contracts.

- 6.8 Unless the Seller has agreed in its Order Confirmation to grant credit, payment of the Price shall be due immediately upon the Parts being available for collection. Where credit is granted the credit days shall run from the date that the Parts are available for collection. The Seller shall issue an invoice, but the Buyer's liability to pay shall not be dependent upon an invoice being issued.
- 6.9 The Buyer shall not be entitled to insist upon proof of delivery before making payment, but the Seller shall nevertheless use reasonable endeavours to proof of delivery if the Seller was responsible for arranging transport.
- 6.10 Where credit is granted such that payment is deferred beyond the period stated in clause 6.8 such credit is entirely discretionary and the Seller shall be entitled, without providing reasons, to withdraw credit and demand immediate payment by giving written notice. For example, but without limitation, credit may be withdrawn if the Seller has reason to believe that the Buyer's (or companies related to the Buyer) financial circumstances have deteriorated or the Seller receives information that causes it to alter its assessment of the credit risk. Where credit is withdrawn prior to delivery of Parts then the Seller shall be entitled to withhold delivery or performance until payment of the Price is made or alternatively the Seller may cancel the Contract, without recourse by the Buyer.
- 6.11 Without prejudice to any other rights or remedies available to the Seller the Buyer shall pay interest to the Seller at the rate of one and half per cent per month on all balances that remain unpaid from the date that they were due or upon the withdrawal of credit became due for payment. The Seller may provide interest notes which shall be binding as to the amount of interest that is due, but the Buyer's obligation to pay interest shall not be conditional upon such interest notes being issued.
- 6.12 The Seller shall be entitled to allocate payments from the Buyer at its sole discretion and regardless of any allocation stipulated by the Buyer and shall be entitled to extinguish claims for interest, legal fees or any other sums due from the Buyer in priority to invoices for Parts and regardless of the date that the respective obligations arose.
- 6.13 Where the Seller incurs costs in the collection of overdue sums then the Buyer shall indemnify and pay to the Seller on demand such costs, which shall include but not be limited to attestation and translation costs, fees of third party debt collection agencies, and lawyers' fees and regardless of whether such costs led to the collection of the overdue sums.

7. CLAIMS

- 7.1 Any claim concerning the Parts shall be presented in writing to the Seller within 14 days of the date that the circumstances giving rise to the claim became known or ought to have become known to the Buyer. Any claim not brought within that period shall be waived and forever barred.
- 7.2 A written claim for the purposes of the preceding clause must provide a complete and comprehensive explanation of the circumstances and basis of the claim and a breakdown of the known and anticipated losses.
- 7.3 In the event of any claim presented in accordance with clauses 7.1 and 7.2 the Buyer shall:
- 7.3.1 cooperate with the Seller and make all necessary arrangements for the Seller or its representatives to investigate such claim, including but not limited to the boarding and inspection of the Vessel, the interviewing of crew and the review and copying of Vessel documents.
 - 7.3.2 preserve any parts, machinery or equipment related in any way to the claim and to keep a complete photo and video record copies of which shall be made available to the Seller upon request.
 - 7.3.3 take all reasonable steps and actions to mitigate any damages, losses, costs and expenses related to any claim o.
 - 7.3.4 take all reasonable steps to preserve the Seller's recourse against any third parties, including the manufacturer of any parts.
- 7.4 Any claims against the Seller in respect of a Contract, including those notified in accordance with the provisions of these GCC, shall be brought before the relevant tribunal within 12 months of the date of delivery of the Parts, failing which such claims shall be deemed waived and time barred.

8. LIABILITY

- 8.1 The Seller's liability for any damage whatsoever arising under a Contract howsoever caused and including the negligence of the Seller, its servants, sub-contractors or agents and whether based in tort or contract and including claims for product liability and pollution shall be limited to the lesser of:
- 8.1.1 US\$10,000; or
- 8.1.2 the Price of the Parts giving rise to the claim on which the Seller's liability is based.
- 8.2 The Seller shall under no circumstances be held liable for any consequential losses whatsoever, including, without limitation, delay, detention, demurrage, loss of charter hire or freight, crew wages, pilotage, towage, port charges, lost profits or increased cost or expenses for obtaining replacement spares and neither shall the Seller be liable under any circumstances for punitive damages.
- 8.3 When assessing liability for damage to the Vessel and compensating for replacement parts there shall be a reduction in the replacement value payable by the Seller of 20 percent for each year or fraction thereof for which the replaced part has been in use.
- 8.4 The Buyer shall indemnify the Seller against any claims, losses or costs of whatever kind related to the Contract, including the legal costs of dealing with such claims, instituted by third parties against the Seller to the extent that such claims exceed the Seller's liability towards the Buyer according to this clause.
- 9. LIEN**
- 9.1 It is agreed and acknowledged that a lien over the Vessel is created for the price of the Parts supplied together with any interest accrued and legal costs incurred by the Seller in enforcing said lien. The Buyer, if not the Owner of the Vessel, hereby expressly warrants that they have full authority of the Owners to pledge the Vessel in favour of the Seller and that they have given notice of the provisions of these GCC to them. The laws of the United States, including but not limited to the Commercial Instruments and Maritime Lien Act, shall always apply with respect to the existence of a maritime lien, regardless of the country in which the Seller takes legal action.
- 10. SUB-CONTRACTING**
- 10.1 Seller is entitled to sub-contract the performance of all or part of its obligations under a Contract, but shall retain its primary obligations to the Buyer. Any sub-contractor appointed by the Seller shall be entitled, as against the Buyer, to all rights, benefits and exclusions of these GCC.
- 11. FORCE MAJURE**
- 11.1 Neither Buyer nor Seller shall be responsible for any loss or damage resulting from any delay or failure in delivery or receipt of Parts hereunder due to fire, explosion or mechanical breakdown, flood, storms, earthquakes, tidal waves, war, military operations, national emergency, civil commotion, strikes or other differences with workmen or unions, or from any delay or failure in delivery or receipt of Parts or Services hereunder when the supply to Seller of Parts or labour or the facilities of production, manufacture, consumption, transportation or distribution of Seller are impaired by causes beyond Seller's control, or by the order, requisition, request or recommendation of any governmental agency or acting governmental authority, or Buyer's or Seller's compliance therewith, or by governmental proration, regulation or priority, or from any delay or failure due to any causes beyond Buyer's or Seller's control similar or dissimilar to any such cases. When such cause or causes exist, the party affected shall have the right, upon notice without delay as soon as practicable to the other of the nature and probable duration of such cause or causes, to restrict or cease performance or acceptance hereunder in a fair and equitable manner for the duration of such cause.
- 12. INTELLECTUAL PROPERTY**
- 12.1 All Intellectual Property Rights in or arising out of or in connection with the Seller's supply of Parts or Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Seller.
- 13. DATA PROTECTION**
- 13.1 Various legislation aimed at protecting the use of personal data may have application to the parties to a Contract. In connection with the Contract the Seller may provide personal data to the Buyer.

- 13.2 The Buyer may process personal data on behalf of the Seller only to the extent necessary for performing its obligations under a Contract. The Buyer shall at all times:
- 13.2.1 take appropriate technical and organisational measures to safeguard against unauthorised and unlawful processing of personal data and against accidental loss, alteration or destruction of, or damage to the personal data and will ensure that such measures are no less rigorous than those maintained by the Buyer in respect of its own information and data of a similar nature;
 - 13.2.2 only process the personal data in accordance with the Seller's written instructions;
 - 13.2.3 not engage subcontractors or subprocessors to process the Seller's personal data without the Seller's consent;
 - 13.2.4 promptly provide such information to the Seller, as the Seller may require to allow it to comply with its own data protection obligations, including subject access rights, or with information notices served by regulators;
 - 13.2.5 promptly notify the Seller of any queries from data subjects, the data protection authorities or any other law enforcement or regulatory authority, which the Seller may decide to resolve at their discretion.
- 13.4 Upon there being no reasonable business reason for retaining personal data provided by the Seller the Buyer shall (and shall procure that its subcontractors shall) destroy all such personal data in tangible form and delete it from all computer hardware (including storage media) and software and shall confirm in writing that this has been done. The Buyer shall always (and shall procure that any subcontractors shall) process personal data on behalf of the Seller in accordance with the Seller's instructions.
- 13.5 If the Seller has agreed that the Buyer may engage subcontractor(s) to process personal data, then (i) such engagement will be under a written contract, and (ii) the subcontract will require the subcontractor to comply with the same obligations applicable to the Buyer under this clause 15 and the applicable laws and regulations. In any event, the Buyer covenants to the Seller that the Buyer will remain fully liable for the acts and omissions of its subcontractors and affiliates.
- 13.6 The Buyer shall implement and maintain at all times appropriate operational, managerial, physical and technical measures to protect the personal data against accidental, unauthorized or unlawful destruction, loss, alteration, disclosure or access so that all processing is in compliance with applicable laws and regulations.

14. COMPLIANCE CLAUSE

- 14.1 Without prejudice to any other remedies and rights, the Seller shall have the option immediately to cancel the Contract in full or in part, for the account and risk of the Buyer and to charge the Buyer the expenses thereby incurred, or take any other measures which the Seller deems appropriate, without prejudice to its rights of indemnification, without any liability on the side of the Seller, if at any time the Seller, in its sole discretion, has reasonable grounds to believe that the Buyer or the Vessel or any other person or entity in any way related to them or to the Contract or its performance are listed on the US OFAC Specially Designated Nationals List or subject by any US, UN EU sanctions or any other sanctions binding or effective on the Seller or its group companies.
- 14.2 The Buyer acknowledges that any Contract and any actions related to a Contract as well as any interaction with third parties related to a Contract are covered by anticorruption laws and regulations, including but not limited to the U.S. Foreign Corrupt Practices Act ("FCPA").
- 14.3 The Buyer and Seller shall comply with all applicable anticorruption laws and regulations and will not, offer, promise, pay, or authorize the payment of any money or anything of value, or take any action in furtherance of such a payment, whether by direct or indirect means, to any public official or private individual to influence the decision of such person in the performance of his duties to a government or to his company. Any breach of this clause will void the related Contract and in the sole discretion of the Seller any other Contract between the parties, making any claims for payment, delivery or any other obligation of the Seller under this Agreement void. The Buyer

is liable for all and any costs or losses incurred by the Seller due to such breach and/or a Contract becoming void as a consequence.

15. TERMINATION

15.1 In the event that:

15.1.1 the Seller terminates a Contract by reason of (i) the Buyer's breach of the Contract; or (ii) conduct on the part of the Buyer entitling the Seller to terminate; or (iii) the Seller establishing that sanctions against the Buyer were in force at the date of the Contract; or

15.1.2 the Buyer cancels a Contract prior to the Seller's performance;

15.1.3 then the Buyer shall have no recourse to the Seller for any loss or damage suffered and the Buyer shall be responsible for:

15.1.3.1 The Seller's loss of profit on the Contract;

15.1.3.2 Costs or charges reasonably incurred to the Seller's sub-contractors or suppliers;

15.1.3.3 Administration costs.

16. LAW AND JURISDICTION

16.1 Subject to the provisions of clause 9 these GCC and each Contract to which they apply together with any dispute, controversy or claim arising in any way out of or in connection with any Contract or these GCC including pre-contractual or non-contractual rights, obligations or liabilities or any issue as to the existence, validity or termination of a Contract shall be governed by the laws of England and Wales.

16.2 All disputes shall be determined by Arbitration in London by a sole arbitrator according to the LMAA Rules 2017.

16.3 In case of breach of Contract by the Buyer, the Seller shall moreover be entitled to take such legal action in any court of law in any state or country which the Seller may choose and which the Seller finds relevant in order to safeguard or exercise the Seller's rights in pursuance of any Contract. Seller shall be entitled to assert its rights of lien or attachment or other rights, whether in law, in equity, or otherwise, in any jurisdiction where the Vessel may be found.