

## **The GI Group Ltd – Terms & Conditions**

# **Terms**

### **DEFINITIONS & APPLICABILITY**

1. For the purpose of these Terms and Conditions the following words shall have the following meanings :-

(a) “Person” shall mean any natural or legal person, including but not limited to any individual, firm, company or corporation.

(b) “the Company” shall mean The G.I. Group Limited.

(c) “the Customer” shall mean the person to whom the Company agrees to supply the Products or where that person acts as an agent that person and their principal and the Vessel to which the Product are provided jointly and severally.

(d) “the Product” shall mean any article which the Customer agrees to buy from the Company and the Company agrees to supply to the Customer.

(e) “the Price” shall mean the agreed Contract price for the Product, together with VAT (where applicable at the prevailing lawful rate) and where agreed between the Company and the Customer carriage, packing and insurance charges or any other sums which the Company shall incur on behalf of and with the consent of the Customer.

(f) “the Contract” shall mean any Contract between the Company and the Customer whereby the Customer places an order and the Company agrees to supply the Product(s) at the Price.

(g) “the Vessel” shall mean any vessel or vessels to which Products are supplied or intended to be supplied by the Company.

2. All Contracts are subject to these Terms and Conditions and these Terms and Conditions may not be released, discharged, supplemented, interpreted, varied or modified in any manner except in writing signed by a duly authorized representative of the Company.

3. Further, these Terms and Conditions shall prevail over any terms and conditions used by the Customer or contained or set out or referred to in any documentation sent by the Customer to the Company. By entering into a Contract with the Company, the Customer agrees irrevocably to waive the application of any such terms and conditions, regardless of any contrary terms that may be expressed in any such terms and conditions.

### **ORDERS**

4. The Company’s quotations are submitted subject to the quoted items being unsold and become void if the Customer has not accepted them within 14 days of the date of the

quotation's issue date. Accepted quotations are normally confirmed by the Company by means of order acknowledgements. Discrepancies between quotation and the order acknowledgement must be raised by the Customer immediately upon receipt of the order acknowledgement.

5. Orders from Customers are only binding on the Company after a written order acknowledgement has been issued incorporating any special conditions stated in the order acknowledgement.

6. The Company shall provide advice in good faith but it shall be the Customer's sole responsibility to ensure that the correct Product is specified from the Company.

## **PAYMENTS**

7. The Customer's obligation to pay the Price shall be fixed when a Contract is created. Unless the Company has agreed that the Customer may defer payment then payment of the Price is due immediately, and the Company shall issue its invoice in respect of the Price.

8. Any discount offered by the Company, howsoever expressed, shall be strictly conditional upon payment being made at the agreed time.

9. Where the Customer is concerned with a series of Contracts and defaults in payment of one or more of those Contracts at any time where the Customer is in default the Company shall be entitled to give immediate written notice of the withdrawal of credit terms for all Contracts and thus requiring immediate payment to be made. Where such notice is given where there may be any Products not yet released to the Customer then the Company shall be entitled to withhold release until receipt of payment of the Price of all Contracts not yet paid.

10. Where the Company withholds release in accordance with clause 9 it shall nevertheless remain entitled to immediate payment of the Price. The withholding of release pending payment of the Price in accordance with clause 7 shall not entitle the Customer to cancel the Contract.

11. Any sums overdue to the Company shall accrue interest at the rate of 4% over the base rate from time to time of Barclays Bank Plc or 18% per annum whichever be the greater from the date payment becomes due until payment in full is received by the Company and shall accrue at such a rate after as well as before any judgement.

12. Where the Company elects to instruct solicitors or collection agents to assist it with securing and/or recovering overdue sums it shall be entitled to recover from the Customer, on demand, all costs and expenses incurred in the securing or recovery of such sums on a full indemnity basis and may be included in the claim for which a Vessel is arrested.

13. The Price and any other amounts due to be paid by the Customer to the Company shall be paid in full (without any deduction or withholding other than – if any – that required by law in respect of withholding or deduction of tax) and the Customer shall not be entitled to assert any credit set-off or counterclaim against the Company on any grounds whatsoever in order to justify withholding payment of any amounts in whole or in part.

14. Regardless of any allocation stipulated by the Customer upon making any payment, the Company shall be entitled to apply payments received from the Customer in any way that it considers appropriate, including allocation firstly to interest that has accrued or costs incurred in accordance with these terms.

15. Unless otherwise agreed by Contract all Products are sold by the Company to the Customer "Ex Works". Where the Customer requests that the Company arranges delivery and/or transit insurance the Company will use its best endeavours to do so but it is understood that in doing so, the Company acts at all times strictly as the Customer's agents. For the avoidance of doubt the Company accepts no responsibility for any claims arising from loss and/or damage of Products during the transit.

16. All sales are final and no refund or credit will be offered for returned Products, irrespective of whether such Products are the subject of a complaint or not, unless the Company has agreed in writing prior to such return and the returns arrive within a reasonable time (entirely at the Customer's expense) and the Product, in the opinion of the Company, is in the same condition as when despatched to the Customer.

17. Cancellation of a Contract (or part thereof) will be at the sole discretion of the Company and will be subject to the Company receiving a cancellation fee as stipulated by the Company. The cancellation fee shall be a minimum of 30% of the Price and where parts made to order (all pump parts and other special order parts) shall be 80% of the Price. The Company shall not agree to cancellation of any Contract or part thereof where the Company has already given notice that delivery is being withheld in accordance with clause 9.

18. The Customer acknowledges that Products manufactured or sourced to order shall almost always carry a high cancellation fee due to their very nature.

## **WARRANTIES**

19. The Company warrants that it holds full clear and unencumbered title in and to all of the Products and that upon release of the Products to the Customer hereunder such title will vest in the Customer subject to the provisions of Clause 29 hereof.

20. The Company warrants that the Products will be fit for the purpose for which the Products were manufactured and free of defects in material and workmanship for a period of one year from the date on which they are received by the Customer. During the said period, the Company shall use its best efforts to repair and/or replace, at the Company's option and at the Company's sole expense, any of the Products in which such a defect manifests itself.

(a) If the Company is unable to repair or replace the relevant Product the Company shall, upon the Customer's written request, accept the return of such Product, and refund in full any amounts paid by the Customer in respect thereof and the liability of the Company shall be strictly limited to refunding the said amounts, but shall accept no responsibility for any consequential loss suffered by the Customer of any kind.

(b) In the event of circumstances arising under clause 20(a) above, and if the Customer does not request the Company in writing to accept the return of the Product supplied, and if the Customer shall (without the consent of the Company) purchase a replacement Product from a third party, there shall be no liability upon the Company whatsoever, either for the replacement Product or for the freight charges, custom clearance, or any other expenses of any kind in respect of delivery of the Customers' replacement Product, nor for consequential loss suffered by the Customer.

(c) Where the Company replaces a Product or where replacement parts are supplied for a Product then the liability of the Company shall be strictly limited to the amounts paid by the

Customer to the Company for the original product or the cost of the replacement product whichever shall be the lesser sum.

(d) This warranty does not cover defects in or damage to the Products which are due to improper installation or maintenance, misuse, neglect, negligence or any cause other than the ordinary commercial or industrial application and use in the manner in which the Product was intended to be used.

(e) Except for the express warranties set out herein, the Company grants no other warranties relating to the design workmanship or materials of the Products, and all other representations or warranties, whether written or oral, express or implied, by statute, common law or otherwise howsoever, relating to such Products, are hereby excluded; in particular (but without limitation to the foregoing) the Company grants no warranties (other than as provided in the warranties set out herein) regarding the fitness for purpose, performance, use, quality or merchantability of the Products, whether express or implied, by statute, common law or otherwise howsoever.

21. The warranties set out in Clauses 19 and 20 are given and accepted in substitution for any representation or warranty which may have been made by the Company (or the sales staff or agents of the Company) prior to the Contract, and in consideration of the Company entering into such Contract the Customer agrees (i) not to rely on any such prior representation or warranty, and (ii) that any such prior representation or warranty is hereby rendered null and void and of no force or effect.

22. The seller shall be under no liability under the warranties set out in Clauses 19 and 20 (or any other warranty, condition or guarantee) if the total Price for the goods has not been paid by the due date for payment.

23. The Company will indemnify the Customer against direct damage to tangible property or death or injury to persons to the extent that it was caused by the wilful or negligent acts or omissions of the Company, its subcontractors, servants or agents, but not otherwise, by making good such damage to property or compensating such death or injury, provided that the Company's total liability under this Clause in respect of damage to property shall not exceed a sum equal to the Price.

24. The Company shall not be liable for any loss or damage whatsoever due to the failure of the Company to deliver the Products to the Customer on a particular date or at a particular time and time shall not be of the essence unless expressly agreed in the Contract.

25. In any event, and notwithstanding anything contained in these Terms, in no circumstances shall the Company be liable, in contract, tort, (including negligence or breach of statutory duty) or otherwise howsoever, and whatever the cause thereof (i) for any increased costs or expenses, savings, (ii) for any special, indirect or consequential damage of any nature whatsoever or (iii) for any loss of profit, business contracts, revenues, or anticipated savings.

26. Further, and notwithstanding anything contained in these Terms, the Company's liability in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever, and whatever the cause thereof (except in relation to death or personal injury caused to the Customer by the wilful act or negligence of the Company or its employees while acting in the course of their employment) shall be limited to the Price.

27. The Customer shall indemnify the Company against all actions, proceedings, claims or demands in any way connected with the Contract brought or threatened against the Company by a third party except to the extent that the Company is liable to the Customer under the Contract.

28. Each of the foregoing Clauses 22 to 27 is to be construed as a separate limitation (applying and surviving even if for any reason one or other of the said Clauses is held inapplicable or unreasonable in any circumstances) and shall remain in force notwithstanding termination of the Contract.

## **RETENTION OF TITLE**

29. (a) Risk in the Product shall pass when the goods are collected by the Customer or the Customer's agent (and the Customer's agent shall include the carrier nominated by the Company where the Company has arranged delivery as the Customer's agent pursuant to Clause 15 and until such time as title in such Product has passed to the Customer, the Customer shall insure the goods to their replacement value and the Customer shall, forthwith, upon request, provide the Company with a certificate or other evidence of such insurance.

(b) Notwithstanding the earlier passing of risk, title in the Product shall remain with the Company and shall not pass to the Customer until the Price and any other sums due (including interest and costs) has been paid in full to the Company.

(c) Until title passes the Customer shall hold the Product as bailee for the Company and shall store or mark them so that they can at all times be identified as the property of the Company.

(d) The Company may at any time before title passes and without any liability to the Customer :-

- repossess, use or sell any of the Products and by doing so terminate the Customer's rights to use, sell or otherwise deal in them;

and

- for that purpose (or determining what if any Products are held by the Customer and inspecting them) enter any premises of or occupied by the Customer.

(e) Until title passes the entire proceeds of any sale of the Product shall be held in trust for the Company and shall be held in a separate designated account and not mingled with other monies or paid into any overdrawn bank account and shall be at all times identifiable as the Company's money.

(f) The Company may maintain an action for the Price of any Products notwithstanding that title in them has not passed to the Customer.

## **FORCE MAJEURE**

30. If the Company 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 Company 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 Company's obligation to deliver shall cease or if appropriate be suspended for the duration of such force majeure.

## **MARITIME LIEN**

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

## **INTELLECTUAL PROPERTY**

32. Any drawings, designs or other intellectual property ("Intellectual Property") supplied by the Company to the Customer shall remain the property of the Company at all times and shall be used only for the purpose provided in relation to the proposed transaction. The Intellectual Property shall not be passed by the Customer to any third party unless strictly necessary for the fulfilment of the specific transaction for which it was provided and the Customer shall ensure that any third party does not pass on the Intellectual Property. The Customer shall be strictly liable for any loss suffered by the Company for any breach of this clause including any breach by a third party to whom the Customer has passed Intellectual Property.

## **LAW AND JURISDICTION**

33. All Contracts shall be governed by English law and all disputes arising under or in connection with them shall be referred to arbitration in London. The reference shall be to a sole arbitrator and the arbitration shall be conducted in accordance with the LMAA Intermediate Claims Procedure 2012.

34. Notwithstanding paragraph 32 the Company shall be entitled to bring substantive proceedings in any Court that it sees fit, provided that prior to such proceedings no arbitration proceedings have been commenced in accordance with paragraph 33.

## **THE G.I. GROUP LTD**

Amended April 2016