

**FOSS MARITIME COMPANY  
GENERAL TERMS AND CONDITIONS FOR ALL PURCHASE ORDERS**

These General Terms and Conditions For All Purchase Orders (“**T&Cs**”) apply to, and are incorporated into and made a part of, all purchase orders, acquisition requests, services agreements and similar documents (together, “**Purchase Orders**”) issued, signed or otherwise entered into legally binding effect by Foss Maritime Company and its subsidiaries (together, the “**Company**”)

By providing goods and/or services to Company as set forth in any Purchase Order (“**Goods**” and “**Services**,” respectively, and collectively “**Products**”), the person or persons providing such Products (“**Seller**”) acknowledges and agrees to all T&CS without amendment, except as permitted below.

**A. GENERAL PROVISIONS**

**1. ENTIRE AGREEMENT.** The Purchase Order and these T&Cs constitute the entire agreement between Company and Seller as to the Products(the “**Agreement**”) unless additional terms are agreed to as permitted in these T&Cs. **Company expressly objects to any and all terms or conditions provided by Seller that purport to legally bind Company in regards its purchase of Products,** including any that may appear in any of Seller’s order forms, invoices, warranty documents or similar materials. Any such Seller terms or conditions will not be part of the Agreement and will be of no force or effect,, notwithstanding Company’s acceptance of any Products, unless specifically agreed to in writing by Company’s purchasing department.

**2. PROVISION OF PRODUCTS; SELLER’S AGREEMENT TO TERMS.** Seller will provide to Company the Products described in any Purchase Order in accordance with the terms of this Agreement. As indicated above, Seller’s acceptance of the applicable Purchase Order, shipment of Goods and/or commencement Services indicates Seller’s acceptance of all of the terms and conditions of the Agreement, including any provisions on the face of the applicable Purchase Order, without amendment. Seller will be bound to all such Agreement terms as of the earliest of the foregoing to occur unless Seller objects to any such terms in writing to Company by the earlier of (a) ten (10) days after the date stated on the applicable Purchase Order; (b) before Seller ships Goods; or (c) before Seller begins providing Services. **Any objections or amendments to the Agreement made or received after such time will be of no force and effect and Seller will remain bound to all terms and conditions of this Agreement.**

**3. VENDOR CODE OF CONDUCT.** Seller will comply with the the most current version of Company’s Supplier Code Of Conduct, which is incorporated into this Agreement by reference. Company’s Supplier Code of Conduct is available here. <https://www.foss.com/wp-content/uploads/Foss-Supplier-Code-of-Conduct1-2-1.pdf>

**4. CHANGES.** Company may, by written change order issued to Seller, make any changes within the general scope of the applicable Purchase Order, including additions to or deletions from the quantities originally ordered, or in the specifications or drawings or in the time and place of delivery. All such changes will become a valid and binding part of this Agreement. If any such change(s) affect the amount due to Seller or the time Seller requires to perform Services and/or ship Goods and Seller wants to request an adjustment, Seller must notify Company in writing of the desired adjustment within **five (5) days** from the date of Company’s change order. Upon receipt, Company will negotiate with Seller to arrive at an equitable adjustment to the affected terms ; provided, however, that nothing herein relieves Seller of its obligation to proceed with the Purchase Order as changed.

**5. INVOICING.** All invoices must be issued to Foss Maritime Company, c/o Accounts Payable, and mailed to the address specified on the applicable Purchase Order. Delivery point and discount terms, if any, must be shown on all invoices. If freight is prepaid for Company, Seller's invoice must show freight charges separately and a copy of the freight bill showing payment of such charges must be submitted with the invoice. Any sales tax, VAT, import/export duties, and other governmental assessments owed by Company to Seller on Company's purchase, receipt and/or use of Products ("**Taxes**") must be computed before adding freight charges and, if Seller is responsible for collecting Taxes from Company and remitting them to the proper taxation authorities, included as a separate line item on each invoice. Invoices for Purchase Orders for Goods will not be processed for payment until all invoiced Goods are accepted by Company, as more completely described below. Company will remit payment to Seller for all invoices by mail. Seller will not deliver Goods on a sight draft basis. If Company is entitled to a cash discount, the period of computation thereof will begin on the date of acceptance or receipt of a correctly completed invoice, whichever is later. If Company is entitled to a cash discount and such discount is not included in Seller's invoice, the period of computation will begin on the date Company determines that the discount applies. If Company requests a price adjustment because of damage to Goods or any other reason, the cash discount period will begin on the date on which Company and Seller agree on an adjusted price, or the date Company agrees that no price adjustment shall be made. Unless otherwise specified on the applicable Purchase Order, payment terms are 30 days from the later of the date a correct invoice is received or the date all invoiced Goods are accepted by Company. **Payment or partial payment does not constitute acceptance of Products.**

#### **6. OWNERSHIP OF WORK PRODUCT.**

a. "**Work Product**" means all designs, discoveries, creations, works, devices, masks, models, work in progress, Services deliverables, inventions, products, computer programs, procedures, improvements, developments, drawings, notes, documents, information and materials made, conceived, or developed by Seller, alone or with others, which result from or relate to the Services performed hereunder. Standard Goods manufactured by Seller and sold to Company without having been designed, customized, or modified for Company do not constitute Work Product; however, the design and customization of such Goods will be considered Work Product.

b. All Work Product is and will remain the sole and exclusive property of Company. Seller irrevocably assigns and transfers to Company all right, title, and interest in and to the Work Product throughout the world, and including all intellectual property rights vesting in such Work Product. Company will have the sole right to determine the treatment of any Work Product, including the right to keep it as trade secret, execute and file patent applications on it, to use and disclose it without prior patent application, to file registrations for copyright or trademark in its own name, or to follow any other procedure that Company deems appropriate. Seller agrees: (i) to disclose promptly in writing to Company all Work Product in its possession; (ii) to assist Company in every reasonable way, at Company's expense, to secure, perfect, register, apply for, maintain, and defend for Company's benefit all copyrights, patent rights, mask work rights, trade secret rights, and all other proprietary rights or statutory protections in and to the Work Product in Company's name as it deems appropriate; and (iii) to otherwise treat all Work Product as Company's Confidential Information (as defined below). These obligations to disclose, assist, execute, and keep confidential survive the expiration or termination of this Agreement.

c. Without limiting the foregoing, Seller will ensure that Seller's employees and subcontractors appropriately waive any and all claims and assign to Company any and all rights or any interests in any Work Product or original works created in connection with this Agreement. Seller irrevocably agrees not to assert against Company or its direct or indirect customers, assignees, or licensees any claim of any intellectual property rights of Seller affecting the Work Product.

d. Company will not have rights to any works conceived or reduced to practice by Seller which were developed entirely on Seller's own time without using equipment, supplies, facilities, or trade secret or Company Confidential Information, unless (i) such works relate to Company's business, or Company's actual or demonstrably anticipated research or development, or (ii) such works result from any Services performed by Seller for Company.

## 7. WARRANTIES.

a. Seller represents, warrants and agrees as follows:

(i) All Goods, including all replacement Goods furnished by Seller, will be (i) new; (ii) conform to all applicable specifications, drawings, samples and descriptions, (iii) merchantable; (iv) free and clear of all liens, claims or encumbrances of every kind; (iv) fit for the particular purpose(s) for which such Goods are ordinarily employed and any other purpose(s) specified by Company, including (A) the purpose set forth in Section B.7. below; and (b) any Goods developed and/or designed by Seller exclusively for Company, and including, if applicable, for installation by Company (or others) in its ultimate products and (v) free from defects in material, design and workmanship (including damage due to unsatisfactory packaging by Seller), all of the foregoing as of the date of delivery to Company.

(ii) All Services will be performed in a professional and workmanlike manner consistent with best industry practices;

(iii) Without limiting the foregoing, Goods, Services and Work Product do not and will not violate or misappropriate any third-party property right, including any patent, copyright, trademark, trade secret, right of publicity, right of privacy or any other and that, as of the date such Products and/or Work Product are provided, there are no suits, proceedings or causes of action pending against Seller alleging any of the foregoing; and

(iv) Company's written approval of designs furnished by Seller will not relieve Seller of its obligations under this warranty.

b. The foregoing express warranties are in addition to, and not in limitation of, any warranty customarily made by Seller for its Products, any other warranty made by Seller to Company in connection with such Products, and any implied warranties of any kind or nature, and will be construed as conditions as well as warranties. For clarity, and language to the contrary elsewhere notwithstanding, any additional warranties made by Seller to Company will be incorporated into the Agreement by reference.

c. **Seller's warranties** for each Good and each Service will extend (i.e. be deemed continuously made) for a period of **twelve (12) months**, or such longer period as may be offered by Seller or Seller's suppliers, after the Good or Service is accepted by Company and successfully used for its intended purpose, whichever is later, except that Seller's warranty under Section 7(a)(iii) (noninfringement) will extend in perpetuity. If Seller or Seller's suppliers provide warranties for longer than twelve (12) months, the longer period of such warranties will be incorporated into the Agreement by reference.

d. Notice of defect may be given to Seller at any time within the warranty period except that notice of latent defect or one concealed by fraud or such gross neglect as amounts to fraud may be given at any time. Seller will, at Company's option, promptly either repair or replace defective Goods and/or reperform defective Services, at Seller's sole expense. Seller will also repair or replace any damage to Company's or any third-party's real or personal property caused by defects in the Products. Company's continued use of defective Goods pending repair or replacement will

not constitute Company's waiver of its rights hereunder.

e. The warranties, representations and covenants of Seller will survive the delivery and acceptance of the Goods and payment under this Purchase Order and will be fully enforceable thereafter. Seller's warranties hereunder are part consideration for the applicable Purchase Order. Any payment by Company hereunder is conditional upon each warranty remaining in effect for the stated time period; and no modification or other change of any warranty shall be valid unless specifically authorized by Company in writing.

**8. EXTENSION OF BENEFITS; THIRD PARTY BENEFICIARIES.** All exceptions, exemptions, defenses, immunities, limitations of liability, privileges and conditions granted or provided by this Agreement to the benefit of Company will also apply to and be for the benefit of all of (a) Company's parent and affiliated companies, as well as all directors, employees and agents of Company and such entities. In addition, if Company is not the ultimate consumer of any Goods, or if Goods are incorporated into products Company sells to its own customer(s), all rights, benefits, warranties, indemnities and remedies available to Company under this Agreement will be deemed made and available to the ultimate consumer of Goods. **All of the foregoing parties listed in subsections (a) and (b) are made third-party beneficiaries to this Agreement to the extent indicated.**

**9. INSURANCE.** Seller, at its sole cost and expense (including the cost of all deductibles), will procure and maintain in force during the term of this Agreement the following insurance coverages:

a. Workers compensation insurance as required by law for all employees, agents and subcontractors of Seller; and employer's liability insurance with a minimum limit of \$1,000,000 each accident or illness. Such insurance will provide coverage in the location in which Services are to be performed, from which Goods are shipped (if applicable) and the location in which the Seller is domiciled. If there is an exposure of injury or illness under the U.S. Longshore and Harbor Workers Compensation Act (including the Outer Continental Shelf Lands Act), the Jones Act, Admiralty Act, Death on the High Seas Act and/or other statutes applicable to maritime employees, Seller agrees to maintain insurance for such injuries or illnesses, and to provide evidence of such insurance as applicable.

b. Commercial general liability insurance, on a per occurrence basis, endorsed to cover premises, operations, products/completed operations, personal injury and contractual liability; with watercraft exclusions deleted and "in rem" coverage as may be applicable, with a minimum limit of \$1,000,000 any one accident or occurrence.

c. Umbrella or additional insurance sufficient to cover and support Seller's indemnification obligations set forth below, if other required coverages are inadequate.

d. Automobile liability insurance, covering Seller's owned, rented, leased, non-owned and hired vehicles; with a minimum limit of \$1,000,000 any one occurrence.

e. The following types and limits of insurance, as applicable:

(i) If consulting Services are being performed under this Agreement, professional liability/ errors & omissions liability insurance with a minimum limit of \$5,000,000 any one occurrence.

(ii) If Seller is selling and/or delivering fuel or other hazardous Goods, or performing waste disposal Services, pollution insurance or environmental impairment insurance with a minimum limit of \$5,000,000 per occurrence, and any other public liability or

environmental impairment coverage required by federal, state or local laws.

- (iii) Should the Services supplied under this Agreement include use of Seller's vessels:
  - (i) Protection & indemnity insurance to be evidenced through a full entry with an international P&I Club, including collision liability, tower's liability, and liability for seepage, pollution, containment and cleanup, with extensions for marine contractual liability, removal of wreck, etc., with a minimum limit of liability of \$5,000,000 any one accident or occurrence. Alternatively, if a full entry in an international P&I Club is not available or applicable, maritime liability coverage should be evidenced on an SP-23 form or equivalent including collision liability, tower's liability and third-party statutory liability for seepage, pollution, containment and cleanup, with extensions for marine contractual liability, wreck / debris removal, with a minimum limit of liability of \$5,000,000.
  - (ii) Hull & machinery insurance including collision liability with sistership clause unamended, with a minimum limit equal to the full value of all vessels used in connection with performance of the Services, and with navigational limitations adequate for the Seller to perform the specified Services. Where vessels engage in towing operations, said insurance shall include full tower's liability with sistership clause unamended
- (iv) If the performance of Services requires the use of any aircraft that are owned, leased, rented or chartered by Seller or any of its subcontractors, aircraft liability or non-owned aircraft liability insurance, as applicable, with a minimum limit of \$5,000,000 per occurrence, including passengers and crew.

f. The Workers Compensation/Employers Liability insurance policy will be endorsed to waive all rights of subrogation against (i) Company; and, if applicable (ii) the vessel(s) on or using which Seller's personnel are providing Services, and shall contain an "In Rem" endorsement, along with an endorsement providing Company with thirty (30) days advance written notice of cancellation. Sellers in states with "State Fund" Workers Compensation must provide proof of coverage through the State Fund. All other policies will be endorsed to name Company, its parent, subsidiary or affiliated companies and their shareholders, officers, directors, agents and employees, and, if applicable, the vessels on or using which Seller's personnel are providing Services, as additional insureds with a waiver of subrogation against all additional insureds, along with an endorsement providing Company with thirty (30) days advance written notice of cancellation.

g. The amount or scope of insurance described herein and Seller's compliance (or failure to comply) with the foregoing obligations is not intended and will not be interpreted to limit or restrict Seller's liability under this Agreement, including Seller's indemnification obligations set forth below. Should Seller maintain insurance limits higher than the limits listed above, Company will benefit from those higher limits. In addition, any insurance company's insolvency, bankruptcy, or failure to pay all Claims (as defined below) accruing will not relieve Seller of any of its obligations

h. Seller will require its subcontractors performing hereunder to maintain insurance of the types and amounts required of Seller.

i. Seller's policies will be deemed primary to any insurance carried by or available to Company and any "other insurance" clauses under Seller's policies will be amended accordingly.

j. All insurance will be written with insurers carrying no less than a "B" rating from A.M. Best's. Commencement of operations without receipt of the required certificates of insurance will not

constitute a waiver of the obligation of the Seller to maintain the required insurance coverages and to provide Company with certificates of insurance (at the following address).

#### **10. INDEMNIFICATION.**

a. Seller will indemnify, defend and hold Company, Company's parent company and affiliates, and their respective officers, agents, employees, contractors, and customers ("**Company Indemnitees**") harmless from and against all claims, losses, expenses, damages, fines, penalties, proceedings, investigations, causes of action and liabilities of every kind and nature, including, without limitation, reasonable attorney's fees (together, "**Claims**"), arising from or out of, or alleging facts that, if proven would constitute (a) Seller's breach of this Agreement; ; or (b) other acts or omissions of Seller or Seller's officers, agents, employees, subcontractors, and guests, excluding Claims or portions of Claims (if applicable) to the extent caused by the negligence, gross negligence or willful misconduct of the Company. In addition, Seller waives any immunity or partial immunity that it may have under applicable Laws for all of the foregoing Claims regarding or as a result of the maintenance and payment of workers compensation insurance. For clarity, Seller's obligations under this Section 11.a. will extend to any interparty Claims, as well as any Claims brought or asserted against Company Indemnitees by a third-party.

b. For any Claims arising out of or alleging Seller's breach of warranty under Section 7(a)(iii) above (nonfringement), in addition to and not in lieu of Seller's indemnification obligation, if the person or entity alleging such infringement is successful in the prosecution of its Claims, Seller will, at its sole cost and expense, either (i) obtain the right for Company to use the Products and/or Work Product that is the subject of the Claim, in which case Seller will pay all royalties, license fees and other fees with respect thereto, or (ii) obtain a substitute or replacement for the infringing Products or portion thereof reasonably acceptable to Company

c. Seller will promptly notify Company in writing of any Claim of which it becomes aware. Company will have the right to participate in the defense of any Claim with counsel of its choosing at its own expense. Seller may not settle any Claim or consent to the entry of any final judgment on a Claim without Company's prior written consent.

**11. TERMINATION.** Company may terminate any Purchase Order, in whole or part, without liability, including the payment of liquidated damages, for Company's convenience, by giving notice to Seller at any time. If terminated for Company's convenience, Seller will be entitled to the reasonable, documented costs Seller has actually and directly incurred in the performance of the Purchase Order through the date Company provides notice of termination.

**12. DEFAULT.** Company may, without r liability, by written notice of default to Seller, (a) terminate any Purchase Order in whole or in part, and/or (b) exercise any other remedy provided to buyers of goods by law or in equity, including, without limitation, any remedy under the Uniform Commercial Code (RCW 62A), in any of the following circumstances:

a. If Seller fails to deliver any Goods or to perform any Services within the time specified in the applicable Purchase Order, or any extension thereof agreed to in writing by Company;

b. Without limiting Company's right to return rejected Goods at Seller's expense, as discussed below, if, in Company's good faith judgment, Seller fails to perform any of the other provisions of the applicable Purchase Order or fails to make progress so as to endanger such performance and does not cure such failure within a period of ten (10) days, or such longer period as Company may authorize in writing, after receipt of notice from Company specifying such failure;

c. Seller is in breach of any of the terms or conditions of this Agreement; or

d. If Seller becomes insolvent or makes an assignment for the benefit of creditors, or if any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt or insolvency law of any jurisdiction or for the appointment of a receiver or trustee in respect to any of Seller's property is instituted against Seller and such proceeding is not dismissed or cured within sixty (60) days.

### **13. COMPLIANCE WITH LAWS/REGULATIONS.**

a. Seller shall comply with all international, national, state, provincial, district and local laws, rules, orders, statutes, ordinances and regulations of all governmental authorities (including agencies and commissions as applicable) ("**Laws**") applicable to and/or with jurisdiction over its performance hereunder and its business,

b. Without limiting the foregoing, **if Seller (including, if applicable, any affiliate, subdivision or similar entity providing Products hereunder), is domiciled in the United States ("United States Seller")**, Seller will comply with (i) Executive Order 11246, as amended, 38 USC 4212 on the Vietnam Era Veterans Readjustment Assistance Act of 1974, Section 503 of the Rehabilitation Act of 1973, as amended, and the regulations at 41 CFR Part 60-1 through 60-60, 60-250, and 60-741, the Civil Rights Act of 1964, and all other Laws regarding wages, hours, materials, price regulations and renegotiation provision, and other matters, whether or not specifically mentioned herein; (ii) the Occupational Safety and Health Act of 1970 and all pertinent state occupational safety and health Laws such as "Right-to-Know" regulations.

c. Without limiting the foregoing, **if Seller is not a United States Seller**, Seller will comply with all applicable Laws of all applicable jurisdictions regarding non-discrimination in hiring and employment opportunities, workplace safety and occupational health, wages, hours, materials, price regulations and renegotiation and all disclosures (including by posting) required under such Laws to notify employees and applicants for employment of their rights and Seller's obligations.

### **14. EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION: UNITED STATES SELLERS.**

Unless exempted by Presidential Executive Order 11246 and applicable regulations thereunder, Seller, if a United States Seller:

a. Certifies that (i) it does not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or any other basis prohibited by Laws; and (ii) it will take, before providing Products hereunder, or has taken affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such affirmative action will include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

b. Will post in conspicuous places, available to employees and applicants for employment, notices to be provided under applicable Laws, setting forth the provisions of this nondiscrimination clause.

c. If the applicable Purchase Order price is in excess of USD \$10,000, acknowledges and agrees that the Equal Opportunity Clause contained in Company's [<http://www.foss.com/wp-content/uploads/Service-vendors-EEOC-Form-2010.pdf>], as may be amended from time to time, is incorporated into this Agreement by reference;

d. If the applicable Purchase Order price is in excess of \$50,000, will furnish the Company with a written Affirmative Action Compliance Program Certificate within 120 days of the date on the applicable Purchase Order; and

e. If requested, will execute Company's Equal Employment Opportunity Agreement and Certification.

**15. ASSIGNMENT.** Seller may not assign this Agreement, in whole or in part, or the right to any payment due hereunder, without Company's prior written consent. Any unauthorized assignment of this Purchase Order by Seller, by operation of Laws or otherwise, will be void. This Agreement will inure to the benefit of each party's successors and authorized assigns. Without limiting the foregoing, Seller may use subcontractors to fulfill its obligations hereunder; provided, however that (a) Seller will remain liable for the performance of all its obligations under this Agreement, even if subcontracted; and (b) Seller will be as liable for the acts or omissions of Seller's subcontractors, including for indemnification purposes, as it would its own acts or omissions.

**16. ADVERTISING.** Seller may make no advertising or publicity statements in any medium having or containing any reference to Company, Company's trademarks or any of its personnel, including on any customer lists Seller uses for advertising and promotional purposes, without Company's prior, written consent in each instance.

**17. CONFIDENTIALITY.** Seller acknowledges that the terms of this Agreement are confidential, and will not disclose the terms of this Agreement to any third party, except to Seller's legal and financial advisors who are obligated to keep such information confidential and as necessary for Seller to perform Seller's obligations under this Agreement, and as otherwise specifically agreed in writing by Company. Seller further acknowledges that all information disclosed to Seller by Company, to which Seller otherwise has access and/or information developed in the course of Seller's performance under this Agreement, by either party, alone or with others (together with the terms of this Agreement, the "**Confidential Information**"), is Company's exclusive property. Seller may use the Confidential Information only as necessary to perform Seller's obligations under this Agreement and Seller may not disclose the Confidential Information to any third party, except in those cases set forth above regarding the terms of this Agreement. Confidential Information excludes or will exclude information that (a) is or becomes known to the general public, other than as a result of Seller's breach of any obligation hereunder; or (b) information that Seller has in its possession before disclosure by Company that it has received from a third-party not affiliated with Company or any transaction contemplated by the applicable Purchase Order free of any duty of confidentiality. It will not be a breach of this section if Seller discloses Confidential Information to the extent required by applicable Laws, including a subpoena or similar document issued by any court of competent jurisdiction, provided that Seller (c) provides Company with advance written notice of such required disclosure sufficiently in advance to permit Company to contest or seek to limit the disclosure or seek a protective order or similar instrument; and (d) cooperates with Company in such efforts.

**18. GOVERNING LAW/JURISDICTION.**

a. This Agreement, will be construed under and governed by the substantive laws of the State of Washington, United States of America, as if entirely made therein, without regard to its conflicts of Laws provisions. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not and will not apply to this Agreement, nor any Purchase Order and the transaction(s) contemplated therein. Any Claim arising under or in connection with this Agreement between the parties, including as to its existence, breach, validity and/or Products supplied, will be adjudicated exclusively in the courts of the State of Washington and the parties consent to the exclusive jurisdiction of such courts. Venue for any such Claim will be in the courts of



competent jurisdiction located in King County, Washington.

b. In any Claim brought to construe or enforce any term of this Agreement or to recover damages arising from any breach of of this Agreement, the losing party shall pay to the prevailing party reasonable attorneys' fees and all other costs and expenses which may be incurred by the prevailing party in any such suit or action and in any reviews thereof and appeals therefrom, in addition to, and not in limitation of, other available remedies.

**19. SEVERABILITY.** If any provision of this Agreement is held illegal, invalid or unenforceable, in whole or in part, by a court, arbitrator or other competent authority, the provision will be deemed to be restated to reflect as nearly as possible the original intentions of the parties in accordance with applicable Laws. The legality, validity and enforceability of the remaining provisions will not be affected and will remain in full force and effect.

**20. FORCE MAJEURE.** Company will not be liable or responsible for delays or failures in performance resulting from events beyond Company's control. Company may delay delivery and/or acceptance of Goods or postpone performance of Company's obligations hereunder without being in breach of this Agreement as a result of such events.

**21. NO WAIVER.** Company's failure to enforce Seller's compliance with the specific terms of this Agreement will not be considered a waiver of (a) its right to do so at a later date; (b) of any Claims Company may have against Seller arising out of the Seller's lack of compliance; or (c) any other terms of this Agreement or remedies against Seller, regardless of how arising, all of which are reserved to Company.

**22. ENGLISH LANGUAGE CONTROLS.** Seller acknowledges that the English language version of this Agreement, including, for clarity, all Purchase Orders and these T&Cs governs and controls and that any translations are provided as a courtesy only.

**23. LIMITATION OF LIABILITY.** Company will not be liable to Seller or any other person or entity for any consequential, special, incidental or indirect damages, including without limitation lost profits, under or with respect to this Agreement, whether arising in tort, contract, strict liability, or any other legal theory, even if Company has been informed of the possibility of such damages and even if any remedy set forth in this Agreement fails as to its essential purpose.

**24. ORDER OF PRECEDENCE.**

**25. SURVIVAL.** In addition to those terms and conditions indicated to survive, any terms and conditions that by their nature should survive will survive termination or expiration of this Agreement.

## **B. ADDITIONAL PROVISIONS APPLICABLE TO GOODS**

a. **IDENTIFICATION.** Seller will include the applicable Purchase Order number on all invoices, packing lists, packages, shipping notices, instructions, manuals and other written documents relating to or affecting a Purchase Order and/or the Goods. Seller will enclose packing lists in each box or package shipped under any Purchase Order that specifies its contents. Seller will supply hazard communication information, such as complete Material Safety Data Sheets (MSDS), to Company for all hazardous material, including, without limitation, all Goods that are known to constitute a toxic, health, poison, fire or explosive hazards. Without limiting Seller's general compliance obligations, Seller will label all boxes, packages and/or other containers as required by applicable Laws at all of the locations to and through which Goods are shipped and will include all certifications required by Laws or reasonably required by Company, including U.S. Coast Guard certifications, as applicable.

**2. SHIPPING INSTRUCTIONS.** Seller will ship all Goods DDP to the address set forth on the applicable Purchase Order (Incoterms® 2010), unless otherwise specified on such Purchase Order. All Goods must be suitably packaged, marked and shipped in accordance with the requirements of common carriers and this Agreement in a manner to secure the lowest transportation costs. Company reserves the right to reject C.O.D. shipments. Seller will not, and will not be required to, insure the Goods for Company's account during shipment except upon Company's written request, or where the approved shipping mode is parcel post.

**3. DELIVERY.** Time is of the essence in delivery of the Goods. If Seller fails to deliver Goods in the quantities and at the time(s) specified in any Purchase Order, Company may, without limiting Company's other rights or remedies, either (a) direct expedited routing, at Seller's expense (which Company may offset against amounts owed to Seller); or (b) terminate the applicable Purchase Order. No change in the scheduled delivery date or performance will be permitted without Company's prior written consent. Company's acceptance of Goods after the scheduled delivery date will not waive Company's rights and/or remedies with respect to such late delivery. If Seller delivers Goods in advance of schedule, Company may, at its option, (a) return the Goods at Seller's expense for scheduled delivery; (b) accept delivery of the Goods but withhold payment until the date that such Goods are actually scheduled for delivery; or (iii) place Goods in storage at Seller's account and at Seller's expense until the scheduled delivery date(s). Delivery in accordance with this Agreement does not constitute acceptance by Company.

**4. INSPECTION, QUALITY CONTROL AND ACCEPTANCE.**

a. Company may inspect all Goods at any time or place and may reject them if not strictly in accordance with all terms, conditions and provisions set forth in this Agreement.

b. Company will have a reasonable time after receipt of Goods and before payment to inspect them for conformity to the requirements of the applicable Purchase Order and this Agreement, and Company will not be deemed to have accepted Goods until it has run an adequate test to determine compliance. For clarity, use of a portion of the Goods for the purpose of testing will not constitute an acceptance of the Goods. If the Goods do not so comply, Company may reject them and return them to Seller, at Seller's expense, as described below. Company's count of Goods will be accepted as final on all shipments whether or not accompanied by a packing list.

c. Without limiting the foregoing, at Company's option, Company or its customers may inspect and/or test Goods at Seller's premises or elsewhere, at reasonable times and places, and Seller will provide sufficient safe and proper facilities for such preliminary inspection or testing; provided, however, that Goods will not be deemed accepted until Company conducts the final testing and inspection described in the previous subsection. For clarity, and as indicated above, the ultimate consumer of the Goods, if not Company, is a third-party beneficiary to the terms permitting testing and acceptance.

d. If a specific brand is specified in a Purchase Order for any Goods, the Goods purchased must (i) be of that brand; and (ii) meet the standards for quality, performance, and use of such brand. If Seller receives Company's prior written approval, Seller may provide Goods of a different brand equivalent to the designated brand, provided that Seller must first provide Company with descriptive literature identifying such equivalent brand, including the quality, performance and specifications therefor. If Company elects to accept Goods of such substitute brand, such election will not limit or restrict Company's right to inspect and reject such Goods as provided hereunder, or any other right or remedy of Company.

**5. DEFECTIVE/NON-COMPLIANT GOODS.** If Company determines that any or all Goods do

not comply with the requirements of this Agreement, in whole or in part, such Goods will be deemed "rejected." Company may, at Company's option, (a) hold rejected Goods for Seller's instructions at Seller's risk, and/or (b) return rejected Goods to Seller at the address indicated in the applicable Purchase Order. Seller will be responsible for transportation charges on returned Goods both ways. Seller will refund any prior payment for rejected Goods, and the rejected Goods will not be replaced without Company's issuing an additional Purchase Order.

**6. PASSAGE OF TITLE.** Title to Goods will pass to Company upon delivery of the Goods as indicated herein. No loss, injury, or destruction of or to Goods while in Seller's or Company's possession or in transit will release Seller from any obligations hereunder. Seller will be solely responsible for asserting any Claims against any applicable common carrier of the Goods and for maintaining any required insurance against loss in transit. If the Goods ordered are destroyed or substantially damaged before title passes to Company, Company may at its option terminate the Agreement or require delivery of substitute Goods of equal quantity and quality. Such delivery will be made as soon as commercially practicable. If loss of Goods is partial, Company may require delivery of the Goods not destroyed.

#### **7. SPECIAL TOOLING, DRAWINGS OR SPECIFICATION.**

a. Seller is responsible for the protection, calibration, maintenance and care, other than normal wear, of all tooling and equipment owned by Company and that Seller uses under or in relation to any Purchase Order. Said tooling or equipment will be subject to surveillance and/or inspection upon notice and will be returned in an acceptable condition upon demand or notice from Company.

b. Except as otherwise specified in a Purchase Order, if Seller requires any special tooling, including jigs, dies, fixtures, molds, patterns, special gauges, special test equipment and/or other items to provide Products under such Purchase Order, and Company is not in possession of such special tooling or is not otherwise able to provide it to Seller, Seller will acquire all such special tooling at its sole cost and expense. If Seller purchases any such special tooling, title will automatically pass to Company upon delivery to Seller (or Company, as agreed to by the parties). In addition, Seller, will (i) stamp or paint "Property of Foss Maritime Company, Seattle, Washington", on all such special tooling (ii) store all such special tooling separately from Seller's other equipment, tools and materials when not in use; (iii) keep all such special tooling in good condition and, (iv) when necessary, replace any such special tooling without expense to Company. Seller will supply all Goods (or components thereof) made from special toolings to Company exclusively.

c. Any drawings and specifications prepared by Seller under this Agreement are Work Product. Seller will store such items separately from Seller's other documents and materials when not in use. Seller will send all such drawings or specifications to Foss Maritime Company, 1151 Fairview Ave. N., Seattle, WA, Washington, 98109, Attention: Purchasing Agent, when the applicable Purchase Order is completed.

#### **C. PROVISIONS APPLICABLE TO SERVICES**

**1. APPLICABLE SERVICES.** If Seller is required to perform Services, including, for clarity, installation of Goods, on Company's premises or any real or personal property under its ownership or control, or that of its agents, customers and/or subcontractors, in addition to its obligations elsewhere in this Agreement, Seller will:

a. Take precautions to protect all property and persons from damage or injury arising out of the Services and comply with any policies, procedures, rules or regulations of Company and/or the owner of the premises upon which Services is being performed. For clarity, and as

indicated elsewhere, Seller will be responsible for the observance thereof and of applicable Laws by all its subcontractors, and its and its subcontractors' employees, agents and representatives

b. Receive, inspect, inventory, store, and protect from exposure to weather, excessive heat, cold or humidity, theft or vandalism any and all Company-furnished or owned items, equipment, machinery or other materials onto Goods (or their components) to the manufacturer's recommended specifications before delivering completed Goods to Company,. Seller will also notify Company's representative upon receipt of all Company-furnished items, equipment, machinery or other materials. Notification should include all items received, date received, condition, serial number, and other relevant information;

c. Keep Company-furnished or owned items, equipment, machinery or other materials and the premises and/or property on which Services are being performed free and clear of all mechanics and materialmen's liens;

d. Without limiting the foregoing promptly pay for all labor and material and, if Seller fails to do so, Company, without waiving any rights or remedies against Seller for or by reasons of such failure, may, but without any obligation to do so, pay the same and deduct the amount of such payments from sums due Seller hereunder; and Company may withhold any payment to Seller until receiving such affidavits, waivers and releases with respect to liens or other Claims for labor and materials as Company may require.

e. Replace at its own expense all Company-furnished or owned or items, equipment, machinery or other materials, or any Goods or portions of Goods or other property damaged or destroyed by any cause whatsoever;

f. Perform Services in accordance with the schedule established by Company and fully cooperate with Company and others engaged in work in connection with the Services so that all work may be performed with the utmost speed, consistent with good practices. In case of conflict, Company may direct the necessary coordination.

g. Keep the premises on which Services are performed clean, orderly and free from debris and upon completion, remove all equipment and unused materials, clean up all refuse and debris and leave the premises in a clean, orderly and in good condition, normal wear and tear excluded.

h. Acknowledges that Company may exclude Seller personnel from Company's premises who do not abide by Company's and/or the premises owner's policies and procedures, as discussed above, and at Company's election, may declare a default under this Agreement.

**2. INDEPENDENT CONTRACTOR.** Company is interested only in the results obtained under this Agreement; without limiting Seller's obligations hereunder, the manner, method and means of achieving the results are under Seller's sole control. Seller is an independent contractor for all purposes, without express or implied authority to bind Company by contract or otherwise. Neither Seller nor its employees, agents or subcontractors are agents or employees of Company, and therefore are not entitled to any employee benefits of Company, including but not limited to, any type of insurance. Seller is responsible for all costs and expenses incident to performing its obligations under this Agreement, including any costs arising from its employment and/or engagement of personnel hereunder, and will, unless otherwise indicated, provide Seller's own supplies and equipment to perform Services. No relationship other than that of an independent contractor is intended or will be interpreted to exist between Company and Seller under this Agreement including, without limitation, a partnership, joint venture or co- or joint-employer relationship .

**\*\*END OF GENERAL TERMS AND CONDITIONS APPLICABLE TO ALL PURCHASE ORDERS\*\***