

# ADDITIONAL TERMS & CONDITIONS OF PURCHASE (EXPORT CONTROLS)

**1. Definitions:**

1.1 The definitions and rules of interpretation in this clause 1 apply to the Order.

"EAR"	means US Department of Commerce Export Administration Regulations.
"ITAR"	means US Department of State International Traffic in Arms Regulations.
"Purchaser"	means "Whippendell Marine Ltd."
"Supplier"	means the Company or Person to whom this order is addressed.
"Supplies"	mean any goods, materials, work or services which are to be provided by the Supplier to the Purchaser pursuant to the Order.

1.2 Clause headings are for convenience only and shall not affect the interpretation of the Order.

1.3 Words in the singular shall include the plural and vice versa.

1.4 A reference to a statute, statutory provision or other legislation, whether of the UK or elsewhere, is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment and includes any subordinate legislation for the time being in force made under it.

**2. Export Controls:**

2.1 The Supplier represents and warrants that it will comply with all applicable import and export control laws and regulations (including, if applicable, the US export control laws and regulations referred to in clause 2.2.2 below) in fulfilling the Order and will provide all information about the Supplies, including where relevant information regarding constituents parts thereof, that may be necessary for the Purchaser's compliance with all applicable import and export control laws and regulations.

2.2 If any of the hardware, technical data, software and/or technical assistance, including any constituent part thereof, to be provided by or through the Supplier under the Order are controlled under the ITAR or EAR, the Supplier shall:

2.2.1 notify the Purchaser in writing at the time the Order is accepted;

2.2.2 comply with all applicable US export control laws and regulations, including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. 2751 et seq., the ITAR, 22 C.F.R. 120 et seq., the Export Administration Act, 50 U.S.C. app. 2401- 2420, and the EAR, 15 C.F.R. 730-774;

2.2.3 immediately after the Order is accepted, consult with the Purchaser about the relevant authorisations required from the US Authorities and request from the Purchaser information necessary to make the Supplier's authorization request complete and accurate, including, without limitation, full details of end use, end user(s), intermediate consignees and any other requirements such as nationality, location or pre-existing company organisation authorisations which may be applicable;

2.2.4 obtain all required export licences, agreements and other authorisations necessary to ensure delivery of the Supplies to the Purchaser in accordance with the delivery dates required under the Order;

2.2.5 in addition to the notification at clause 2.2.1 above, provide the following information and documentation in writing at the time the Order is accepted: (a) a description of ITAR/EAR controlled material; (b) the name and address of the US exporter and/or manufacturer of ITAR/EAR controlled material; (c) the part reference number for the ITAR/EAR controlled material; and (d) the ITAR US Munitions List category and paragraph number (and any special designation as Significant Military Equipment or Major Defense Equipment) or, as the case may be, EAR Commerce Control List Export Control Classification Number (or other EAR designation);

2.2.6 provide the following further information and documentation in writing at the time the Order is accepted, if already secured or, if not, as soon as possible upon being secured: (a) details of the relevant licence, agreement or other authorisation (including details of any exemptions or exceptions) such details to include the reference numbers and dates; and (b) full copies of such licences, agreements or other authorisations including any correspondence with the US Department of State or the US Department of Commerce consenting to or giving guidance on the use of exemptions or exceptions or listing provisos.

2.3 Copies of the licences, agreements or other authorisations required under clause 2.2.6(b) must be provided no later than thirty (30) days prior to the first agreed scheduled delivery date. Any commercially sensitive information contained within licences or agreements may be deleted providing it does not prevent identification of any relevant constraint; any provisos and conditions; the end users or the parties and/or consignees.

2.4 ITAR Delivery. Unless the applicable regulations (i.e. 22 C.F.R. 123.9) have been revised to require otherwise, for each ITAR controlled item or document being delivered the following statement shall be included as an integral part of the bill of lading, air waybill, or other shipping document, the delivery note, the purchase documentation or invoice, and in the case of ITAR Technical Data, on the document itself:

2.4.1 in respect of ITAR Hardware, "These commodities are authorized by the U.S. Government for export only to [country of ultimate destination] for use by [end user] under [license or other approval number or exemption citation]. They may not be resold, diverted, transferred, or otherwise be disposed of, to any other country or to any person other than the authorized end-user or consignee(s), either in their original form or after being incorporated into other end-items, without first obtaining approval from the U.S. Department of State or use of an applicable exemption."; and

2.4.2 in respect of ITAR Technical Data, "EXPORT CONTROLLED DATA: This document contains technical information whose export is governed by the U.S. International Traffic in Arms Regulations (ITAR). These commodities are authorized by the U.S. Government for export only to [country of ultimate destination] for use by [end user] under [license or other approval number or exemption citation]. They may not be resold, diverted, transferred, or otherwise be disposed of, to any other country or to any person other than the authorized end-user or consignee(s), either in their original form or after being incorporated into other end-items, without first obtaining approval from the U.S. Department of State or use of an applicable exemption.".

2.5 EAR Delivery. Unless the applicable regulations (i.e. 15 C.F.R. 758.6) have been revised to require otherwise, for each EAR controlled item or document being delivered the following Destination Control Statement shall be included as an integral part of the invoice and bill of lading, air waybill, or other export control document that accompanies the shipment, and the document itself in the case of EAR Technology: "These commodities, technology, or software were exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to U.S. law is prohibited." In addition, the licence number(s) for each applicable EAR or ITAR licence and the ECCN for each "600 Series" item being exported must be included.

**2.6** Any outer package containing the controlled material should be marked/labelled with an Export Control statement as described in clauses 2.4 and 2.5 above as appropriate to the nature, size, packaging, etc of the item.

**2.7** Where practical, the Supplier shall segregate deliveries of ITAR or EAR controlled material from other deliveries, and shall not mix ITAR-controlled items, data and services with EAR controlled items, data and services on the same licences, agreements or authorisations.

**2.8** Without limiting the foregoing, the Supplier shall only use ITAR Technical Data received from the Purchaser in the performance of the work required to deliver the Order, and shall not transfer or otherwise provide access to any ITAR or EAR controlled item, data or services, to include transfer to a person (including lower-tier sub-contractors within the same country) who is not a "U.S. Person" as defined in the ITAR (22 C.F.R. 120.15), without the authority of a US Government export licence, agreement, or other authorisation, such as an applicable licence exemption or exception. The Supplier will strictly comply with the conditions in any such approval and in the export licence or other Government authorisation for such disclosure. The restrictions on the transfer of export controlled data apply equally to both data furnished by the Purchaser and to any such data incorporated in documents, software or hardware generated by the Supplier. Any rights in the data may not be acquired by the Supplier unless expressly authorised pursuant to an export licence, export agreement or otherwise provided in the ITAR. Additionally, no disclosure of data furnished by the Purchaser can be made unless and until the Purchaser has considered the request and provided its written approval through contractually authorised channels.

**2.9** The Supplier hereby authorises the Purchaser to disclose any and all Confidential Information to government authorities with jurisdiction over such Confidential Information as may be reasonably necessary for the purpose of disclosing, resolving or remediating any violation or potential violation of applicable export control laws or regulations.

**2.10** The Supplier shall immediately notify the Purchaser if the Supplier is or becomes identified either individually or collectively on any list of denied, debarred, embargoed, blocked, prohibited, specially designated, sanctioned or otherwise ineligible parties maintained by any government or international organisation or, becomes ineligible to contract with the US Government, or if the Supplier's export privileges are otherwise denied, suspended or revoked in whole or in part by any government entity or agency.

**2.11** If engaged in the business of either exporting or manufacturing (whether exporting or not) US defence articles or defence services, the Supplier represents and warrants that it maintains an effective export/import compliance program in accordance with the ITAR and, if located in the US, that it is registered with the US Department of State as required by the ITAR.

**2.12** If engaged in brokering activities within the meaning of the ITAR (22 C.F.R. 129), the Supplier represents and warrants that it is registered with the US Department of State as required by the ITAR and has obtained any necessary approval with respect to the Supplies provided in the Order.

**2.13** Where the Supplier is a signatory, sub-licensee or consignee under an export licence, agreement or other authorisation, the Supplier shall provide immediate written notification to the Purchaser in the event of changed circumstances affecting the said licence or agreement.

**2.14** The Supplier shall return, or at the Purchaser's direction, destroy all of the technical data exported to the Supplier pursuant to the Order upon fulfilment of its terms and create and maintain the records required under the ITAR and EAR.

**2.15** The Supplier shall indemnify each Indemnified Party against any and all liability, loss, claims, costs, expenses or damages of any kind whatsoever incurred by an Indemnified Party as a result of or in connection with any breach by the Supplier, its employees, agents or subcontractors of this clause 2.

### **3. UK Export Controls:**

**3.1** If any of the hardware, technical data, software and/or technical assistance, including any constituent part thereof, to be provided by or through the Supplier under the Order are controlled by UK Government Export Controls, the Supplier shall:

**3.1.1** notify the Purchaser in writing at the time the Order is accepted, including the relevant Control List Reference.

**3.1.2** provide the Purchaser with all necessary assistance, including, but not limited to, technical drawings, data sheets and technical data to allow the Purchaser to obtain the necessary Export Licence.