

# Singapore Shipping Enterprises Pte. Ltd.

## Standard Terms of Purchase - 03/2016

### Article 1 - Product

- 1.1 The "Goods": As defined in the relevant Sales Confirmation ("Confirmation").

### Article 2 - Delivery

- 2.1 Seller shall place the Goods at the disposal of Buyer at the place specified in the Confirmation, not loaded on any collecting vehicle within the period specified in the Confirmation.

### Article 3 - Transfer of risks

- 3.1 Buyer must bear all risks of loss or damage to the Goods howsoever caused from the time they have been delivered in accordance with Article 2.

### Article 4 - Title/Ownership and terms of payment

- 4.1 The payment for the Goods shall be made by Buyer to Seller as set out in the Confirmation. Title/Ownership of the Goods shall not transfer to Buyer until Seller has received payment for the Goods in full from Buyer.
- 4.2 If Buyer fails to pay the Price by the date specified in the Confirmation, Seller shall be entitled to charge interest on the Price from the date on which payment was due. The rate of interest shall be fifteen percent (15%) per annum. The right to claim further damages is reserved.
- 4.3 Invoicing of the Goods shall take place when their readiness advice is tendered by the Seller.

### Article 5 - Delivery Time

- 5.1 If Seller anticipates that he will not be able to deliver the Goods at the time specified in the Confirmation, Seller shall notify Buyer in writing, stating the reason, and, if possible the time when delivery can be expected.
- 5.2 Without prejudice to Article 5.1, the delivery time is reasonably extended:
- a) if all technical queries between the contracting Parties have not been fully clarified
  - b) in case of a Force Majeure Event, as defined in Article 9, hereunder.
- 5.3 In case Buyer fails to accept delivery of the Goods at the time specified in the Confirmation, Buyer is obliged to pay any part of the Price which became due on delivery, as if the delivery has taken place. Should Buyer fail to accept delivery of the Goods, Seller shall

arrange for storage of the Goods at the sole risk and expense of Buyer, and if Buyer requires, Seller shall insure the Goods solely at Buyer's expense. If after the expiry of fifteen (15) calendar days from the date of delivery specified in the Confirmation Buyer has not taken delivery of the Goods, Seller may by written notice (including e-mail) terminate the Contract in whole or in part without incurring any liability whatsoever to Buyer, and Article 5.4 shall apply.

- 5.4 In case of cancellation of order due to reason attributable to the Buyer and/or termination of the Contract in accordance with Article 5.3 above, Buyer must pay Seller an amount equivalent to twenty five percent (25%) of the Price by way of liquidated damages, the Parties agreeing that this sum represents a genuine pre-estimate of Seller's loss, plus any additional costs incurred whatsoever by Seller as a result of Buyer's failure to take delivery, including, but not limited, to storage costs and/or insurance costs. The payment of such sums shall be made within fourteen (14) calendar days of the date the Cancellation Confirmation is issued by Seller.

### Article 6 - Licences, authorisations, inspections and formalities

- 6.1 Buyer must obtain at his own risk and expense any export and import licence or other official authorisation and carry out, where applicable, all customs formalities for the export of the Goods.
- 6.2 Buyer must pay the costs of any pre-shipment inspection, including inspection mandated by the authorities of the country of export.

### Article 7 - Price

- 7.1 The price of the Goods is as specified in the Confirmation.

### Article 8 - Responsibility and warranties

- 8.1 Except as set out in this Contract, all warranties, conditions, terms and undertakings, express or implied, whether by statute, common law, custom, trade usage, course of dealings or otherwise in respect of the Goods are excluded to the fullest extent permitted by law.
- 8.2 Buyer warrants that the Goods are suitable for the purposes for which Buyer is purchasing the Goods and that it is not reliant on the skill and judgment of Seller in any way whatsoever.
- 8.3 Seller shall not be liable to Buyer in any circumstances whatsoever whether in contract, tort (including negligence), delict, for breach of statutory duty, strict liability or otherwise and

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whether or not for matters including but not limited to delay, defective performance or total failure to perform this Contract, for:

(a) loss of profits and/or loss of anticipated profits and/or loss of revenue and/or loss of income and/or loss of market opportunities and/or business interruption damages and/or cost of labour/removal of the Goods and/or towage charges and/or docking charges and/or repair charges; and/or

(b) consequential and/or indirect loss or damage

of any nature arising at any time from any cause whatsoever.

**8.4** If Seller incurs liability towards any third party for damage to property and/or persons caused by the Goods in any way whatsoever, Buyer shall indemnify, defend and hold Seller harmless in respect of such liability.

**8.5** Without prejudice to the generality of the foregoing, Seller's responsibility for any defects in the Goods delivered to Buyer shall be limited to repair or replacement solely and exclusively in accordance with the provisions of this Article 8.

The return of Goods shall not be allowed. Nevertheless, if defects in the Goods are found within six (6) months from the date of delivery specified in the Contract ("the Guarantee Period") and are obviously due to the reasons resulting from defective materials and/or poor workmanship Seller shall in its option repair or replace the defective Goods with new ones on an ex-works basis. Any replaced parts shall become Seller's property.

The Buyer shall carry full burden of proof for such defects.

**8.6** Without prejudice to Article 8.8 the Guarantee Period expires automatically if Buyer or a third party (whether or not acting under the instruction of Buyer) undertakes inappropriate modifications and/or repairs and/or inappropriate installation of the Goods, or if Buyer, in case of a defect, does not immediately take all appropriate steps to give Seller the possibility of remedying such defect.

**8.7** Buyer shall notify Seller of its claim within seven (7) days on discovery of any defect or lack of quantity of Goods is found in writing, failing which and notwithstanding the foregoing, Seller shall be discharged from all liability whatsoever in respect of the Goods arising out of or in connection with the defect or lack of quantity (as the case may be) in question

**8.8** Seller shall only bear the costs for repairing or replacing, at his discretion, the defective Goods at Hyundai Heavy Industries Co. Ltd.'s ("Maker") factory and the costs of transporting the goods to/from the Maker's factory shall be solely to Buyer's account. If, for reasons beyond Seller's control, such Goods cannot be repaired or replaced at Maker's factory, all additional costs arising therefrom shall be borne by Buyer, including but not limited to dismantling, installing and transporting of defective Goods to/from the Maker's factory or to/from another location, designated by Maker.

Seller shall not be responsible or liable for any defect caused by: negligence and unawareness of Buyer or any end user; and/or any damage caused after the Goods are delivered in accordance with the terms of this Contract by any factors whatsoever including, without limitation, corrosion, humidity, sand, other substances from outside, chemical or electrical contact, use of improper lubricating oil or fuel oil (gas), inappropriate cooling, extreme weather conditions such as heat wave or bitter cold, natural disaster; and any damages caused by defective spare parts supplied by Buyer or a third party (whether or not acting under the instruction of Buyer) and/or occurring as a result of the assembly and/or installation of the Goods.

**8.9** The remedies provided for in this Article 8 shall be the sole and exclusive remedies of Buyer for any claims arising out of or related to defects in the Goods against Seller and no other claims shall be brought under the Contract and/or at law.

**8.10** If Buyer has given a notice of defects and no defect is found for which Seller is liable, Seller shall be entitled to compensation for the costs he has incurred investigating the matter as a result of such notice.

### Article 9 - Force Majeure

**9.1** Any delay or failure in the performance of any part or the whole of this Contract (save for the obligation to make payment when due) by either Party shall be excused if and to the extent caused by the occurrence of any of the following events (the "Force Majeure Event") which is unforeseeable and beyond the reasonable control of the affected Party, including, but not limited to, war, threat of war, warlike condition, strike, lockout, shutdown, mobilization, confiscation, fire, flood, tidal wave, earthquake, lightening, typhoon, hurricane, cyclone, plague or other epidemic, delayed or missing deliveries from sub-suppliers caused by and of the circumstances mentioned above, explosion, accident or breakdown, acts of God, blockade, embargo, seizure, detention,

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insurrection, riot, civil commotion, revolution, sanction, looting, labor trouble, industrial disturbance, closing of exchanges, nationalization, prohibition of import or export, refusal by a government to issue approval or license or to remove any restriction with regard to this Contract, hostilities or any other similar causes.

**9.2** Without prejudice to Article 5.1, the Party suffering from such Force Majeure Event shall notify the other Party in writing of the occurrence of the Force Majeure Event as soon as practicable but no later than fourteen (14) days after the occurrence thereof, and shall give the other Party written notice describing in detail the particulars of such occurrence including an estimation of its expected duration and probable impact on the performance of such Party's obligations hereunder and thereafter continue to furnish timely regular reports with respect thereto during the continuation of Force Majeure Event. The Party suffering from such Force Majeure Event shall be relieved from the performance of any part or the whole of its obligations under this Contract for a period of time reasonably accepted and agreed upon by both Parties in good faith (save for the obligation to make payment when due).

**9.3** In the event that a Force Majeure Event as notified by either Party to the other continues for more than 30 continuous days, either Party may terminate this Contract without any liability to the other Party save for any payment obligations which have accrued at the time of termination by written notice (including e-mail) to the other Party sent to the following address specified in the Confirmation.

## **Article 10 - Counterparts**

**10.1** This Contract may be signed in any number of counterparts, each of which when signed, shall be an original and all of which together evidence the same Contract. Whether or not these terms and/or the Confirmation are signed shall not affect the binding nature of this Contract.

## **Article 11 - Variation**

**11.1** Any variation of this Contract shall be in writing and signed by or on behalf of each Party.

## **Article 12 - Assignment**

**12.1** Neither of the Parties to the Contract shall without the previous consent in writing of the other Party assign the Contract or any rights or obligations hereunder.

## **Article 13 - International Conventions**

**13.1** The following shall not apply to this Contract:

(a) The Uniform Law on Sales and the Uniform Law on Formation to which effect is given by the Uniform Laws on International Sales Act 1967.

(b) The United Nations Convention on Contracts for the International Sale of Goods of 1980.

(c) The United Nations Convention on Prescription (Limitation) in the International Sale of Goods of 1974 and the amending Protocol of 1980.

(d) The Sale of Goods Act 1979.

(e) Incoterms.

## **Article 14 - Entire agreement**

**14.1** This Contract constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

**14.2** Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.

## **Article 15 - Governing law**

**15.1** This Contract and any non-contractual obligations arising out of or in connection with it shall be exclusively governed by the laws of England.

## **Article 16 - Arbitration**

**16.1** Any dispute, whether of a contractual or non-contractual nature, arising out of or in connection with this Contract shall be submitted to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this clause. The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced.

## **Article 17 - Contracts (Rights of Third Parties) Act 1999**

**17.1** No term of this Contract is intended to, or does, confer a benefit or remedy on any third parties. A person, company or other legal entity who is

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not a party to the Agreement shall not have nor acquire whether by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise any rights in relation to the Agreement.