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## OCEANWORKS INTERNATIONAL, INC. TERMS AND CONDITIONS OF SALE

**1. GENERAL TERMS.** The terms and conditions set forth herein apply to all sales of equipment and attendant component parts and other products and any services (collectively herein, "Products") designed, manufactured, or otherwise provided by OCEANWORKS INTERNATIONAL, INC. ("OCEANWORKS"). The Products which are the subject matter of these are described on the sales order and related documents to which these terms are attached, and, of which these Terms and Conditions shall be deemed a part thereof. Any purchase order, letter of credit, or written or oral confirmation received by OCEANWORKS shall be considered an acceptance of all the terms and conditions of this offer. Upon such acceptance by Customer, the terms and conditions of this offer shall constitute a valid and binding contract between OCEANWORKS and Customer (the "Contract"). Unless otherwise agreed to in writing by OCEANWORKS, no other or different terms and conditions shall be applicable to Product sales and OCEANWORKS shall not be obligated to any terms and conditions which are not clearly set forth herein. No Contract may be canceled without written consent of OCEANWORKS.

**2. DELIVERY; RISK OF LOSS.**

2.1 Unless otherwise agreed upon in writing, all Products are sold Ex-Works OCEANWORKS' plant in Houston, Texas, U.S.A. in United States dollars, in accordance with INCOTERMS 2000. Customer shall be responsible for arranging for shipment of the Products and shall pay for all packaging materials, crating, handling and shipment costs.

2.2 If Customer requests OCEANWORKS to arrange for shipment of the Products or has not furnished complete shipping instructions to OCEANWORKS prior to the time OCEANWORKS has finished assembling the Products, OCEANWORKS will ship the Products to Customer in a commercially reasonable manner convenient to OCEANWORKS. All such shipments shall be at Customer's risk and the charge for OCEANWORKS' assistance will be OCEANWORKS' cost plus 15%. Notwithstanding such assistance by OCEANWORKS, delivery shall, for all purposes, be deemed to have been made when the Products are f.o.b. a carrier at OCEANWORKS' plant or have been readied for shipment and notification of such ready state has been verbally or otherwise conveyed to the Customer.

2.3 Any risk associated with sale of Products rests with OCEANWORKS up to the time of delivery of the Products by OCEANWORKS to a carrier or notification of the Customer of the Products' readiness for shipment as provided in Clause 2.2, above. Thereafter, such risk rests with Customer, including the return of any Products to OCEANWORKS after their receipt by Customer.

**3. PARTIAL DELIVERY; DATE OF DELIVERY.**

3.1 Unless otherwise instructed by customer in writing, OCEANWORKS is authorized to make partial delivery of the Products. Each partial delivery shall be deemed a separate sale and an invoice shall be rendered and payment shall become due on each such sale in accordance with the terms of the Contract.

3.2 OCEANWORKS will endeavor to have the Products available for delivery by the date specified in the Contract. However, such delivery dates are only approximate and OCEANWORKS shall not be responsible for any damages, losses or costs, including consequential or special damages, losses or costs incurred as a result of late delivery of the Products.

**4. STANDARDS.** All Products are based on OCEANWORKS utilizing its standard procedures, specifications and techniques of manufacture and testing. The cost of any additional labor, material or outside services for any modifications in such procedures, specifications or techniques requested by Customer, minor or otherwise, shall be added to OCEANWORKS' standard Product prices at their respective costs plus 15%. CUSTOMER ASSUMES ALL RISK AND LIABILITY WITH RESPECT TO THE PERFORMANCE OF THE PRODUCTS IF SUCH A MODIFICATION IS MADE.

**5. TERMS OF PAYMENT AND CREDIT.**

5.1 Net 30 days from date of invoice on all orders for standard Products. On all orders for custom Products of any value, other payment terms may be required. OCEANWORKS reserves the right, at its sole discretion, to require advance payment on any order.

5.2 Interest at the rate of 1.5% per month or the maximum rate allowed by applicable law, whichever is less, shall be charged on past due accounts. Customer shall be responsible for and pay reasonable attorney's and collection fees if OCEANWORKS retains counsel or a collection agent to collect any past due account.

**6. TAXES.** All sales, excise and other taxes which OCEANWORKS may be required to pay or collect with respect to the production or delivery of the Products will be for the account of Customer except as otherwise provided by law.

**7. FORCE MAJEURE.** OCEANWORKS shall not be responsible for delays or damages in the production or delivery of the Products due to acts of God or to any other causes beyond the control of OCEANWORKS including, but without limitation, strikes, war, riots, terrorism, revolutions, fires, floods, lockouts or other labor difficulties, or governmental regulations or orders (including, but not limited to priorities, requisitions, allocations or price adjustment restrictions), and in the event that OCEANWORKS is rendered unable, wholly or in part, by any of these occurrences or causes, to carry out its obligations under the Contract, it is agreed that the time for performance shall be extended automatically and such extension shall be for the reasonable period of time necessary to permit the production and delivery of the Products.

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## 8. INDEMNIFICATION

8.1 Purchaser is solely responsible for and shall indemnify and hold OCEANWORKS harmless against any and all liability, loss, damage, claims, suits, actions, judgments, costs or expenses, including attorney's fees, resulting from death or personal injury of Purchaser's employees, agents, or subcontractors, or loss of or physical damage to Purchaser's property regardless of cause.

8.2 OCEANWORKS is solely responsible for and shall indemnify and hold Purchaser harmless against any and all liability, loss, damage, claims, suits, actions, judgments, costs or expenses, including attorney's fees, resulting from death or personal injury of OCEANWORKS' employees, agents, or subcontractors, or loss of or physical damage to OCEANWORKS' property regardless of cause.

8.3 All liability, loss, damage, claims, suits, actions, judgments, costs or expenses, resulting from death, personal injury, loss of or physical damage to property of third parties caused by the joint or concurrent acts of OCEANWORKS and Purchaser, shall be borne by OCEANWORKS and Purchaser to the extent each is determined negligent either by agreement of the parties or by arbitration if no agreement can be reached.

8.4 The Purchaser shall indemnify and hold harmless OCEANWORKS from all claims, liabilities, costs, damages and expenses of every kind and nature associated with, related to, or arising out of, any infringement of any patent or proprietary right with regard to drawings and specifications provided by the Purchaser to OCEANWORKS and used in the performance of the Contract.

## 9. LIMITATION OF WARRANTY.

9.1 Subject to the conditions and exclusions set out below, OCEANWORKS warrants that all Products provided by OCEANWORKS shall be free from defects in materials and workmanship for a period of six (6) months from date of purchase (the "Term"). OCEANWORKS shall not be responsible for any direct or indirect, incidental or consequential damages or losses suffered by the Purchaser by reason of any defect in materials, workmanship or manufacture of the Products, including but not limited to, damages associated with any loss of use of the Products, loss of time, inconvenience and commercial loss, including loss occasioned by reason of the failure of the Products. OCEANWORKS does not warrant any associated equipment, parts or supplies that have not been manufactured by OCEANWORKS. The Purchaser assumes all risk and liability resulting or arising from the use of the Products.

9.2 If any defects directly attributable to faulty materials or poor workmanship are discovered by the Purchaser within six (6) months of the acceptance of the Products by the Purchaser, OCEANWORKS shall, at its own cost and option, elect to repair or replace the defective Products. Parts replaced by OCEANWORKS shall become the property of OCEANWORKS. The Purchaser will bear all of the transportation costs associated with returning the Products to OCEANWORKS for the repair and/or the replacement of parts.

9.3 This warranty shall only apply if : (a) the Purchaser gives written notice of any defects in the Products to OCEANWORKS within ten (10) days of their discovery; (b) the Products is returned to OCEANWORKS, with all transportation charges prepaid, at the earliest time after the discovery of the defects, but no later than 200 days after the Products has been delivered to the Purchaser; (c) the Products has been used, maintained, and serviced in a proper and careful manner and in accordance with such instructions as may be given by OCEANWORKS to the Purchaser from time to time; (d) no alterations or repairs have been made to the Products by any person other than OCEANWORKS or an employee or authorized agent of OCEANWORKS, and (e) the Products has been used in accordance with the Lloyd's Register of Shipping certified capacity or other rated capacity of the Products. The continued use and possession of the Products for the remaining portion of the Term following repair by OCEANWORKS or the replacement of any part thereof by OCEANWORKS or the failure to give notice of any defects to OCEANWORKS within ten (10) days of their discovery shall result in a waiver of the breach of the warranty by the Purchaser and the warranty shall be deemed to have been fulfilled and any obligations of OCEANWORKS completely discharged. No assistance rendered by OCEANWORKS in operating the Products or remedying any defect either before or after such times shall waive or excuse the Purchaser for failure to give notice or to comply with any of the above conditions.

9.4 This warranty does not apply to defects or damage to the Products, directly or indirectly, or wholly or partly attributable to: (a) normal wear and tear; (b) the misuse, abuse or neglect of the Products, including but not limited to the Products resulting from alterations or modifications made by any person not authorized by OCEANWORKS; (c) negligence or accident; (d) improper maintenance or servicing contrary to the maintenance procedures as specified by the Products manual; (e) improper maintenance or servicing contrary to the instructions or technical bulletins as may be prescribed by OCEANWORKS from time to time; (f) damage to surface finishes and paint coatings after acceptance by the Purchaser; (g) improper maintenance performed by personnel and/or technicians not trained or authorized by OCEANWORKS; (h) repair or replacement of parts or alterations made by anyone other than OCEANWORKS, its employees or authorized agents; (i) improper use or operation contrary to the Lloyd's Register of Shipping certification of the Products (if applicable); (j) unauthorized maintenance carried out in the absence of written instructions as provided by OCEANWORKS; (k) improper use or operation; and (l) umbilicals and tethers. ALL WARRANTY CLAIMS BY THE PURCHASER ARE SUBJECT TO A REVIEW OF THE MAINTENANCE LOGS BY OCEANWORKS.

9.5 The need for re-termination of electrical and mechanical connectors and assemblies is considered to be normal wear and tear and is not covered under the warranty.

9.6 This warranty is void in the event any sums due Seller are not fully paid by Buyer. Seller will not be responsible for warranty on Buyer supplied equipment unless otherwise stated.

9.7 This limited warranty is in lieu of all other express or implied warranties, including any implied warranty of merchantability or fitness for a particular purpose, and no person is authorized to give any further representation or warranty or assume any further obligation on behalf of OCEANWORKS with respect to the Products.

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**10. DESIGN AND CONSTRUCTION MODIFICATIONS.** OCEANWORKS expressly reserves the right to modify and improve the design and method of manufacture of any Product without incurring any obligation or liability to furnish or install such modification or improvement on Products sold prior to or after such modification or improvement.

**11. REJECTION OF NONCONFORMING PRODUCTS.**

11.1 Any rejection of Products for being nonconforming under the requirements of the Contract must be made within 5 days after their receipt by Customer. Rejection becomes effective only after Customer sends written notification to OCEANWORKS of the rejection specifying the alleged nonconformity of the Products and the description of that portion of the shipment being rejected. Defects that do not impair satisfactory service shall not be a cause for rejection.

11.2 Upon receipt of notification of rejection, OCEANWORKS shall have ten (10) days to have its agent inspect such Products, at Customer's premises, for nonconformity; otherwise such inspection will be made on return to OCEANWORKS' plant. When such Products are confirmed or deemed by OCEANWORKS to be nonconforming, OCEANWORKS will ship conforming Products within 60 days following the notice of rejection unless the Customer earlier notifies OCEANWORKS to forego such shipment. Customer will not be charged for Products properly rejected as being nonconforming under the requirements of the Contract. In the event Customer is to be charged for Products not properly rejected, Customer will be notified immediately by telephone, telex or telegraph in an effort to arrange a new delivery date if such Products have been returned to OCEANWORKS. The expenses of inspection will be borne by Customer except in any instance in which Products have been properly rejected.

**12. DELEGATION; ASSIGNMENT.** Customer may not delegate the performance of any of its obligations under the Contract to any third party. The Contract is not assignable by Customer.

**13. PARTIES BOUND.** The Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by the Contract.

**14. GOVERNING LAW.** The Contract is to be governed by, construed and enforced in accordance with the laws of the State of Texas, United States of America.

**15. SEVERABILITY** In the event any one or more of the terms or conditions contained herein shall be held invalid, illegal or unenforceable in any respect by a court, such invalidity, illegality or unenforceability shall not affect the other terms or conditions stated herein.

**16. SETTLEMENT EFFORTS; ARBITRATION; APPLICABLE LAW.** . In the event there shall exist any dispute or controversy between the parties hereto with respect to this Agreement or the transactions contemplated hereby, the parties agree to diligently work in good faith to resolve such dispute by mutual agreement. If such dispute is unable to be resolved by agreement within 30 days following notice of a dispute from one party to the other setting forth in reasonable detail the basis of such dispute, such dispute shall be finally resolved by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Either party may elect to submit the dispute to arbitration, and such party shall provide notice to the other party of its election to do so. Promptly thereafter, the parties shall cooperate diligently to have appointed one or more arbitrators in accordance with the above arbitration rules. The governing law shall be the laws of the State of Texas, and the location of the arbitration shall be in Houston, Texas at a mutually acceptable facility upon which the parties shall reasonably agree. The language of the arbitration shall be English. The decision of the arbitrator, or a majority thereof if more than one, shall be final and binding upon the parties hereto, and each party shall abide by such decision. All expenses of arbitration shall be borne equally by the parties, except that each party shall bear the compensation and expenses of its own counsel, witnesses and employees.

**17. NOTICES.** All communications to OCEANWORKS regarding the Contract shall be addressed to OCEANWORKS INTERNATIONAL, INC., 11611 Tanner Road, Houston, TX, 77041, U.S.A.

**18. ENTIRE AGREEMENT; AMENDMENT; TITLES.** This document embodies the entire agreement and understanding between OCEANWORKS and Customer and supersedes all prior and future representations, understandings and agreements relative to the subject matter of the Contract. This Contract shall control over any inconsistent provisions in any CUSTOMER work order and/or purchase order or other instrument and this Contract shall not be modified or supplemented by the terms of any other work order, purchase order, invoice or other document unless the proposed modification or supplementation is approved and signed in advance of the Products being furnished by OCEANWORKS' in-house counsel or contracts manager by separate written instrument (separate and apart from any such work order, purchase order, invoice or other document) which states an express intent to modify or to supplement this Contract. All titles to sections contained in the Contract are for identification only and shall not be construed as being a substantive part of the Contract.