**BIRD-JOHNSON PROPELLER COMPANY LLC**

**GENERAL TERMS AND CONDITIONS FOR SALE OF**

**TECHNICAL PERSONNEL SERVICES AND SHOP WORK**

These general terms and conditions and those set forth in Seller’s quotation (collectively, the “Conditions”) will, unless otherwise agreed in writing, apply to all sales of technical personnel services and shop work by BIRD-JOHNSON PROPELLER COMPANY LLC (“Seller”) to Buyer (Buyer and Seller are collectively referred to herein as the Parties”), and constitute the entire, complete, and exclusive agreement between the Parties with respect to the subject matter hereof. **IF THESE CONDITIONS ARE DIFFERENT FROM, OR CONTAIN TERMS AND CONDITIONS IN ADDITION TO, BUYER’S PURCHASE ORDER OR ANY OTHER DOCUMENT PROVIDED BY BUYER (INCLUDING ANY MODIFICATIONS THERETO), SELLER EXPRESSLY REJECTS SUCH DIFFERENT OR ADDITIONAL TERMS IN BUYER’S DOCUMENT, AND SELLER’S PROVISION OF THE SERVICES HEREUNDER IS EXPRESSLY CONDITIONED UPON BUYER’S ASSENT TO THESE TERMS. NOTWITHSTANDING ANY OTHER ACTS OR OMISSIONS OF**

**THE PARTIES, BUYER’S ACCEPTANCE OF SERVICES HEREUNDER CONSTITUTES BUYER’S ASSENT TO ALL OF THE CONDITIONS.**

1. **QUOTATIONS AND ORDERS**

 Unless otherwise indicated on the quotation, a quotation is valid for thirty (30) days from the date of the quotation.

 Buyer must confirm its order by a written order or acknowledgement (“Purchase Order”).

 A Purchase Order that has been accepted by Seller is binding on both Parties with respect to the Work (as defined below) to be provided. All requests to reschedule, cancel or otherwise revise a Purchase Order are subject to the written agreement of Seller and payment of fees specified herein.

1. **SCOPE OF WORK**

Seller agrees to provide Buyer with qualified technical personnel (“Personnel”) to provide services described in the Purchase Order (the “Work”), which may include any of the following services: technical support, repair, maintenance, installation, and start-up services, including instruction, consultation and direct liaison with Buyer, in connection with the installation, start-up, trials, operation, maintenance, repair or overhaul of Seller’s equipment, or equipment supplied by another manufacturer, at Buyer’s site, dock or vessel.

1. **BUYER’S RESPONSIBILITIES**

Unless otherwise agreed in writing, Buyer will comply with the following at no cost to Seller:

1. Labor, Equipment and Tools

Buyer will furnish all ancillary labor and supervision, materials, supplies, utilities, compressed air, tools and equipment as may be required by the Personnel, including proper calibration, certifications and records for the tools and equipment. Buyer will ensure that adequate supervisory personnel for Buyer’s employees, subcontractors or agents are on duty at all times during the Personnel’s work hours. Buyer will not use the Personnel in any manner as lead hand, foreman or supervisor of Buyer’s employees, for whom Buyer will be liable and will maintain adequate insurance coverage. Buyer will defend, hold harmless and indemnify Seller from any and all claims arising out of the Personnel’s acts or omissions while acting in such capacity.

1. Safety

Buyer will ensure that Personnel are provided the necessary safety awareness training and a safe working environment, in compliance with local, state, and federal regulations.

1. Lodging

Buyer will provide proper heated/air-conditioned facilities for working, boarding and lodging of the Personnel in close proximity to the work site as follows:

* 1. sufficient service storage sheds with locks, equipped with shelves and bins for tools, equipment and supplies for the Personnel;
	2. sufficient changing rooms, provided with locks and washing facilities for use of the Personnel;
	3. sufficient furnished offices with locks, equipped with telephones, fax, internet and other communication requirements of the Personnel; and (iv) accessible toilet facilities and drinking water on the work site.

1. Technical Information

Buyer will make available to the Personnel all technical information such as drawings, technical manuals and interface specifications regarding the equipment as are available to Buyer.

1. Customs, Visas and Work Permits

Buyer will provide all assistance requested by Seller with customs formalities required for import and export of the Seller’s equipment and tools free of all duties and taxes. Buyer will also provide all assistance requested by Seller to ensure that the Personnel obtain visas and any other official entry, exit, residence or working permits that may be required.

1. Compliance with Laws, Rules and Regulations

Buyer will comply with all laws and regulations and permitting requirements applicable at the work site, or arising out of the performance of the Work.

1. Taxes and Personnel Costs

Buyer will pay all taxes, duties or charges levied upon Seller or its Personnel in connection with the performance of the Work at Buyer’s site or incidental to the lodging or travel of the Personnel or shall promptly reimburse Seller for any such charges which Seller may be required to pay.

1. Illness and Accidents of the Personnel

In the event of Personnel illnesses or accidents, at work or outside work, necessitating medical attention or hospital treatment, Buyer will be responsible for ensuring that the best available medical attention and hospital treatment are made available to the Personnel. All costs incurred for such medical attention will be for the account of Seller.

**4. REMUNERATION**

1. Service Rates

Buyer will pay the hourly service rates/ daily rate specified in the attached Service Rates Sheet. Service rates are subject to adjustment without notice.

1. Normal Working Hours; Overtime

Unless otherwise agreed in writing, the Purchase Order prices proposed by Seller assume the Work will be performed during normal working hours as specified in Seller’s Service Rates Sheet. Any Work done outside normal working hours will be charged as overtime at the rates specified in the Service Rates Sheet.

1. Waiting Time

Any waiting time during normal working hours for which the Seller is not responsible, will be charged to Buyer as normal working time. Any waiting time during overtime will be charged to Buyer at overtime rates. All time and actual costs incurred in obtaining visas and any other required entry, exit, working or other permits will be charged to Buyer.

1. Transportation and Living Expenses

Travel and living expenses will be charged as specified in the attached Service Rates Sheet based on government per diem rates for meals and actual costs for lodging, transportation (airfare, car rental) and allowable miscellaneous expenses with an additional 10% administrative fee.

1. Time Sheets

The Personnel will present time sheets to Buyer showing hours worked. Buyer may review and approve the time sheets insofar as practicable, but approval will not be required for invoicing by the Seller of Personnel’s time as shown on the time sheets.

1. **TAXES**

 Any and all taxes, including any federal, provincial, state and local sales, use, excise, privilege, and similar taxes, imposed on Seller, or which Seller has a duty to collect, in connection with the performance of the Work will appear as separate items on the invoice. If sales to Buyer are exempt from such taxes, Buyer will furnish to Seller a certificate of exemption with Buyer’s Purchase Order.

1. **PAYMENT AND LIEN**

 Payment for Seller’s charges for the Work and reimbursement of expenses will be due thirty (30) days from the date of the invoice. All payments will be in United States dollars. If Buyer fails to make payment when due, in addition to Seller’s other rights and remedies, all amounts past due will automatically bear interest at three percent (3%) above the Citibank N.A. annual prime rate in effect at the time or the highest lawful rate which may be charged to Buyer, whichever is less.

 Buyer will make all payments to Seller under these Conditions in full without any withholding or deduction or right of offset of any amounts (including those for alleged damages) whatsoever.

 Seller may change its credit terms and/or suspend performance hereunder when, in Seller’s opinion, Buyer's financial condition or record of payment so warrants. Buyer will pay any third-party collection expenses, including reasonable attorney's fees, incurred by Seller to effect collection of any unpaid amounts.

 To the extent applicable, Seller shall have a maritime lien against the Buyer’s vessel and the cargo thereon, and their improvements, renewals and replacements, for the total compensation and any other amounts payable to Seller for the Work.

1. **RESCHEDULING AND CANCELLATION**

 All requests to reschedule or cancel the Work are subject to Seller’s written consent. For rescheduled or cancelled Work, Buyer will reimburse Seller for any time and travel and living expenses incurred as a result of the rescheduling or cancellation.

1. **EXCUSABLE DELAY**

 Seller will not be liable for any delay in performance caused by circumstances beyond its reasonable control or which would cause Seller to incur unreasonable

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expense to avoid, including without limitation fire, earthquake, flood, storm, strikes and other labor interruption or disturbances, riot, war, transportation damage or delay, labor or material shortages, acts of public authority, or delays or interference of Buyer or site owner, and, in the event of such a delay, Seller will be entitled to a reasonable extension of time for performance. When delays in the Work are caused by Buyer or site owner, Buyer will reimburse Seller for the time and expenses caused by such delay.

**9. LIMITED WARRANTY**

 Seller warrants to Buyer that the Work will be performed in a competent, diligent manner and in accordance with generally accepted standards for such services (collectively, the “Warranty”). This Warranty is not transferable or assignable and any such transfer or assignment is void. This Warranty will expire at the end of three (3) months from the date of the completion of the Work.

 The Warranty does not cover any cost incurred by Buyer for the removal, disassembly, reassembly, reinstallation, adjustment or repair of any equipment, or any other work performed in connection Seller’s re-performance of the nonconforming Work. Dry-docking and related shipyard services or other comparable costs are specifically excluded.

 Seller will consider only written claims under this Warranty. Buyer should contact the local BIRD-JOHNSON PROPELLER COMPANY LLC office that performed the Work and give details in writing of the nonconforming Work. The notice must be submitted within the warranty period.

 **THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, EXPRESS, STATUTORY OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR WORKMANLIKE SERVICE.**

1. **EXCLUSIVE REMEDY**

**IF BUYER CLAIMS AND SELLER AGREES THAT THE WORK FAILS TO**

**CONFORM TO THE WARRANTY (I.E., IS “NONCONFORMING”), SELLER’S SOLE OBLIGATION, AND BUYER’S SOLE REMEDY, IS LIMITED TO, AT SELLER’S OPTION, THE RE-PERFORMANCE BY SELLER OF SUCH WORK AT SELLER’S COST. THIS ARTICLE SETS FORTH THE EXCLUSIVE REMEDIES FOR CLAIMS BASED UPON NONCONFORMITY OF THE WORK PERFORMED, WHETHER THE CLAIM IS IN CONTRACT, WARRANTY, TORT (INCLUDING ACTIVE OR PASSIVE NEGLIGENCE) OR OTHERWISE.**

This exclusive remedy shall not be deemed to have failed its essential purpose so long as Seller is willing and able to re-perform nonconforming Work within a reasonable time after Buyer demonstrates that nonconformance exists.

1. **LIMITATION OF LIABILITY**

**IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE WILL SELLER BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES OF ANY KIND (EVEN IF SELLER HAS BEEN NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGES), INCLUDING, BUT NOT LIMITED TO, LOSS OF ACTUAL OR POTENTIAL PROFITS OR REVENUES, LOSS OF USE OF THE REPAIRED EQUIPMENT, THE COST OF SUBSTITUTE EQUIPMENT, TOWAGE CHARGES, DRY-DOCKING AND RELATED SHIPYARD SERVICES, POLLUTION REMEDIATION COSTS, DAMAGE TO ANY VESSEL, ENGINE ROOM, YARD OR OTHER PROPERTY OF BUYER, OR FOR ANY OTHER LOSSES, DAMAGES OR INCREASED COSTS. SELLER WILL NOT BE**

**LIABLE FOR ANY WORK CARRIED OUT BY BUYER OR BY ANY THIRD PARTY,**

**EVEN THOUGH CARRIED OUT WITH ASSISTANCE OF SELLER’S PERSONNEL. THE TOTAL LIABILITY OF SELLER, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING ACTIVE OR PASSIVE NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THE PERFORMANCE OR NONPERFORMANCE OF ANY PURCHASE ORDER, OR FROM THE MANUFACTURE, SALE, DELIVERY, RESALE, REPAIR, REPLACEMENT OR USE OF ANY PART OR THE FURNISHING OF ANY SERVICE RELATED THERETO, WILL IN NO EVENT EXCEED TWENTY PERCENT (20%) OF THE TOTAL PRICE OF THE PURCHASE ORDER THAT GIVES RISE TO THE CLAIM. THE LIMITATIONS OF THIS SECTION 11 SHALL APPLY EVEN IF THE EXCLUSIVE REMEDY SET FORTH IN SECTION 10 FAILS OF ITS ESSENTIAL PURPOSE.**

1. **LIMITATION OF ACTIONS**

**ANY ACTION AGAINST SELLER ARISING OUT OF OR RELATED TO THE SUBJECT MATTER HEREOF SHALL BE COMMENCED WITHIN ONE (1) YEAR FROM THE DATE SUCH CAUSE OF ACTION ACCRUED, OTHERWISE THE SAME SHALL BE BARRED.**

1. **INSURANCE**

 The Seller and the Buyer will each at its own cost provide for and maintain comprehensive insurance coverage to protect its own property and personnel. For the avoidance of doubt, and not in limitation of the foregoing, if there is an exposure of injury or illness under the U.S. Longshore and Harbor Workers Act or other statutes applicable to maritime employees, both Parties agree to maintain coverage for such injuries or illnesses, to include In Rem coverage, mutual Waivers of Subrogation endorsements, and to provide evidence of such insurance as applicable.

1. **NO WAIVER**

 The failure of either Party to enforce any provision of these Conditions is not to be construed as a waiver of the provision or the right thereafter to enforce each and every provision. No waiver by either Party, express or implied, of a breach of a term or condition is to be construed as a waiver of any other breach of that term or condition.

1. **SALE OF SPARE PARTS**

 Spare parts to be provided by Seller to Buyer for use in connection with the Work may be provided in accordance with a separate purchase order, but in the event such spare parts are provided pursuant to these Conditions, they will be subject to Seller’s most recent General Terms and Conditions for Sale of Spare Parts and those set forth in its quotation.

1. **ASSIGNMENT AND SUB-CONTRACTING**

 Buyer may not assign or otherwise transfer its rights or obligations hereunder without the prior written consent of Seller. No attempt to assign or transfer in violation of this provision will be valid or binding upon Seller. Seller may sub-contract all or any part of its obligations hereunder to a competent third party and may assign these Conditions to an affiliate at any time or to a non-affiliate as part of the sale of Seller’s business.

1. **GOVERNING LAW**

 This Agreement shall be interpreted in accordance with the construction thereof and shall be governed by the laws of the State of New York, USA excluding its conflict of law and choice of law rules. The Parties irrevocably consent to the non-exclusive jurisdiction of the United States District Court for the Southern District of New York in any suit action or proceeding brought by either Party under this Agreement and any matter related thereto.

1. **ENTIRE AGREEMENT**

 These Conditions supersede all prior agreements, arrangements and understandings between the Parties and constitute the entire agreement between the Parties relating to the subject matter hereof. Buyer warrants to Seller that it has not been induced to enter into these Conditions by any prior oral representation (whether innocently or negligently made) except as specifically contained herein.

1. **SEVERABILITY**

 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provisions in question will not be affected and will be enforced to the fullest extent permitted by law.

1. **CONFIDENTIALITY; OWNERSHIP OF INFORMATION**

 All drawings, specifications, data, memoranda, calculations, notes and other material or documents created under, arising out of, or furnished under this Purchase Order, including any tooling for use in performing the Work under this Purchase Order, are the property and copyright of the creating or furnishing Party, and unless otherwise provided in these Conditions, must be delivered to the creating or furnishing Party at the completion of the transactions or termination of this Purchase Order.

 All rights of title to copyright and ownership in any reports, drawings, specifications, calculations and other documents or materials developed by Seller outside this Purchase Order will remain solely with Seller.

 Each Party will take reasonable security precautions, at least as great as the precautions it takes to protect its own confidential information, but no less than reasonable care, to keep confidential all information obtained from the other pursuant to these Conditions which is marked “confidential” or the equivalent or is delivered in circumstances of confidence.

 Notwithstanding the foregoing, Buyer (or its designee) will have the right to use information (such as manuals) supplied by Seller solely for Buyer’s operation, repair and maintenance of the equipment for which the information was provided. Buyer will not duplicate or use such information for any other purpose without Seller’s prior written authorization.

 Buyer will not use Seller’s drawings, specifications and other material or documents for any use not contemplated by these Conditions, unless by agreement in writing and with appropriate compensation to Seller.

 Buyer will not reverse engineer any material, tooling, component or spare part provided or delivered to Buyer in connection with this Purchase Order

1. **SOFTWARE**

 Software, including software products and software incorporated in spare parts and other products sold by Seller, is provided under license agreement, a copy of which may be obtained from the nearest BIRD-JOHNSON PROPELLER COMPANY LLC office .

1. **GOVERNMENT CONTRACTS**

 To the extent a Purchase Order from Buyer is issued under a U.S. Government contract, the only FAR clauses that are incorporated in these Conditions are those in paragraph (e)(1) of FAR 52.212-5, Contract Terms and Conditions Required to Implement Statures or Executive Orders - Commercial Items (NOV 2020).

1. **TERMINATION**

 Seller may terminate these Conditions, and shall have no obligation to perform the Work, immediately upon the bankruptcy or insolvency of Buyer or Buyer’s breach of these Conditions. Buyer will pay the price for any Work performed on or before the date of termination. Seller is not liable for any costs, expenses, losses, damages or liabilities arising out of such termination. Termination or cancellation will not alter

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or terminate any of the Parties’ obligations under any section of these Conditions that by its nature extends beyond termination or cancellation.

**24. ANTI-BRIBERY AND CORRUPTION**

Representation, warranty and undertaking

Each party represents, warrants and undertakes to the other that neither it nor its Affiliates, directors, employees, representatives nor any other person acting on its or their behalf have engaged, or will engage, in any conduct which was or would be an offence under any of the ABC Laws (whether or not either party is subject to that ABC Law).

Inducements

Each party represents, warrants and undertakes to the other that, to the best of its knowledge, neither it nor its Affiliates, directors, employees, representatives nor any other person acting on its or their behalf have authorized, offered, promised, paid or otherwise given any Inappropriate Inducement and it will take reasonable steps to ensure that they do not authorize, offer, promise, pay or otherwise give, any Inappropriate Inducement.

Termination

Notwithstanding any other provision of this Agreement, either party may, without prejudice to any of its rights under law, contract or equity, terminate this Agreement immediately by written notice if the other party is in breach of any part of this Section 24f this Agreement, or if, at any time, the representations, warranties and undertakings given by the other party in any part of this Section 24ould not be true and accurate in all respects.

Prohibited Information

Each party agrees not to:

|  |  |
| --- | --- |
| (a)  | act in breach of any duty of confidentiality owed to any third party in the course of performing its obligations under this Agreement; and  |
| (b) Definitions  | offer or provide any Prohibited Information, whether specifically related to the subject matter of this Agreement or otherwise.  |
| “ABC Laws”  |  |  the United Kingdom Bribery Act 2010, the United States Foreign Corrupt Practices Act 1977 (15 U.S.C. Section 78dd-1, et. seq.), as amended, and any other laws relating to anti-bribery and corruption matters applicable to the subject matter of the Agreement.  |
| “Affiliates”  |  |  means, as to any person, any other person that is in Control of, is Controlled by, or is under common Control with, such person.  |
| “Control”  |  |  means the power, directly or indirectly, either to: (i) vote 50% or more of the securities having ordinary voting power for the election of directors (or persons performing similar functions) of such person; or (ii) direct or cause the direction of the management and policies of such person, whether by contract or otherwise, in relation to the Services, and “Controls” and “Controlled” will be construed accordingly.  |
| “Government Official” “Inappropriate Inducement”  |  means any person who would constitute either: (i) a “foreign public official” as defined in the UK Bribery Act 2010; or (ii) a “foreign official” as defined in the United States Foreign Corrupt Practices Act (15 U.S.C. Section 78dd-1, et. seq.), as amended.  |
|   | means any payment or thing of value or any financial or other advantage to or for the use or benefit of: 1. any Government Official; or
2. any director, officer, employee, agent or representative of any commercial organization or private individual; or
3. any other person, entity or third party intermediary while knowing or having reason to know that all or any portion of such payment, thing of value or advantage would be offered, promised, paid or given to any of the persons described in subparagraphs (i) to (ii) above,
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for the purpose of influencing any act or decision of any such person, including a decision to do or omit any act in violation of the duty of such person in order to obtain or retain business, secure any improper advantage or obtain any license, permit, approval, certificate or clearance.

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| “Prohibited Information”  |  |
|   | means any information, whether offered in written, verbal or other form, that such party is not authorized to have and use in connection with this Agreement, including, but not limited to, any information from a competitor’s confidential proposals, bid terms or contract and pricing terms.  |

1. **EXPORT COMPLIANCE**

The Parties acknowledge that any products, engines, parts, services, and/or related technology, software, or technical data (collectively “Export Controlled Item”) provided or received hereunder may be subject to government export control laws, regulations, and orders. In performing their respective obligations under this Agreement, each of the Parties will strictly comply with all applicable requirements under such laws, regulations, and orders as they may be amended from time to time. As such, each Party warrants and undertakes that it will not export or transfer, re-export or re-transfer by any means, electronic or otherwise, any Export Controlled Item without complying in all respects with the applicable export control legislation, codes of conduct, the relevant export authorization(s), guidelines, notices and/or instructions in relation to any such export or transfer of the Export Controlled Items. The receiving Party shall indemnify and hold the furnishing Party harmless for all claims, demands, damages, costs, fines, penalties, attorney’s fees, and all other expenses arising from failure of the receiving Party to comply with this clause.

1. **Economic and Trade Sanctions Compliance**

The Parties acknowledge the importance and responsibilities of full compliance with all applicable economic and trade sanctions laws, regulations, and orders administered or enforced by the U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”), the U.S. Department of State, the U.S. Department of Commerce, the United Nations Security Council, the European Union, the United Kingdom, Canada, or other sanctions authority of any relevant jurisdiction (collectively “Sanctions”). Each Party represents and warrants to the other, in respect of this Agreement, that none of the Party, , any of its subsidiaries or affiliates, to the knowledge of the Party, any director, officer or employee of the Party or any of its subsidiaries or affiliates is an individual or entity (“Person”): - i. Listed on the U.S Consolidated Screening List (“CSL”) that include, among others, Specially Designated Nationals List and the Foreign Sanctions Evaders List maintained by OFAC as well as the Denied Persons List and Entity List maintained by the U.S. Department of Commerce; ii. Located, organized or resident in a country or territory that is or whose government currently is the target of any Sanctions; iii. Directly or indirectly owned or controlled by any Person currently on any of the CSL, or is directly or indirectly owned or controlled by any Person who is located, organized, or resident in a country or territory that is, or whose government currently is, the target of any Sanctions; or iv. Currently the subject of any Sanctions investigation, or is directly or indirectly owned or controlled by any Person who is currently the subject of a Sanctions investigation; The Parties will not directly or indirectly deliver or otherwise make any Item subject to this Agreement available to a legal entity (includes any subsidiary, affiliate, joint venture partner), individual, country or territory whose government is the subject of any Sanctions or in any other manner that would result in a violation of Sanctions. Changes to sanctions or embargoes that are beyond the control of either Party that results in the inability to deliver Items as per the Agreement will constitute a Force Majeure event and hold the other Party free from any arising liabilities.

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