



**1. DEFINITIONS AND INTERPRETATIONS**

1.1 In the Conditions:

“**Competent Authority**” means the Classification Society and any governmental or regulatory authority described in the Tender;

“**Completion Date**” means the date for completion of the Works stated in the Tender or as extended by any of the express terms of the Conditions;

“**Conditions**” means these General Conditions;

“**Contract**” means the agreement between the Principal and Contractor for the execution of the Works constituted by the Contractor’s written acceptance of the Order, and any other contract or legal relationship at any time made or entered into between the Principal and the Contractor, and includes the Tender, the Specification, the Order and the Conditions;

“**Contractor**” means Suez Shipyard;

“**Claims and Costs**” means any actions, proceedings, claims, losses, costs and expenses (including legal costs and expenses on a full indemnity basis), payments, liabilities, fines, damages or other sanctions of a monetary nature (including any penalty payable in connection with any failure to pay or delay in paying any of the same);

“**Delivery**” means whichever is the earlier of: (a) completion and acceptance of the Works; (b) the Vessel leaving the Yard; and (c) the withdrawal of the Contractor’s workmen from the Vessel following termination of the Contract by the Contractor;

“**Disputes**” has the meaning ascribed to it in paragraph 17;

“**Dispute Notice**” has the meaning ascribed to it in paragraph 18;

“**Expert**” has the meaning ascribed to it in paragraph 18;

“**Force Majeure Event**” has the meaning ascribed to it in paragraph 12;

“**Order**” means the Principal’s acceptance of the Tender;

“**Owner**” means the registered owner of the Vessel;

“**Price**” means the sum stated in the Tender as the price payable to the Contractor for the execution of the Works;

“**Principal**” means the person identified as such in the Tender together with its officers, servants, agents and sub-contractors from time to time, the Representative, The Owner and the master of the Vessel;

“**Proceedings**” has the meaning ascribed to it in paragraph 17;

“**Representative**” has the meaning ascribed to it in paragraph 6;

“**Specification**” means the specification of the Works included in the Tender;

“**Tender**” means the Contractor’s priced tender to the Principal for the execution of the Works and includes the Specification;

“**Tests**” has the meaning ascribed to it in paragraph 10;

“**Termination Event**” has the meaning ascribed to it in paragraph 14;



“Vessel” means the Vessel and any part of the Vessel or any floating structure or part thereof, any cargo, machinery or equipment carried on or removed from the Vessel or structure for any purpose, and any equipment, materials, articles and things within the scope of the Works or in respect of which the Contractor executes, or is to execute, the Works;

“Works” means all services, equipment, materials, articles and things to be supplied or provided, and all works to be done, by the Contractor under the Contract; and

“Yard” means the Yard and all the other premises in Suez of the Contractor or of any sub-contractors from time to time employed by it.

1.2 In the Conditions, unless the context otherwise requires, any reference to; (a) any “person” shall be construed as a reference to any person, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) or any two or more of the foregoing; (b) the Conditions or any other agreement or document shall be construed as a reference to the Conditions or, as the case may be, such other agreement or document as the same may have been, or may from time to time be, amended, varied, novated or supplemented in a manner acceptable to the Contractor; (c) any “paragraph” or “sub-paragraph” is a reference to such paragraph or sub-paragraph of the Conditions; and (d) words importing the singular number include the plural and vice versa.

1.3 Paragraph headings are for ease of reference only and shall not affect the interpretation of the Conditions.

## **2. APPLICATIONS OF CONDITIONS**

2.1 The Conditions shall govern and be incorporated into the Contract and if there is any conflict or inconsistency between the Conditions and any other conditions, terms, representations or warranties whatsoever, expressed or implied (and whether statutory or otherwise), the Conditions shall prevail except and to the extent that any part of the Conditions may have been, or may from time to time be, specifically excluded or varied in writing and duly signed by an authorised representative of the Contractor.

2.2 The Tender does not constitute an offer by the Contractor and the Contractor reserves the right to withdraw or revise the Tender at any time prior to its acceptance of the Order.

2.3 The issue of the Order shall (without prejudice to any other manner in which acceptance of the Conditions may be evidenced) be deemed to constitute unqualified acceptance of the Conditions by the Principal.

2.4 The contractor’s acceptance of the Order shall be effective and binding on the Contractor only where such acceptance is made on the Contractor’s printed Order acceptance form duly signed by an authorized representative of the Contractor.

## **3. SCOPE AND PERFORMANCE OF WORKS**

3.1 The Works shall be carried out in accordance with applicable rules and regulations of the Competent Authorities which are published and in force at the date of the Tender.

3.2 The Principal shall: (a) at its expense duly obtain, comply with the terms of and do all that is necessary to maintain in full force and effect all consents, licenses, certificates, approvals or authorisations of, declarations to or registrations with Competent Authorities relating to the Vessel or the Works which are required to enable the Principal and the Contractor lawfully to enter into and perform their respective obligations under the Contract; and (b) produce to the Contractor from time to time on request such documents and such information as the Contractor may require to prove compliance by the Principal with its obligations under this sub-paragraph.

3.3 The Principal shall make the Vessel available to the Contractor at the time, place and in the condition stipulated in the Tender and in all respects ready to enable the Contractor to commence immediately and proceed continuously with the Works until they have been completed.

3.4 The laws, regulations, practices, rules and instructions from time to time applicable at the Yard (including, without limitation, the applicable laws and regulations of the Competent Authorities as well as the oral and written practices, rules and instructions from time to time issued, made or given by or on behalf of the Contractor) shall in all respects



apply to the Principal and the Vessel during the Vessel's stay at the Yard, and the Principal shall comply with and observe all such laws, regulations, practices, rules and instructions.

- 3.5 Without prejudice to the generality of sub-paragraph 3.4, the Works shall be carried out during normal working hours for the Yard and otherwise in accordance with the practices and rules prevailing at the Yard, and any overtime work carried out at the request of the Principal shall be subject to such practices and rules and all extra costs of work so done shall be added to the Price or paid by the Principal on an interim basis against presentation of the Contractor's invoices.
- 3.6 If any of the materials or equipment required by the Specification or otherwise under the Contract are in short supply or are unavailable at the time when they are required for use in connection with the Works, the Contractor may use other suitable materials or equipment in substitution therefor.
- 3.7 All old or superseded equipment and materials removed from the Vessel in consequence of the Works, save only for propellers and tail shafts (and any other heavy parts of machinery expressly excluded from the ambit of this sub-paragraph by written agreement between the Principal and the Contractor), shall become the property of the Contractor without compensation to the Principal.
- 3.8 The Contractor undertakes, at the request of the Principal, to modify the Specification to reflect the requirements of any new applicable rules and regulations of the Competent Authorities which are published or come into force after the date of the Tender provided that; (a) if any such modification is compulsory the Principal, upon receipt of information from the relevant Competent Authority concerning the new rules or regulations, shall transmit the same to the Contractor in writing, and the Contractor shall modify the Specification accordingly but only after the Principal shall first have agreed in writing to any alteration required by the Contractor to the Price, the Completion Date and any other terms and conditions of the Contract; and (b) if any such modification is not compulsory but the Principal desires to incorporate it into the Specification, the Principal shall so notify the Contractor and the Contractor may accept such modification if it will not adversely affect the Contractor's planning or programme in relation to the Contractor's other commitments and if the Principal shall first have agreed in writing to any alteration required by the Contractor to the Price, the Completion Date and any other terms and conditions of the Contract.
- 3.9 If the Principal desires to modify the Specification for any reasons other than those described in sub-paragraph 3.8 then, the Principal shall so notify the Contractor and the Contractor may accept such modification if it will not adversely affect the Contractor's planning or program in relation to the Contractor's other commitments and if the Principal shall first have agreed in writing to any alteration required by the Contractor to the Price, the Completion Date and any other terms and conditions of the Contract.

#### **4. TECHNICAL INFORMATION**

- 4.1 At the request of the Contractor, the Principal shall from time to time supply free of charge to the Contractor all such technical information and documentation (including, but not limited to, drawings, models and descriptions of the Vessel) as the Contractor may require in connection with the preparation for and execution of the Works.
- 4.2 The Principal shall ensure that the execution of the Works in accordance with the Principal's requirements (whether the same are contained in or evidenced by the Contract or any technical information and documentation supplied by the Principal pursuant to sub-paragraph 4.1 or otherwise) shall not infringe any right of any third party and the Principal shall indemnify the Contractor and hold it harmless against all Claims and Costs whatsoever or howsoever arising which may be brought against the Contractor or incurred or suffered by it as a direct or indirect result of the carrying out of any Works which involve any infringement or alleged infringement of any rights of any third party.

#### **5. INSURANCE**

- 5.1 Throughout the period during which the Vessel is at the Yard or otherwise is being worked on pursuant to the Contract, the Principal shall: (a) properly and adequately insure the Vessel against fire and all usual marine risks, war risks and protection and indemnity risks upon such terms (as to amount and otherwise), through such first class brokers and with such first class insurance companies, underwriters, war risks and protection and indemnity associations as may be approved in writing by the Contractor provided that such approval shall not be unreasonably withheld; and (b) produce to the Contractor from time to time on request such documents (including, but not limited to, insurance policies, certificates of entry and receipts) and such information as the Contractor may require to prove compliance by the Principal with its obligations under this sub-paragraph.



- 5.2 The Contractor undertakes to have a valid ship repairer's liability insurance to cover such loss and damage for which the Contractor may be held liable under the Contract but the Contractor is not obliged under the Contract to take out any other insurance.

**6. PRINCIPAL'S REPRESENTATIVE**

- 6.1 The Principal shall appoint a representative (the "Representative") who shall be fully authorized on behalf of the Principal promptly, irrevocably and unconditionally to approve all drawings and documents prepared and produced by the Contractor, to agree to extra work or to cancellation of items of work, to attend the Tests and, where necessary, to countersign a test protocol, to accept the Works and to sign a protocol of acceptance, and to approve and, where necessary, to countersign Contractor's invoices, and to make all such other decisions, to do all such other things and to execute all such other documents as may be required of the Principal in respect of the Works.
- 6.2 If the Principal shall fail to appoint (or maintain the appointment of) the Representative, the master of the Vessel shall be deemed to have full authority to represent and bind the Principal in relation to the matters described in sub-paragraph 6.1.
- 6.3 The Representative shall attend the Yard at the sole risk and expense of the Principal, and the Contractor shall be under no liability whatsoever to the Principal or the Representative for any loss or damage whatsoever suffered by the Representative including, but not limited to, the death of or any bodily injury to the Representative, or any damage to or loss or destruction of any property of the Representative, other than for death or bodily injury directly resulting from the negligence of the Contractor.
- 6.4 Except to the extent that the Contractor shall be liable under sub-paragraph 6.3 the Principal shall indemnify the Contractor and hold it harmless against any Claims and Costs whatsoever and howsoever arising which may be brought against the Contractor or incurred or suffered by it as a direct or indirect result of the Representative's attendance at the Yard or supervision of any part of the Works.

**7. PRINCIPAL'S WORK**

- 7.1 Without the prior written permission of the Contractor the Principal shall not be entitled to have any work carried out on the Vessel (other than by the Contractor) while the Vessel is at the Yard.
- 7.2 The Principal shall indemnify the Contractor and hold it harmless against all Claims and Costs whatsoever or howsoever arising which may be brought against the Contractor or incurred or suffered by it as a direct or indirect result of any work carried out by the Principal or any officers, servants, agents or sub-contractors of the Principal.

**8. PRICE**

- 8.1 The Price covers and relates only to the Works specified in the Tender as confirmed by the Principal's Order and the Contractor's written acceptance of the Principal's Order.
- 8.2 The Price is calculated on an ex-works basis and is exclusive of (a) any value added tax or other applicable sales tax or duty and (b) any import or export costs and expenses, customs duties and taxes, storage, transportation and towage costs, harbor, port and Pilotage dues and disbursements, or any other tax, duty, cost, expense, due, disbursement, levy, impost or any other charge of a similar nature, any and all of which shall be for the account of the Principal.

**9. TERMS OF PAYMENT**

- 9.1 Subject to sub-paragraph 9.3 the Price is due and payable at Delivery.
- 9.2 Any credit or installment arrangement allowed to the Principal may be changed or withdrawn by the Contractor at any time without the need for the Contractor to give any prior notice or any reason to the Principal.



- 9.3 At any time, and from time to time, the Contractor may require the Principal to pay any part of the Price on presentation of interim invoices in order to cover costs incurred or to be incurred in connection with the Contract or the Works, and each such invoice shall be due and payable on presentation.
- 9.4 In the event of failure by the Principal to pay on the due date for payment thereof, or in the case of any sum payable on demand the date of demand therefor, any amount payable by it under or in connection with the Contract or the Conditions, the Principal will pay to the Contractor interest on such amount from the date of such failure to the date of actual payment (both before and after any relevant judgement or winding up of the Principal) at the rate of 1.5% per month, and interest payable by the Principal under this sub-paragraph shall be compounded at such intervals as the Contractor shall determine and shall be payable on demand.
- 9.5 All payments to be made by the Principal under or in connection with the Contract of the Conditions shall be made in the currency in which the Price was quoted and in immediately available funds on the due date for payment thereof, or in the case of any sum payable on demand, the date of demand therefor, to such bank account as the Contractor may designate for this purpose.
- 9.6 The Principal's obligation to make all payments required to be made by it in connection with the Contract or Conditions shall be absolute and unconditional irrespective of any matter or contingency whatsoever including, but not limited to, any right of set-off, counterclaim, recoupment, abatement, discount or analogous deduction or defence, or any failure by the Principal to obtain or maintain any consent, licence, certificate, approval, authorisation, declaration or registration required to be obtained or maintained by it pursuant to sub-paragraph 3.2.

## **10. TESTS AND ACCEPTANCE OF WORKS**

- 10.1 The Contractor shall carry out such tests and trials (the "Tests") specified in the Contract (or otherwise agreed between the Contractor and the Principal) as may be necessary to confirm that the Works have been completed in accordance with the Specification.
- 10.2 The Contractor shall give at least one (1) day's notice to the Representative of the date, time and place of any tests to be carried out pursuant to sub-paragraph 10.1 and when due notice has been given, the failure by the Representative to attend such Tests shall be deemed to be a waiver of the Principal's right to attend such Tests.
- 10.3 The performance of all Tests shall be at the risk (subject to sub-paragraph 13.1) and expense of the Principal who shall from time to time on request or (as the case may be) demand of the Contractor: (a) supply an appropriate number of competent and suitably qualified personnel to operate the Vessel during Tests in accordance with the Contractor's instructions; (b) reimburse the Contractor for all costs and expenses incurred by it in connection with Tests (including, but not limited to, the costs of all fuel, oil and other consumables used in relation to Tests); and (c) indemnify the Contractor against and hold it harmless from all Claims and Costs whatsoever or howsoever arising which may be brought against the Contractor or incurred or suffered by it as a direct or indirect result of performing any tests.
- 10.4 If the Representative discovers any alleged material non-conformity in any part of the Works, it shall immediately notify the Contractor in writing of such alleged material non-conformity.
- 10.5 If the Contractor accepts a notice given by the Representative under sub-paragraph 10.4, the material non-conformity shall be described in a test protocol to be signed by the Contractor and the Representative and, thereafter, the Contractor shall at its cost remedy any such non-conformity before Delivery.
- 10.6 If the Contractor does not accept a notice given by the Representative under sub-paragraph 10.4, the dispute shall be resolved in accordance with paragraph 17 or, as the case may be, paragraph 18.
- 10.7 On correction of any material non-conformity listed in the test protocol or, if no material non-conformity is alleged or maintained by the Representative, on completion of the Tests, the Principal shall be bound to accept the Works, take delivery of the Vessel and sign a protocol of delivery in terms acceptable to the Contractor.
- 10.8 The Principal acknowledges and agrees that Delivery shall be conclusive proof that, for the purposes of the Contractor's obligations and liabilities under the Contract, the Works at that time have been completed fully in



accordance with the Contract and save only as provided in paragraph 11 the Contractor shall be under no liability whatsoever to the Principal after Delivery.

- 10.9 Upon Delivery the Principal shall, at its risk and expense, remove from the Yard any equipment and materials belonging to the Principal or to the Vessel and if any such equipment and materials have not been removed within thirty (30) days from Delivery the Principal shall be deemed to have waived its rights to the same whereupon they shall become the property of the Contractor without compensation to the Principal.

## **11 GUARANTEE**

- 11.1 Subject to the other provisions of this paragraph 11, the Contractor undertakes to remedy any defect in any part of the Works which arises directly from any defective materials supplied or from any defective workmanship performed by the Contractor provided that the Contractor shall be under no liability whatsoever for any defect arising in any manner out of the manufacture, design or suitability of such materials or the design or suitability of such workmanship.
- 11.2 Notice of complaint in respect of any defective materials supplied by the Contractor or any defective workmanship of the Contractor shall be given by the Principal immediately upon discovery of the relevant defect and prior to Delivery.
- 11.3 Upon Delivery the Contractor shall be discharged from all liability for any and all defects except for any defects for which the Contractor is liable under sub-paragraph 11.1 existing at the time of Delivery which the Principal could not reasonably have discovered before or at the time of Delivery and provided always that notice of complaint in respect of any such defects is given in writing to the Contractor immediately upon discovery of such defects and, in any event, within three (3) months of Delivery.
- 11.4 Where liability is accepted by the Contractor under sub-paragraph 11.1 the Contractor's only obligation shall be to remedy the relevant defect at the Yard or, in accordance with the terms and subject to the conditions of sub-paragraph 11.6, to pay the cost of necessary remedial work carried out elsewhere and in particular, but without limitation, the Contractor shall be under no liability whatsoever for any loss of whatsoever in nature, whether direct or indirect (including, but not limited to, any loss of time, loss of profit, loss of revenue or earnings, loss of use of the Vessel, loss of contract, demurrage, loss of goodwill or reputation, loss resulting from liability of the Principal to any other person or any other indirect, special or consequential loss whatsoever) and howsoever arising suffered or sustained by the Principal by reason of any of the defects specified in sub-paragraph 11.1 or any other defects or alleged defects, or due to repairs or other works undertaken to remedy any such defects or alleged defects.
- 11.5 The Contractor shall not be responsible for any defect in any part of the Works which may subsequent to Delivery have been in any way remedied or repaired by any other contractor, unless such contractor has been appointed by the Contractor, or for any defect which has been caused or aggravated by any omission or improper use or maintenance of the Vessel on the part of the Principal or any third party, or by ordinary wear and tear, or by any other event or circumstance whatsoever and howsoever arising beyond the absolute control of the Contractor.
- 11.6 In any case where the Contractor is liable under this paragraph 11 to remedy any defect, the Principal shall be entitled to have the necessary remedial work effected at any other suitable yard or workshop if it would mean considerable inconvenience for the Principal to bring the Vessel to the Yard and provided that: (a) the Principal shall first, but in any event as soon as possible, give the Contractor advance written notice of the nature of the proposed remedial work and of the time and place at which such work will be carried out which is sufficient to ensure that the Contractor has an adequate opportunity to verify and approve by its own or an appointed representative the nature and extent of the alleged defect and of the proposed remedial work; and (b) the Contractor's liability in such a case shall be limited to the payment of the actual costs of the necessary remedial work and shall in no circumstances exceed the cost of such work if it had been performed by the Contractor at the Yard.
- 11.7 In any case to which this paragraph 11 applies, the Vessel shall be taken at the Principals' risk and expense to the place selected for the necessary remedial work and there delivered in all respects ready for such work to be commenced immediately and proceeded with continuously until completed.
- 11.8 When any remedial work required to be done under this paragraph 11 has been completed the Contractor shall be under no other or further liability whatsoever for the relevant defect.



## **12 FORCE MAJEURE**

- 12.1 The Contractor shall not be liable to the Principal for any loss or damage whatsoever which may be suffered or sustained by the Principal as a direct or indirect result of the Contractor failing to complete the Works by the Completion Date or otherwise being prevented, hindered or delayed, directly or indirectly, from or in performing any of its obligations under the Contract by any Force Majeure Event.
- 12.2 Upon the occurrence of any Force Majeure Event (a) the Contractor's obligations under the Contract shall be suspended for so long as the Force Majeure Event continues and the Completion Date shall be extended for a period equivalent to such suspension, (b) the Contractor shall notify the Principal in writing of the occurrence of the Force Majeure Event, the date of commencement of the Force Majeure Event and of the effect of the Force Majeure Event on its ability to perform its obligations under the Contract and (c) subject to sub-paragraph 12.3, as soon as reasonably practicable after the cessation of the Force Majeure Event the contractor shall notify the Principal in writing of the cessation of the Force Majeure Event and shall resume performance of its obligations under the Contract.
- 12.3 If the Force Majeure Event continues for more than one (1) month after the commencement of the Force Majeure Event or if in the reasonable opinion of the Contractor the occurrence of any Force Majeure Event renders the completion of the Works impossible then the Contractor may at any time by notice to the Principal terminate the Contract without any liability on the part of the Contractor.
- 12.4 If the Contract is terminated under sub-paragraph 12.3 the Principal shall pay to the Contractor on demand the amount determined by the Contractor and certified by it to the Principal to be the aggregate of: (a) the value of the Works executed prior to the date of termination; (b) the cost of materials ordered for the Works or for use in connection with the Works which have been delivered to the Contractor or of which the Contractor is legally liable to accept delivery, on the basis that such materials shall become the property of the Principal when paid for by the Principal; and (c) the amount of any other expenditure which was reasonably incurred by the Contractor in the expectation of completing the whole of the Works.
- 12.5 For the purposes of this paragraph 12, "**Force Majeure Event**" means any event or circumstance of any kind whatsoever which is beyond the absolute control of the Contractor and whenever occurring or arising (whether before or after the time when the Works should have been completed or Delivery should have occurred) including, but not limited to, any of the following events and circumstances: (a) any act or omission on the part of the Principal; (b) any act or omission on the part of the Contractor necessary for the safety or preservation of any persons or the Vessel or the Yard; (c) any epidemic or abnormal sickness, difficulty or increased expense in obtaining workers, equipment, materials or transport or any other circumstance affecting the supply of any other articles or things required in connection with the Works, shortage of labour, strike, lock-out, labour dispute or other industrial disturbance (whether lawful or not), irregularity of abstention from work, cessation or restriction of work or output by any of the Contractor's workmen or any of the workmen employed by sub-contractors, suppliers or transport authorities, whether partial or general, affecting the quality, quantity or delivery of any materials, equipment or services in connection with the Works by short deliveries, defective quality or defects in materials or equipment which would not have been detected by the Contractor using reasonable care, by defective forgings, castings, mechanical processing of parts, whether supplied by the Contractor or its sub-contractors or suppliers; (d) any war declared or undeclared, threat of war, warlike operation, terrorist act, blockade, embargo, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, malicious damage, act of vandalism; (e) any act of God, violent storm, lightning, cyclone, tidal wave, flood, earthquake, landslide or other environmental problem or natural disaster; (f) any fire, explosion, total or partial failure or breakdown of plant, machinery or equipment; or (g) any restriction as to import or export, delay in approval of plans or any other matters where such approval is required to be given by the Principal or others, delay caused by any Competent Authority or other body, compliance with any law, directive, order, regulation, direction, legislation or governmental intervention or restraint (whether lawful or not).



**13**      **LIABILITY**

13.1      The Contractor shall be under no liability whatsoever to the Principal for any loss of whatsoever nature, whether direct or indirect, (including, but not limited to, any loss of time, loss of profit, loss of revenue or earnings, loss of use of the Vessel, loss of contract, demurrage, loss of goodwill or reputation, loss resulting from liability of the Principal to any other person or any other indirect special or consequential loss whatsoever) and howsoever arising other than for any physical loss or damage to the Vessel or property of the Principal which is proved to have been caused directly or by negligence of the Contractor, in which case the contractor's aggregate liability for each incident or series of incidents giving rise to a claim or claims shall in no circumstance exceed the sum of U.S. \$1,000,000.00 and shall be the lowest of: (a) the cost of necessary remedial work; and (b) the value of that part or parts of the Vessel or such property to which the claim relates at the time of the loss or damage.

Under special circumstances however, the contractor reserves the right to make out for the Owner's account and subject to agreement with Owner an additional insurance covering the Contractor's liability, if any, for damage to vessel during the repairs.

13.2      Without prejudice to sub-paragraphs 10.8, 11.2 and 11.3, the Contractor shall be under no liability whatsoever to the Principal in respect of any claim of whatsoever nature arising out of or in connection with the Contract, and the Principal shall not be entitled to commence any suit, action or proceedings whatsoever in respect of any such claim, unless the Principal notifies the Contractor in writing of the claim immediately after the Principal becomes aware (or should reasonably have become aware) of the facts or matters giving rise to the claim and, in any event, within six (6) months of Delivery.

13.3      Except to the extent and solely for the amount that the Contractor would be liable to the Principal under sub-paragraph 13.1, the Principal shall indemnify the Contractor and hold it harmless against all Claims and Costs whatsoever or howsoever arising which may be brought against the Contractor or incurred or suffered by it as a direct or indirect result of carrying out any of the Works.

13.4      Except as otherwise expressly provided in the Conditions: (a) at all times the Vessel shall be at the entire risk, liability and responsibility of the Principal; and (b) the Contractor makes no condition, term, representation or warranty, expressed or implied (an whether statutory or otherwise) in connection with or in relation to the Works and, accordingly, the Principal irrevocably and unconditionally waives the benefit of any such condition, term, representation or warranty.

**14.**      **TERMINATION EVENTS**

14.1      There shall be a Termination Event if:

- (a)      the Principal fails to pay any sum payable by it under the Contract within five (5) days of the Contractor notifying the Principal of such non-payment thereof, or in the case of sums payable on demand, within five (5) days of demand; or
- (b)      the Principal at any time defaults in the due performance or observance of any of its obligations under the Contract other than those referred to in sub- paragraph 14.1 (a) and, only if such default is capable of remedy, the Principal fails to remedy such default to the satisfaction of the Contractor within a period of fourteen (14) days after receipt by the Principal of notice from the Contractor requiring the same to be remedied and, in any such case, the Contractor reasonably considers such failure is or could become materially prejudicial to the interests, rights or position of the Contractor; or
- (c)      any representation, warranty or statement made or deemed to be made to the Contractor by or on behalf of the Principal or in any certificate, statement, notice or other document given, made or furnished to the Contractor pursuant to or in connection with the Contract proves to be untrue or incorrect in any material respect (as at the date when, or when deemed to have been given, made, furnished) in a manner which is or could become materially prejudicial to the interests, rights or position of the Contractor; or
- (d)      any consent, license, certificate, approval, authorization, declaration or registration required to be obtained or maintained by the Principal to enable the Principal to enable the Principal or the Contractor to lawfully enter into and perform their respective obligations under the Contract is modified in a manner unacceptable to the



Contractor or is revoked, suspended, withdrawn or terminated, or expires and is not renewed, or otherwise ceases to be in full force and effect and within fourteen (14) days of the occurrence thereof such event is not remedied to the satisfaction of the Contractor, and the Contractor reasonably considers the such failure is or could become materially prejudicial to the interests, rights or position of the Contractor; or

- (e) a resolution is passed or an order is made for the winding-up of the Principal (otherwise than for the purposes of an amalgamation or reconstruction previously approved in writing by the Contractor), or the Principal becomes subject to an administration order, or a receiver, administrative receiver or administrator is appointed over or an encumbrancer takes possession of the Principal's property or assets, or the Principal is dissolved, or the Principal enters into an arrangement or composition with its creditors, or the Principal takes or suffers any similar or analogous action in consequence of debt, or the Principal ceases or threatens to cease to carry on its business, or the Principal becomes insolvent, or the Principal ceases to be able to pay its debts, as they fall due; or
- (f) the Principal repudiates the Contract or does or causes to be done any act or thing evidencing an intention to repudiate the Contract; or
- (g) any other circumstances arise or events occur which give reasonable grounds in the opinion of the Contractor for belief that the Principal may not (or may be unable to) perform or comply with its obligations under the Contract.

14.2 A Termination Event shall constitute (as the case may be) either a repudiatory breach of the contract, or breach of condition by the Principal under the Contract, or an agreed termination event, and on or at any time after the occurrence of a Termination Event the contractor shall be entitled (but not bound and without prejudice to any rights, powers and remedies provided to the Contractor by law) to exercise any of the rights conferred on it in paragraph 15.

## **15 CONTRACTOR'S RIGHTS FOLLOWING A TERMINATION EVENT**

- 15.1 At any time after a Termination Event shall have occurred and be continuing, the Contractor may by notice to the Principal; (a) (without prejudice to its right to terminate the Contract under sub-paragraph 15.1(b)) suspend the performance of all or any of its obligations under the Contract, in which case the Completion Date shall be extended for a period equivalent to the continuation of the Termination Event; or (b) terminate the Contract without any liability on the part of the Contractor.
- 15.2 Upon termination of the Contract pursuant to sub-paragraph 15.1: (a) all sums from time to time due and to become due to the Contractor from the Principal under the Contract shall become immediately due and payable; (b) the Contractor shall be relieved of all of its obligations under the Contract; and (c) the Principal shall indemnify the Contractor and hold it harmless against all Claims and Costs whatsoever and howsoever arising brought against the Contractor or incurred or suffered by it in connection with such termination.
- 15.3 In the event of the termination of the Contract pursuant to sub-paragraph 15.1, the Contractor shall be entitled to complete or not to complete the Works as it deem fit, and to offer the Vessel for sale by public auction or by private sale or otherwise at the best price reasonably obtainable by the Contractor (with or without advertisement and with or without reserve), for cash or upon credit, in the Contractor's discretion, and on terms that any such sale may be held or conducted at such place and at such time as the Contractor may determine but so that the Principal will have not less than seven (7) days prior notice of such sale.
- 15.4 In the event of the sale of the Vessel pursuant to sub-paragraph 15.3, the sale proceeds actually received by the contractor will be applied: (a) firstly, in or towards payment of the amount determined by the Contractor and certified by it to the Principal to be the aggregate of all the Contractor's costs and expenses in connection with the sale including, but not limited to, brokers' commissions, marketing expenses, court fees and legal costs, laying-up and insurance costs, stamp duties, registration fees, taxes, costs and expenses incurred in moving or maintaining the Vessel, in completing the Works or in carrying out any other necessary works or modifications to the Vessel, and any other costs and expenses incurred in respect of the sale of the Vessel; and (b) secondly, in or towards the payment of the amount determined by the Contractor and certified by it to the Principal to be the aggregate of all sums due and payable to the Contractor under or in connection with the Contract including, but not limited to, any



sums payable under indemnity provisions in favor of the Contractor, and any damages or other compensation (whether for loss of profit or otherwise) payable to the Contractor in respect of the termination of the Contract.

- 15.5 If the sale proceeds actually received by the Contractor exceed the total amount to which such proceeds are to be applied pursuant to sub-paragraph 15.4, the contractor shall pay to the Principal the amount of such excess.
- 15.6 If the sale proceeds, actually received by the contractor are insufficient to pay the total amount to which such proceeds are to be applied pursuant to sub-paragraph 15.4, the Principal shall upon demand of the contractor, pay to the Contractor the amount of such deficiency.

## **16 GENERAL**

- 16.1 The Principal acknowledges and agrees that no officer, servant, agent or sub-contractor of the Contractor shall in any circumstances whatsoever be under any liability whatsoever to the Principal for any loss, damage or delay of whatsoever kind arising or resulting directly or indirectly from any act, neglect or default on its part while acting in the course of or in connection with its employment and, without prejudice to the generality of the foregoing, every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, defence, immunity and indemnity of whatsoever nature applicable to the Contractor or to which the Contractor is entitled hereunder shall also be available and shall extend to protect and indemnify every such officer, servant, agent or sub-contractor of the Contractor acting as aforesaid and for the purpose of all of the foregoing provisions of this sub-paragraph 16.1 the contractor is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all persons who are or might be its officers, servants, agents, or sub-contractors from time to time and all such persons shall to this extent be or be deemed to be parties to the Contract.
- 16.2 The Contractor shall have a general, as well as a particular, lien on the Vessel and on all property owned by the principal in the contractor's possession, custody or control for the whole or part as the case may be of any amount due to the contractor at any time from the Principal under or in connection with the Contract.
- 16.3 The Principal shall, from time to time on demand of the Contractor, indemnify the Contractor against and hold it harmless from all Claims and Costs whatsoever and howsoever arising which may be brought against the Contractor or incurred or suffered by it in connection with the preservation and/or enforcement of any of the rights, powers and remedies of the Contractor under the Contract.
- 16.4 The Principal hereby: (a) irrevocably appoints the Contractor its attorney for and on behalf of the Principal in its name and as its act and deed to do all acts and things and to execute all documents which the Principal itself could do in reference to the Works or in reference to any of the other matters dealt with in the contract, and to execute and deliver to any purchaser of the Vessel from the Contractor in exercise of its powers under sub-paragraph 15.3, a bill of sale or other assurance in respect of the Vessel; and (b) agrees that the exercise by the Contractor of this power shall be conclusive evidence of its right to exercise the same, provided always that the Contractor shall not exercise the power contained in this sub-paragraph unless and until a Termination Event shall have occurred.
- 16.5 None of the rights and obligations of the principal under the Contract may be assigned or transferred in whole or in part without the prior written consent of the contractor.
- 16.6 The Contractor may sub-contract any part of the Works.
- 16.7 Time shall be of the essence in relation to the performance by the Principal of each and every one of its obligations under the Contract.
- 16.8 No failure or delay on the part of the Contractor in exercising any power, right or remedy under the Contract or in relation to the Vessel shall operate as a waiver thereof nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise of any such right, power or remedy or the exercise of any other right, power or remedy.
- 16.9 If any term or condition of the Contract is held to be illegal, invalid or unenforceable, whether in whole or in part, such illegality, invalidity or unenforceability shall not prejudice the effectiveness of the remainder of the Contract and each other term and condition or part thereof shall be legal, valid and enforceable to the fullest extent permitted by law.



- 16.10 The rights, powers and remedies conferred on the Contractor by the Contract are cumulative, may be exercised as often as the Contractor thinks fit and are in addition to, and are not exclusive of, any rights, powers and remedies provided by law.
- 16.11 Save where expressly otherwise provided in the contract, any certificate or determination by the contractor (including, but without limitation, any certificate or determination contained in or evidenced by any invoice issued by the Contractor) as to any amount payable under the contract shall, in the absence of manifest error, be conclusive and binding on the Principal.
- 16.12 No amendment to or other variation of the Contract shall be valid unless it is in writing and signed by a duly authorised representative of each of the Contractor and the Principal.
- 16.13 The tender, the Specification and all drawings, designs, specifications and other information and documentation submitted by the Contractor shall be treated as confidential and shall not be disclosed to any third party without the Contractor's prior written consent or used by the Principal other than for the purposes expressly authorized by the Contractor.
- 16.14 The Contractor, its officers, servants, agents or sub-contractors shall design any items for the Principal for use in or in connection with the Works then any copyright or design rights created in relation to such items shall vest in the Contractor, and the Principal will, at the request of the Contractor, from time to time do or procure the doing of all such acts and execute or procure the execution of all such documents as may, in the reasonable opinion of the Contractor, be necessary to secure vesting of title to such copyright or design rights in the Contractor.
- 16.15 Any notice or other communication under or in connection with the Contract shall be in writing in the English language and may be delivered personally or sent by air mail or by telefax or by telex to the address, telefax number or telex number for each party specified in the Contract.
- 16.16 In the absence of evidence of earlier receipt, any notice or other communication shall be deemed to have been given: if delivered personally, when left at the appropriate address of the addressee; if sent by air mail, seven (7) days after posting it; if sent by telefax, on completion of its transmission provided the same is received in a complete and fully legible condition; and if sent by telex when the proper answer-back is received.
- 16.17 If the customer fails to get the vessel in or out of the dock on the fixed time he shall pay the docking rate according to DWT for first or last day. The shipyard reserves the full right to clear the dock for the vessel and collect charges and fees besides all other consequence related cost to this case.

**17. GOVERNING LAW AND JURISDICTION**

- 17.1 The contract shall be governed by, and construed in accordance with the laws of and applicable in Egypt.
- 17.2 The principal hereby irrevocably agrees for the benefit of the Contractor that the Civil Courts in Egypt shall have exclusive jurisdiction to hear and determine any suit, action or proceedings, and to settle any disputes, which may arise out of or in connection with the Contract (respectively, "Proceedings" and "Disputes") and for such purposes, irrevocably submits to the jurisdiction of such courts.
- 17.3 The Principal hereby irrevocably waives any objection which it might at any time have to the courts referred to in sub paragraph 17.2 being nominated as the forum to hear and determine any Proceedings and to settle any Disputes, which may arise out of or in connection with the Contract and agrees not to claim that any such courts is not a convenient or appropriate forum.
- 17.4 The submission to the jurisdiction of the courts referred to in sub-paragraph 17.2 shall not (and shall not be construed so as to) limit the right of the Contractor to take Proceedings against the Principal in any other court of competent jurisdiction, nor shall the taking of Proceedings by the Contractor in any one or more jurisdictions preclude the Contractor from taking Proceedings in any other jurisdiction (whether concurrently or not) if and to the extent permitted by applicable law.



**18. REFERENCE TO EXPERT**

- 18.1 In the event of any dispute giving rise to technical issues purely of fact (including without limitation, any dispute relating to questions as to the existence, degree or extent of any alleged defects relating to any part of the Works), either party may give a notice that a dispute (a “Dispute Notice”) to the other party and if the parties have not resolved the dispute within seven (7) days of the Dispute Notice, the following provisions of paragraph 18 will apply.
- 18.2 Either party may refer the dispute to an independent person agreed by the parties or in default of agreement within fourteen (14) days of the Dispute Notice, an independent person, experienced as a Marine Surveyor, nominated by the Arbitration Committee for the time being of the Egyptian Chamber of Commerce, (the “Expert”) with a request that the Expert make a report on the technical issues of fact in dispute within eight (8) days of receiving the reference.
- 18.3 In any reference, the Expert shall act as an expert and not as an arbitrator.
- 18.4 The costs and expenses of the Expert shall be agreed by the Arbitration Committee and shall be borne equally by the Principal and the Contractor, and shall be deposited in advance at Egyptian Chamber of Commerce.
- 18.5 The conclusions of the Expert’s report do not constitute a judgement on matters of law.