



These Terms and Conditions apply to all Contracts for purchase of Products and/or Services and/or the hire of Equipment entered into by James Fisher and Sons plc or any of its subsidiaries or related companies.

Attention is drawn in particular to clause 6, which contains warranties and indemnities in the Company's favour in certain circumstances.

## 1. Definitions

In these Terms and Conditions, unless the context otherwise requires:

**"Company"** means James Fisher and Sons plc or any of its subsidiaries or related companies.

**"Company's Address"** means Fisher House, PO Box 4, Barrow-in-Furness, Cumbria, LA14 1HR or the usual place of business of any subsidiary or related company within the James Fisher Group.

**"Completion Date"** means the date specified in the Purchase Order by which the Supplier will fully and satisfactorily complete the Service(s), and/or deliver the Equipment or the Products to the relevant address by the Delivery Date.

**"Contract"** means the agreement between the Company and the Supplier, whereby the Supplier sells or supplies Products or Equipment or provides a Service to the Company, incorporating these Terms and Conditions.

**"Delivery Date(s)"** means the date or dates specified in the Purchase Order for the Supplier to deliver the Products or Equipment.

**"Equipment"** means the equipment, plant, machinery, tools, parts and accessories, including any instalment, part or combination of same, which the Company is to hire from the Supplier, and/ or the Supplier is to provide Services in respect of, in accordance with the Contract.

**"Hire Period"** means the period from the time the Equipment is delivered by the Supplier to the Company until the time the Equipment is made available by the Company for collection by the Supplier at Company's Address or other such address as may be agreed in Writing.

**"including"** means without limitation.

**"Losses" or "Claims"** includes all actions, causes of action, claims, demands, proceedings, damages, awards, payments, debts, losses, costs, expenses (including legal or professional expenses), penalties, fines, compensation or other liabilities whether direct, indirect, consequential or otherwise including loss of profit, business, turnover or market share, and interest thereon.

**"Party"** means each of the Company and the Supplier and **"Parties"** shall be construed accordingly.

**"Price"** means the charge made by the Supplier for the provision of Services, sale of Products or hire of Equipment as further defined in the Contract.

**"Product(s)"** means any goods, materials, equipment, machinery, products or articles of whatsoever nature, which the Supplier is to sell to the Company, or provide any Services in respect of, under the Contract.

**"Purchase Order"** means the written instruction issued by the Company to the Supplier setting out the requirements of the Company for the purchase of Products and/or Services and/or the hire of Equipment.

**"Quotation"** means the Supplier's quotation for the provision of Services, sale of Products and/or hire of Equipment.

**"Service(s)"** means any services or work provided by the Supplier to the Company under the Contract including the provision of any consultancy or advisory services, research or design services, or the service, maintenance, refurbishment or provision of qualified operators for the use or operation of the Products or Equipment.

**"Supplier"** means any person, firm, company, partnership, competent authority or other business entity engaged in supplying Services, hiring Equipment or providing Products to the Company under the Contract.

**"Terms and Conditions"** means the Terms and Conditions set out in this document and any other terms and conditions agreed pursuant to clause 2.1.

**"Writing"** means any form of written communication including electronic mail ("Email") where the parties have agreed either expressly or by a course of dealing to communicate by Email and have provided each other with correct Email addresses accordingly, save that any Email shall take effect only when received by the recipient.

## 2. Application

- 2.1 All business conducted by the Supplier with the Company, including any Contracts, Purchase Orders, Quotations or pre-contractual negotiations, shall be subject to these Terms and Conditions to the exclusion of any and all other terms and conditions, including any standard or general terms and conditions of purchase, sale, hire or for services confirmed or referred to in any Quotation or acknowledgement from the Supplier, except where the Parties have identified or incorporated mutually agreed special conditions into a Purchase Order to modify, supplement or amend these Terms and Conditions ("Special Conditions"). Such Special Conditions shall apply equally with these Terms and Conditions but in the event of a conflict or any ambiguity between these Terms and Conditions and the Special Conditions, the Special Conditions shall prevail.
- 2.2 Any and all statements, warranties, representations, advice or recommendations made or given by the Company during negotiations prior to the conclusion of a Contract are not binding unless incorporated into the Contract in Writing and signed by both parties.
- 2.3 The headings in these Terms and Conditions are for convenience only and shall not affect their interpretation.
- 2.4 If any provision of these Terms and Conditions is held by any competent court, tribunal or authority to be invalid or unenforceable in whole or in part the validity of the remainder of the provision and all other remaining provisions of these Terms and Conditions shall not be affected thereby.
- 2.5 A Contract shall be formed when the Supplier accepts the Company's Purchase Order subject to these Terms and Conditions.
- 2.6 The Supplier will sell Products and/or hire Equipment and/or provide Services to the Company and the Company will pay the specified Price, in accordance with the Contract.



**3. Performance of Contract**

- 3.1 Unless otherwise agreed in Writing or specified in the Purchase Order, the place of performance of the Contract, including any delivery of Products or Equipment or where any Services are to be provided, shall be the Company's Address. Unless otherwise agreed in Writing, it is the Supplier's obligation and risk to deliver any Products or Equipment the subject of the Contract to the Company's Address or any other address the Company may nominate.
- 3.2 Where the Supplier agrees to sell Products or hire Equipment to the Company, it is the essence of the Contract that the Supplier will deliver any Products or Equipment to the relevant address by the Delivery Date within normal office hours.
- 3.3 Where the Supplier agrees to provide a Service to the Company, it is the essence of the Contract that the Supplier will complete the Service by the Completion Date.
- 3.4 The Supplier must notify the Company immediately of any circumstances whatsoever which might cause non-compliance with the Completion Date and/or the Delivery Date(s).
- 3.5 The Supplier shall provide the Company in good time with any instructions or other information required to enable the Company to accept performance of the Services and/or delivery of the Products or Equipment.
- 3.6 The Products or Equipment shall remain at the risk of the Supplier until delivery to the Company is complete (including any off-loading or stacking), when ownership, where applicable, of the Products or Equipment shall pass to the Company.

**4. Price**

- 4.1 The Price for the provision of Services, purchase of Products or hire of Equipment shall be that agreed between the parties and confirmed in Writing by the Company or specified in the Purchase Order.
- 4.2 Unless otherwise specified, the Price for any Services, Products or Equipment provided by the Supplier shall be inclusive of any and all costs, charges or taxes relating to storage, loading, carriage, unloading, delivery and insurance of any Products or Equipment or any licence fees, duties, local taxes or additional costs of such nature.
- 4.3 The Company shall not accept any variation of the Price or any additional charges from the Supplier unless agreed in Writing by the Company.

**5. Invoicing and Payment**

- 5.1 The Supplier will issue to the Company an invoice or invoices for the Price of any Services, Products or Equipment at the intervals agreed in the Contract, or in the absence of such terms, following the Completion Date.
- 5.2 Unless otherwise agreed, the Company will pay undisputed invoice(s) within sixty (60) days of receipt of the invoice.
- 5.3 The Company shall have the right to set-off in law or equity against any sums due to the Supplier any sums which in the Company's opinion is due from the Supplier to the Company.

**6. Warranties, Representations, Risk and Indemnities**

- 6.1 The Supplier warrants and guarantees to the Company that the Products sold or Equipment supplied by the Supplier are of the best available design, of the best quality, material and workmanship, are without fault and conform in all respects with the Company's Purchase Order and any specification, drawing, requirement or other information provided to the Supplier.
- 6.2 The Company's rights under these Terms and Conditions are in addition to the statutory terms implied in favour of the Company by the Sale of Goods Act 1979 and/or the Supply of Goods and Services Act 1982, and any subsequent amending or relevant legislation.
- 6.3 The Company is entitled to rely on any statement, warranty, representation, advice and/or recommendation made by the Supplier during negotiations and/or after the date of the Contract, and such statements, warranties, representations, advice and/or recommendations shall be deemed incorporated into the Contract.
- 6.4 Where the Supplier is providing a Service to the Company, the Supplier agrees to exercise utmost care and skill in doing so and in accordance with any applicable industry standards.
- 6.5 Prior to delivery of any Products or Equipment by the Supplier, the Company shall have the right if it so wishes to inspect and test the Products or Equipment at all times, and if the results of such inspection or testing cause the Company to consider that the Products or Equipment do not, or are unlikely to, conform with the Purchase Order and/or any specification, drawing or information provided to the Supplier, the Company shall inform the Supplier and the Supplier shall immediately take such action as is necessary to ensure conformity.
- 6.6 Where the Supplier is not the manufacturer of the Products or Equipment, the Supplier will transfer to the Company the benefit of any warranty or guarantee given to the Supplier in respect of such Products or Equipment.
- 6.7 The Supplier shall indemnify the Company in full against all Losses incurred by the Company as a result of or in connection with:
  - 6.7.1 defective workmanship, quality or materials;
  - 6.7.2 an infringement or alleged infringement of any intellectual property rights caused by the use, manufacture or supply of the Services, Products or Equipment;
  - 6.7.3 any claim made against the Company in respect of any Losses arising as a consequence of a breach or negligent performance or failure or delay in performance of the Contract by the Supplier;
  - 6.7.4 defective Products or Equipment;
  - 6.7.5 any claim made against the Company in respect of any Losses arising as a consequence of the use or possession of the Equipment or the Products or the Equipment or Products failing to perform as expected, including any explosion or other malfunction of the Equipment or Products causing Losses; and
  - 6.7.6 any failure by the Supplier to comply with any term or terms of the Contract.
- 6.8 Without prejudice to any other right or remedy which the Company may have, if any fault or defect in any Products shall



occur within twelve (12) months after the Products have been delivered, the Company shall notify the Supplier and the Supplier shall then (at the Company's option) either replace the Products or make good the Products at the expense of the Supplier and any Products so replaced or made good shall be guaranteed by the Supplier on the same terms for a further period of twelve (12) months.

6.9 Where the Supplier and/or its personnel, employees, agents, officers, directors, contractors, sub-contractors including any key personnel, or any other person at the behest of the Supplier (the "Workforce"), boards any vessel or craft or enters the environs of any other property or premises owned or leased or occupied by the Company, in connection with the Contract,

6.9.1 the Supplier agrees to hold the Company, its employees, directors, crew, servants, agents and insurers (together the "Indemnified Parties") harmless, and to indemnify them:-

6.9.1.1 for any Losses of whatsoever nature that they may sustain and/or incur as a result of any act or omission by the Supplier's Workforce, and

6.9.1.2 in respect of their liability for any Claims of whatsoever nature which may be made against them by the Supplier's Workforce, their heirs or assigns, and

6.9.1.3 in respect of their liability for any Claims of whatsoever nature which may be made against them by any third party arising out of any default, act or omission by the Supplier's Workforce, and

6.9.1.4 in respect of any and all Losses incurred by them arising from any injury to or illness of the Supplier's Workforce.

6.9.2 the Supplier also:

6.9.2.1 undertakes and guarantees that all its liabilities, of whatsoever nature arising out of this clause 6.9 will be insured by the Supplier with an insurance company or facility acceptable to the Company, and further that the insurance company or facility concerned will waive its rights of subrogation against the Indemnified Parties, and

6.9.2.2 agrees, in the event of any proceedings, action, arbitration and/or claim being commenced against the Indemnified Parties in respect of any and all of the matters referred above, provide the Indemnified Parties from time to time on demand with sufficient funds to defend any such proceedings.

## **7. Company's Property**

7.1 If the Company or its agents, customers, personnel or subcontractors supply any goods, materials, equipment or the like or any specifications, drawings or such data free of charge to the Supplier for the purposes of the Contract, all such items shall be and remain the exclusive property of the Company and shall be held by the Supplier in safe custody and maintained and kept in good order and condition by the Supplier until returned to the Company.

## **8. Confidentiality and Intellectual Property**

8.1 All techniques, processes, inventions, trade secrets, equipment, drawings, designs, specifications, documents, proposals and information concerning the Services, Products or Equipment or relating to the Company's business of which the Supplier and its Workforce shall obtain knowledge or information (except to the extent that they are within or fall into the public domain other than by breach of the Contract) shall remain both during and after the completion of the business conducted under the Contract the absolute and exclusive property of the Company and the Supplier shall keep confidential and retain the same with the utmost secrecy and shall use its utmost endeavours to ensure that all its Workforce shall abide by the terms of this provision as though it were binding upon each of them and the Supplier shall not, and shall procure that each member of its Workforce shall not, disclose or permit to be disclosed to any third party or otherwise use the same other than for the purpose of the provision of the Products, Equipment and/or Services, nor shall it cause or permit anything which may damage or endanger the intellectual property of the Company or allow or assist others to do so.

8.2 All copyrights and other intellectual property rights including design rights, data base rights, moral rights and rights to computer software (collectively "IPR") relating to any and all documents, works, software or data and all other material in whatever form including hard copy and electronic form produced or recorded by the Supplier or its Workforce in the provision of Products, Equipment and/or Services are hereby assigned to the Company and shall be the absolute property of the Company to do with as the Company deems appropriate. The Supplier shall, if so required by the Company, and in any event on the termination of the Contract, surrender to the Company all original and copy documents, working papers, computer disks, and all other property containing IPR and/or belonging to the Company which is in the Supplier's or its Workforce's custody, power or control and shall deliver, and shall procure that each relevant member of its Workforce delivers an assignment, undertaking and waiver (in a form approved by the Company) to assign all IPR relating to any and all documents, works, software or data and all other material in whatever form including hard copy and electronic form produced or recorded by the Supplier or its Workforce (as the case may be) in the provision of the Products, Equipment and/or Services and to waive all rights in relation thereto.

8.3 The Supplier hereby agrees that, during the term of the Contract and for a period of twelve (12) months after expiry or termination howsoever caused, he will not solicit the Company's staff who are known by the Supplier or by any member of Supplier's Workforce to have been employed or engaged in the performance of the Contract. For the purposes of this clause, 'solicit' means a direct or indirect attempt to induce such person to take an engagement with such party as an employee, director, sub-contractor or independent contractor provided that this clause shall not apply to any engagement as a result of a general advertisement or recruitment campaign.

## **9. Rejection and Termination**

9.1 Without prejudice to any other right or remedy which the Company may have, if any Services, Products or Equipment are not supplied in accordance with the Contract, or the Supplier fails to comply with any terms of the Contract or the Company wishes to end the Contract for convenience, the Company may avail itself of any one or more of the following remedies at its discretion, whether or not part of the Services, Products or Equipment have been accepted by the Company:



- 9.1.1 to terminate the Contract (in whole or in part) by notice in Writing, without any liability on the part of the Company;
- 9.1.2 to reject any Products or Equipment (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier and require a full refund for the Products or Equipment so returned, to be paid by the Supplier; or
- 9.1.3 to refuse to accept deliveries of any further Products or Equipment and without any liability on the part of the Company.
- 9.2 The Company shall further be entitled to terminate the Contract forthwith by notice in Writing to the Supplier if:
- 9.2.1 the Supplier makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of solvent amalgamation or reconstruction); or
- 9.2.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Supplier; or
- 9.2.3 the Supplier ceases or threatens to cease to carry on business;
- 9.2.4 where the Supplier is resident in a jurisdiction other than England and Wales, an event similar to any of those specified in the above sub-clauses occurs to or in relation to the Supplier; or
- 9.2.5 the Supplier undergoes a change of control (where "control" for the purposes of this sub-clause 9.2.5 means the ability to direct the affairs of another whether by virtue of the ownership of shares, contract or otherwise).
- 9.3 In the event of termination by the Company pursuant to clause 9.2 above then, without prejudice to any other right or remedy available to the Company, the Company shall be under no further obligations under the Contract and any sums already paid by the Company to the Supplier but not earned shall become repayable immediately notwithstanding any previous agreement or arrangement to the contrary and the Company shall be entitled to charge interest at the per annum rate of 2% above the base bank rate from time to time of HSBC Bank PLC from the time of such cancellation or suspension on any sums owed by the Supplier to the Company until the Company receives payment in full.
- 10. Force Majeure**
- 10.1 The Company shall not be liable to the Supplier or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations due to any cause beyond the Company's reasonable control including:
- 10.1.1 act of God, storm, flood, tempest or other weather conditions, explosion, fire or accident;
- 10.1.2 war or threat of war, civil war, hostilities, sabotage, insurrection, riot or civil disturbance, or requisition;
- 10.1.3 Governmental or local authority acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind;
- 10.1.4 import or export regulations or embargoes;
- 10.1.5 strikes, lock-outs or other industrial actions or trade disputes whether involving employees of the Company or of a third party;
- 10.1.6 failure or breakdown in equipment or machinery from power failure or other external causes.
- 11. Notices**
- 11.1 Any notice required to be given by either Party under the Contract shall be delivered or sent by pre-paid first class recorded delivery letter addressed to the registered office of the party to be served or to such other place as may be designated by Party for the purpose of service and shall be deemed to have been served in the case of a notice delivered by hand, when delivered, in the case of a letter, forty-eight (48) hours after the time of posting.
- 12. Non-Assignment**
- 12.1 The Supplier shall not assign, transfer or sub-contract the Contract or any benefit, interest, right or obligation under the Contract, without the prior agreement of the Company in Writing.
- 13. Waiver**
- 13.1 No act, omission, delay or indulgence on the part of the Company in enforcing the Contract or any of the Terms and Conditions thereof shall operate as a waiver of the Company's rights thereunder, unless in each case the Company expressly so agrees in Writing.
- 14. Governing Law and Jurisdiction**
- 14.1 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or Claims) shall be governed by and construed in accordance with the laws of England.
- 14.2 The Parties hereby agree that any Claims, disputes, legal actions, suits or proceedings that either Party may have against the other arising out of or in connection with the Contract shall be subject to the exclusive jurisdiction of the English Courts. In addition the Supplier hereby agrees that the Company shall have the right to bring any Claims, disputes, legal actions, suits or proceedings it may have against the Supplier in the courts of any jurisdiction where the Supplier or any of its property or assets may be found or located, and the Supplier hereby irrevocably submits to the jurisdiction of any such court.
- 15. Anti-Bribery**
- 15.1 The Supplier shall:
- 15.1.1 comply, and shall procure that each of its suppliers and subcontractors, and the members of its and their Workforces shall comply, with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including the Bribery Act 2010;
- 15.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;



- 15.1.3 have and shall maintain in place throughout the term of the Contract its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure its compliance with clauses 15.1.1 and 15.1.2 and will enforce them where appropriate;
  - 15.1.4 promptly report to the Company any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of the Contract; and
  - 15.1.5 immediately notify the Company in writing if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier (and the Supplier warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of the Contract).
- 15.2 The Supplier shall ensure that any person associated with the Supplier who is providing Products or Services, or hiring Equipment in connection with the Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 15.
- 16. Forced Labour**
- 16.1 The Supplier shall:
- 16.1.1 comply, and shall procure that each of its suppliers and subcontractors, and the members of its and their Workforces, shall comply with all applicable laws, statutes, regulations and codes relating to slavery, servitude, forced or compulsory labour and human trafficking including the Modern Slavery Act 2015;
  - 16.1.2 undertake not to purchase any resource, materials or products from producers, suppliers or manufacturers using forced or compulsory labour in its operations or practices;
  - 16.1.3 have and shall maintain in place throughout the term of the Contract its own policies and procedures to ensure its compliance with clauses 16.1.1 and 16.1.2 and will enforce them where appropriate; and
  - 16.1.4 immediately notify the Company in writing if it becomes aware of any breach or alleged breach of this clause within its supply chain (and the Supplier warrants that has not been convicted of any offence involving slavery and human trafficking and, having made reasonable enquiries, to the best of its knowledge none of its suppliers or subcontractors or its or their Workforce or direct or indirect owners at the date of the Contract have been or are the subject or any investigation, enquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding an offence or alleged offence of or in connection with slavery and human trafficking).
- 16.2 The Supplier shall ensure that any person associated with the Supplier who is providing Products or Services, or hiring Equipment in connection with the Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 16.