

SPECIAL CONDITIONS OF SALE – SHIP REPAIR WORK

Unless otherwise expressly agreed in writing the following terms and conditions apply to any supply of goods or services in relation to work on any vessel at the request of a Customer. These terms and conditions shall be read together with the terms and conditions contained in Lyttelton Engineering Limited's written Conditions of Sale, which shall also be of full contractual effect and which shall be deemed to be incorporated herein. Where there is any conflict between any of these terms and conditions and those contained in the Conditions of Sale, these terms shall prevail.

References to "the Company" in these conditions shall be deemed to be a reference to Lyttelton Engineering Limited or its successors or assigns. References to "the Customer" shall be deemed to be a reference to the party purchasing the goods or services from the Company.

1. WORKS

- 1.1 The Customer has requested the Company to carry out certain works ("the works") on the Customer's vessel (including its machinery, equipment, parts and devices) and the Company has agreed to carry out such works.
- 1.2 The Customer agrees that the Company, unless specifically instructed otherwise in writing, may take all steps that in the opinion of the Company are necessary or desirable to carry out the works including, without limitation:
- a) The operation of any machinery, equipment, part or device on or about the vessel; and
 - b) The removal from the vessel of any machinery, equipment, part or device.

2. LIABILITY

- 2.1 The Company will not under any circumstances, whether arising in contract, negligence, any other tort or howsoever otherwise be liable for:
- a) Any claim arising directly or indirectly, occasioned by or arising from death or bodily injury and/or under workmen's compensation or employers' liability acts or any other statutory or common law liability in respect of loss of life, bodily injury to or illness of any workman or other person employed in any capacity whatsoever by the Customer, his agents or subcontractors when such loss of life, bodily injury or illness arises out of or in the course of the employment of such workman or other persons;
 - b) Payments under penalty clauses, detention, demurrage, loss of time, loss of freight, loss of charter, loss of market or any other consequential loss whatsoever, and whether arising from the Company's fault or delay in completion of the works or for any other reason;
 - c) Any claim arising from any strike, lockout, labour disturbance, riot, civil commotion or act of any person taking part in any such occurrence, or from any act of any person acting maliciously;
 - d) Punitive or exemplary damages;
 - e) Any claim in respect of or arising in connection with:
 - i) Condemnation or rejection of any part by reason of faulty design;
 - ii) Any loss or expense arising from such condemnation or rejection;
 - iii) The cost or expense of repairing, modifying or replacing any part (or for any loss or expense arising therefrom);
 - iv) The failure or inability of the vessel or any machinery or part to operate as intended, after being repaired or modified or replaced in accordance with a method proposed by the Company whether or not such repair, modification or replacement has been carried out with the knowledge and/or consent of the Customer.
- 2.2 Except to the extent that liability has been effectively excluded in terms of clause 2.1 above, the liability of the Company for loss of or damage to the vessel, its machinery, equipment or any part or device shall be limited to, at the option of the Company:
- a) The replacement of the item or the supply of equivalent items;
 - b) The repair of the items;
 - c) The payment of the cost of replacing the items or of acquiring equivalent items;
 - d) The payment of the cost of repairing the goods;
 - e) The supply of the services again; or
 - f) The payment of the cost of having the services supplied again.

3. DISPUTES

- 3.1 The Customer and the Company will meet and discuss in good faith any dispute between them arising out of this agreement. If such discussions fail to resolve the dispute, either party may, by written notice to the other party, require that the dispute be submitted for mediation by a single mediator nominated by the President for the time being of the Canterbury District Law Society. The cost of the mediation will be shared equally between the parties. Neither party may issue any legal proceedings (except for urgent interlocutory relief) in respect of any such dispute unless that party has first taken all reasonable steps to comply with this clause.

4. LAW

- 4.1 This agreement is governed by the laws of New Zealand.