

## Standard Terms and Conditions of Sale

### **The acceptance of any order is on the understanding that the Purchaser agrees to the following Conditions and Terms of sale:**

- 1.1** These conditions apply to all sales of Goods by Transmark Subsea Ltd (TS) (“the Goods”) and shall prevail over any other Terms and Conditions contained or referred to in the Purchaser’s order or in correspondence or elsewhere, or implied in by trade, custom, practice or course of dealing, unless such other Terms or Conditions are specifically agreed to in writing by TS. TS’ agents shall not have the authority to enlarge, vary or exclude any of these Conditions. Any purported enlargement, variation or exclusion thereof shall be without effect, unless specifically agreed to in writing by TS and the Purchaser. Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.2** The Purchaser shall be responsible to TS for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Purchaser, and for giving TS any necessary information relating to the Goods within a sufficient time, to enable TS to perform its agreement in accordance with these terms and conditions.
- 2 PRICES**
- 2.1** A quotation by TS shall constitute an invitation to treat and not an offer. TS may withdraw or amend any quotation at any time prior to TS’ written acceptance of the purchase order.
- 2.2** The price of the Goods ordered by the Purchaser shall be TS’ quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in TS’ published price list current at the date of acceptance of the order. All prices quoted are valid for 30 days only. Unless otherwise agreed in writing between TS and the Purchaser, all prices are given Ex-Works TS Aberdeen. If TS agrees to deliver the Goods elsewhere, the Purchaser shall be liable to pay TS’ charges for transport, packaging and insurance. The Purchaser is also referred to clause 13
- 2.3** TS reserves the right, by giving notice to the Purchaser at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to TS which is due to any factor beyond the control of TS (such as, without limitation, alteration of duties, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Purchaser, or any delay caused by any instructions of the Purchaser or failure of the Purchaser to give TS adequate information or instructions.
- 2.4** The price is exclusive of any applicable VAT which the Purchaser shall be additionally liable to pay to TS. In certain circumstances release from duty can be obtained. TS are prepared to advise on the

preparation of claims and to submit these to the authorities on behalf of Purchasers, where the duty saving is sufficient to justify the work involved.

### **3 ILLUSTRATIONS & SPECIFICATIONS**

- 3.1** Catalogue and other illustrations and specifications are not binding and are only intended to represent generally the type of Goods available. Owing to the improvement and revision of design, apparatus may not conform to them in detail.
- 3.2** TS reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Purchaser’s specification, which do not materially affect their quality or performance.
- 3.3** If the Goods are to be manufactured or any process to be applied to the Goods by TS in accordance with the specification submitted by the Purchaser, the Purchaser shall indemnify TS against all loss, damages, costs and expenses claimed against or incurred by TS in connection with, or paid by or agreed to be paid by TS in settlement of any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual, property rights of any other person which results from TS’ use of the Purchaser’s specification.
- 3.4** No order which has been accepted by TS may be cancelled by the Purchaser except with the agreement in writing of TS and on terms that the Purchaser shall indemnify TS in full against all loss (including loss of profit), costs (including the costs of all labor and material used), damages, charges, and expenses incurred by TS as a result of cancellation.

### **4 DELIVERY**

- 4.1** Whilst every effort is made to adhere to delivery dates, time shall not be deemed to be of the essence, and no liability can be accepted for any loss or consequential damages resulting from the non-delivery or delayed delivery. Deliveries offered from stock are subject to the Goods still being available at the date of acceptance of the Purchaser’s order.
- 4.2** If TS fails to deliver the Goods for any reason other than any cause beyond TS’ reasonable control or the Purchaser’s fault, and TS is accordingly liable to the Purchaser, TS’ liability shall be limited to the excess (if any) of the cost to the Purchaser (in the cheapest market available) of similar Goods to replace those not delivered over the price of the Goods.
- 4.3** If the Purchaser fails to take delivery of the Goods or fails to give TS adequate delivery instructions at the time stated for delivery (other than by reason of any cause beyond the Purchaser’s reasonable control or by reason of TS’ fault), without prejudice to any other right or remedy available to TS, TS may:
- 4.3.1** Store the Goods until actual delivery and charge the Purchaser for the reasonable cost (including insurance) of storage or
- 4.3.2** Sell the Goods at the best price readily available (after deducting all reasonable storage and selling expenses) account to the Purchaser for the excess over the price under the agreement or charge the

Purchaser for any shortfall below the price pursuant to the order.

## **5 INSURANCE**

Where goods are insured by TS at TS' discretion or at the Purchaser's request, charges for the insurance may be made on the invoice. TS' liability in respect of the risks insured shall be limited to the amount received by TS under such insurance or the value of the Goods, whichever is the less, from which deduction may be made for the expenses incurred in relation to the claim.

## **6 DAMAGE AND/OR LOSS IN TRANSIT**

In so far as is permitted by the statute, TS' is excluded from all responsibility for breakages or loss in transit. Both carriers concerned and TS must be advised, in writing, of all breakages within three days of receipt of Goods. In the event of non-delivery, both carriers and TS must be notified in writing within 14 days after the date of advice of dispatch.

## **7 SHORTAGE OR ERROR**

No claims can be considered unless notified in writing within three days of receipt of consignment.

## **8 EMPTY CASES AND CONTAINERS**

Unless agreed otherwise in writing, cases, reels and/or containers are neither returnable nor refundable.

## **9 PAYMENT**

**9.1** All accounts for approved customers are for settlement within 30 days from the date of invoice. If it is not settled within 30 days, interest on arrears will apply. TSA reserves the right to require cash payment or Bank Guarantee before accepting a Purchase Order.

**9.2** For the conditions herein to be valid, all Goods shall be paid in time and in full.

**9.3** If a purchaser fails to make any payment on the due date then, without prejudice to any other right or remedy available to TS, TS should be entitled to:

**9.3.1** Cancel the order or suspend any further deliveries to the Purchaser.

**9.3.2** Appropriate any payment made by the Purchaser to such of the Goods for the Goods supplied under any other agreement between TS and the Purchaser (as TS may think fit) notwithstanding any purported appropriation by the Purchaser.

**9.3.3** Late payment penalties will be according to "Late payment of commercial debts act 1998" in Scotland.

**9.3.4** Repossess any of the Goods and thereafter to resell the same and for this purpose the Purchaser hereby grants an irrevocable right and license to TS' servants and agents to enter upon all or any of its premises with or without vehicles during normal business hours. This right should continue to subsist notwithstanding termination of the agreement through the happening of any of the events specified in section 15 or otherwise and with prejudice to any accrued rights of TS there under.

## **10 RESPONSIBILITY**

**10.1** Where any valid claim in respect of any of the Goods which is based on any defect in the quality of

or in the condition of the Goods, or their failure to meet specification is notified to TS in accordance with these Conditions, TS shall be entitled to replace the Goods free of charge or, at TS's sole discretion, refund to the Purchaser the price of the Goods (or a proportionate part of the price), but TS shall have no further liability to the Purchaser.

**10.2** TS does not exclude liability for death or personal injury to the extent that results from the negligence of TS, its servants or agents. Save as aforesaid all liability for any representations, whether oral or in writing, and all guarantees, conditions, warranties or other terms, whether expressed or implied by statute, common law or otherwise, are hereby excluded to the fullest extent permitted by law.

**10.3** Without prejudice to the above TS shall not be liable to the Purchaser or deemed to be in breach of its agreement by reason of any delay in performing, or any failure to perform any of the obligations on behalf of TS in relation to the Goods, if the delay or failure was due to any cause beyond TS's reasonable control.

## **11 REPAIRS**

**11.1** Articles sent to TS for repair are accepted only on the undertaking that, in so far as statute permits, TS shall not be held liable for any damage caused to such Goods. Time involved in preliminary examination of Goods may be charged in the event of no order being placed. Goods returned for repairs should be sent carriage paid and clearly labeled with the sender's name and address, at the same time a letter should be sent detailing work required. After exchange or repair, the item will be returned carriage forward to the Purchaser.

## **12 INSTALLMENTS**

**12.1** Where the Goods are to be delivered in installments, each delivery should constitute a separate contract for the purpose of these conditions.

## **13 FLUCTUATING EXCHANGE RATES**

**13.1** In relation to such parts of the Goods which are manufactured or procured from outside United Kingdom, the prices and duty are based on the actual rate of exchange at the date of TS' quotation or order acknowledgment. Should the exchange rate change more than  $\pm 3\%$  between the date of the quotation/order acknowledgement and the date of invoicing, TS reserve the right to adjust the price and duty by an amount proportional to the change.

## **14 DEFAULT**

**14.1** This condition applies if:

**14.1.1** The Purchaser makes any voluntary arrangement with its creditors or becomes subject to an order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction) or

**14.1.2** A trustee takes possession, or a receiver is appointed of any of the property or assets of the Purchaser, or

**14.1.3** The Purchaser ceases or threatens to cease, to carry on business or

14.1.4 TS reasonably apprehends that any of the events mentioned above is about to incur in relation to the Purchaser and notifies the Purchaser accordingly.

**14.2** If this condition applies then, without prejudice to any other right or remedy available to TS, TS shall be entitled to cancel its agreement with the Purchaser or suspend any further deliveries pursuant thereto without any liability, and if the Goods have been delivered but not paid for, the price should become immediately due and payable notwithstanding any previous agreement to the contrary.

## **15 OWNERSHIP & RISK**

**15.1** Goods are dispatched from TS's premises at the Purchaser's own risk.

**15.2** Notwithstanding delivery and the passing of risk in the Goods or any other provision of these conditions, the property in the Goods shall not pass to the Purchaser until TS has received in cash or cleared funds payment in full of the price of the Goods and all other Goods agreed to be sold to TS to the Purchaser for which payment is then due.

## **16 GENERAL**

**16.1** Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party given a notice, and they be given personally or may be sent by 1<sup>st</sup> class post or by fax, and any notice given by post shall be deemed to be served at the time of transmission if sent during business hours and at the commencement of business on the first business day following the transmission not sent during business hours.

**16.2** No waiver by TS or any breach of these conditions by the Purchaser shall be considered as a waiver of any subsequent breach of the same or any other provision.

**16.3** 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 provision in question shall not be affected hereby.

**16.4** Any dispute arising under, or in connection with these Conditions of sale of the Goods, shall be referred to arbitration in Aberdeen in accordance

with the Scottish act on arbitration/proceedings before the ordinary court system.

**16.5** These Conditions shall be governed by the laws of Scotland, and TS and the Purchaser's submit to the jurisdiction of the Aberdeen Court.

## **17 WARRANTY**

**17.1** Any goods returned to TS for a warranty claim must be accompanied by the relevant certification issued at sale.

**17.2** The Seller warrants that the product or Service provided to the Purchaser is free from defects in materials and workmanship for a period of twelve (12) months from the date of delivery.

**17.3** During the warranty period, if the product or Service is found to be defective, TS will, at its discretion, either repair or replace the defective product or re-perform the service without any additional charge to the Purchaser.

**17.4** This warranty does not cover defects or damages resulting from:

17.4.1 Normal wear and tear

17.4.2 Misuse, abuse, or neglect of the product or service

17.4.3 Unauthorized modifications or repairs

17.4.4 Acts of nature, accidents, or other external causes.

**17.5** To initiate a warranty claim, the Purchaser must notify TS in writing within the warranty period, providing details of the alleged defect. TS may require the Purchaser to return the defective product or allow the Seller to inspect the service on-site.

**17.6** TS's liability under this warranty is limited to the repair, replacement, or re-performance as outlined in Section 17.3.

In no event shall TS be liable for any consequential, incidental, or indirect damages arising from the use or inability to use the product or service.

**17.7** This warranty is effective for a period of twelve (12) months from the date of delivery.