

# GENERAL TERMS AND CONDITIONS OF CONTRACT WÄRTSILÄ ANCS (2024)

## 1. APPLICABILITY

These General Terms and Conditions of Contract ("Conditions") apply, to the exclusion of any other general terms and conditions, to any Contract for the supply of goods and services, as defined below, between any authorised company, agent or service station of Wärtsilä Corporation ("Supplier") and any customer ("Customer"). Supplier and Customer are singularly referred to as a "Party" and together referred to as the "Parties".

## 2. DEFINITIONS

The following terms have the meaning set out below when used in the Conditions or in the Contract.

**2.1** "Cloud Service" means any cloud-based service to be provided by Supplier to Customer under the Contract and which shall be delivered online and hosted and managed by or on behalf of Supplier.

**2.2** "Contract" means any agreement for Supply and/or Services concluded between the Parties, including but not limited to an acknowledgement or confirmation of an order, which directly, through its appendices, or by operation of law incorporates these Conditions.

**2.3** "Contract Price" means the total of the amounts due from the Customer to the Supplier under the Contract.

**2.4** "Delivery" means the delivery of Equipment or Spare Parts pursuant to the Contract.

**2.5** "Equipment" means and includes any goods, items, documentation and certificates to be delivered by the Supplier pursuant to the Contract.

**2.6** "Hazardous Materials" means without limitation arsenic, asbestos, lead or any other waste material or hazardous substances as defined by legislation or international convention relevant or applicable to the Services or Supply.

**2.7** "Intellectual Property Rights" means patents, trademarks, copyrights, trade names, designs, product descriptions and any other intellectual property, including all registrations, applications and licenses therefore, as well as know-how, including inventions, confidential and proprietary industrial or commercial information or techniques in any form and trade secrets, drawings, formula, test results, reports, project reports and testing or manufacturing procedures, instruction and training manuals.

**2.8** "Licensed Software" means a copy of any software which is delivered and licensed by Supplier to Customer pursuant to the Contract and which shall be hosted and managed by Customer, including software embedded in hardware or otherwise installed in Customer's systems.

**2.9** "Normal Working Time" means working time consisting of forty (40) hours spread over five (5) working days not exceeding eight (8) hours per day or as otherwise specified in Supplier's technical specifications for specific Services

**2.10** "Services" means the services or any work that the Supplier has undertaken to perform pursuant to the Contract.

**2.11** "Site" means the Vessel, the construction area where the Vessel is being built or any other location where Equipment or Services are supplied or where Wärtsilä personnel enters to perform their duties under the Contract but excluding Wärtsilä premises.

**2.12** "Software" means any software programs which form part of the Licensed Software and/or Cloud Service included in the Supply or Services.

**2.13** "Spare Parts" means the original spare parts, original, auxiliary and exchange parts and reconditioned spare parts supplied for the Equipment under the Contract.

**2.14** "Supply" means the Equipment, Spare Parts and/or Software collectively to be supplied under the Contract.

**2.15** "Vessel" means the individual vessel, construction or structure owned by the Customer or any third party in respect of which

any Supply or Services are supplied under the Contract.

**2.16** "Wärtsilä Company" means any business entity in which Wärtsilä Corporation holds a controlling proportion of shares or which has been set up as a joint venture between any Wärtsilä Company and any third parties.

## 3. CONTRACT PRICE

**3.1** The Contract Price does not include and the Customer shall bear or reimburse the Supplier for any taxes, duties or other official charges, including, but not limited to value added tax or any taxes raised on the Supply or Services, custom and import duties or any other charges on the Contract Price or any part thereof.

**3.2** The Contract Price includes the Supplier's standard transport packing materials. The Customer must advise the Supplier and be responsible for the additional costs of any special requirements for packing or storage.

**3.3** If any payment due from the Customer under the Contract is not received by the Supplier, or if any payment security agreed to be provided or opened is not provided or opened as required by the Contract, without prejudice to the Supplier's rights under the Contract, the Customer shall pay interest on any amounts due or to be covered by the payment security at the rate of one (1) month's Euro Interbank Offered Rate (EURIBOR) prevailing at the due date plus three (3) percentage units per annum/pro rata from the date that payment or provision of the payment security is due until the payment is received in full or until the payment security is provided or opened.

**3.4** The Supplier may make equitable adjustments to the Contract Price in response to Force Majeure events described in Clause 16, delays to the provisional time of delivery, and fluctuations in currency exchange rates or material and component prices.

## 4. VARIATION ORDERS

**4.1** Either Party may, prior to the Delivery or completion of Services and subject to the limitations set out in Clause 4.3, request variations in the originally agreed scope of supply. Such Party shall make a request for a variation by written notice to the other Party with an exact description of the variation requested.

**4.2** The Supplier shall, without undue delay, after receipt of a request for a variation or after having himself proposed a variation inform the Customer in writing whether and how the variation can be carried out stating the effects of the variation on the Contract Price, the estimated time for Delivery or completion of the Services and other terms of the Contract. The Supplier shall also give such notice when variations are required by reason of changes in laws and regulations.

**4.3** The Supplier is not obliged to carry out variations before the Parties have agreed on how the variation will affect the Contract Price, the time for Delivery or completion of the Services and other terms of the Contract, including issuance of a payment security for the increased price. For the avoidance of doubt, if the Supplier for any reason carries out the requested variation before the Parties have agreed its effects, such performance is deemed to have been made in good faith and shall constitute neither a waiver of any of Supplier's rights nor Supplier's acceptance of Customer's requests.

## 5. DELIVERY AND RETENTION OF TITLE

**5.1** Equipment and Spare Parts shall be delivered at the place named and on the terms set out in the Contract. All terms used in this regard are interpreted and construed in accordance with Incoterms® 2020 unless otherwise agreed in the Contract.

**5.2** On Delivery, the Customer, its representative or an internationally recognised inspection service shall, as soon as possible and at the cost of the Customer, inspect the Equipment and Spare Parts. The Customer shall, within three (3) calendar days of such inspection, give a written notice to the Supplier of any relevant matter the Customer considers not to be in conformity with the Contract. If the

Customer fails to give such notice, the Equipment and Spare Parts shall be deemed to have been delivered fully in conformity with the Contract.

**5.3** The Supplier may make improvements to any items of the Equipment not yet delivered.

**5.4** The origin of the Supply will be at Supplier's discretion.

**5.5** The Supplier retains title and ownership of the Equipment and Spare Parts which shall automatically pass to the Customer only on receipt of the Contract Price in full. Despite of retention of title, risk passes to the Customer at Delivery.

**5.6** The Customer warrants to preserve and protect the Supplier's rights and title in the Equipment and Spare Parts.

## **6. DELAYS CAUSED BY SUPPLIER OR CUSTOMER**

**6.1** Delivery dates are estimates only, and subject to later adjustment by Supplier based on availability of materials and components.

**6.2** If the supply of the Supply is delayed past a firm delivery date due to reasons attributable to the Supplier and the Customer has suffered a loss as a consequence, the Customer is entitled to liquidated damages calculated from (fourteen) 14 days after the date on which delivery should have taken place ("grace period") at zero point twenty-five percent (0.25%) of the value of the delayed part of the Supply supplied per each full week of delay. The total amount of liquidated damages under Clause 6.1 to be paid by the Supplier in consequence of the Supplier's delay shall in no case exceed five percent (5%) of the part of the Contract Price which is payable for the Supply in respect of the Vessel affected by the delay. These liquidated damages are the Customer's only remedy for delay.

**6.3** If performance of any obligations under the Contract is delayed for any reasons attributable to the Customer or at his request, without prejudice to the Supplier's rights under the Contract,

a) the Contract Price is increased by zero point six percent (0.6%) for each month of delay up to and including the month of actual Delivery; and

b) the Supplier may adjust the test schedule and the date, mode or schedule of Delivery and charge the Customer for all costs resulting to the Supplier from such delay, including but not limited to storage, transportation, insurance and maintenance of the Equipment and Spare Parts.

**6.4** If the Customer anticipates that he will be unable to accept the Delivery of the Supply at the time set forth in the Contract, he shall notify the Supplier in writing stating the reason and the time when he anticipates being able to accept the Delivery. Without prejudice to Clause 6.3 above, the Customer shall pay the part of the Contract Price that becomes due at the Delivery as if the Delivery had taken place. The Supplier may by notice require the Customer to accept the Delivery within a final reasonable time.

**6.5** The Parties also agree and acknowledge that sanctions and consequent supply chain disruptions or imbalances stemming from the war in Ukraine may impact on delivery times under this Contract. Supplier shall not be liable for any delays attributable to sanctions or disruptions or imbalances in the supply chain ultimately related to or derived from Force Majeure events described in Clause 16.

## **7. SUBCONTRACTORS AND ASSIGNMENT**

**7.1** The Supplier is entitled to subcontract all or part of its obligations.

**7.2** The Supplier is not responsible or liable for subcontractors selected or appointed by the Customer.

**7.3** The Supplier may transfer or assign rights, benefits, obligations or liabilities under the Contract to any third person without the prior written approval from the Customer. The Customer may not transfer or assign rights, benefits, obligations, or liabilities under the Contract to any third person without the prior written approval from the Supplier.

## **8. CUSTOMER'S SUPPLIES**

**8.1** Any defect or delay in the supply of information, software, documentation, goods or services to be made by the Customer ("Customer's Supplies") shall be considered as a delay attributed to the Customer with application of Clauses 6.2 and 6.3.

**8.2** In the event of delays or defects in respect of Customer's Supplies, the Supplier may proceed with any tests to be carried out prior to or in the context of the Delivery. The Customer accepts the results of such tests and accepts the Equipment and/or Software as having been delivered in conformity with the Contract.

**8.3** The Supplier's warranty in respect of Equipment, Software and/or Services supplied does not cover any defects in Customer's Supplies and the Supplier shall not be liable for any damage or losses caused by Customer's Supplies. The Customer indemnifies the Supplier in respect of any losses, liabilities or expenses incurred by the Supplier or any third party in connection with any Customer's Supplies including liabilities and expenses suffered as a result of the infringement of Intellectual Property Rights of third parties.

## **9. INSTALLATION AND COMMISSIONING**

**9.1** The Customer is responsible for the installation of the Equipment. The installation will be performed by the Customer in accordance with the guidelines and procedures of the Supplier.

**9.2** Following installation, if so contractually agreed, the Equipment shall be checked and started up in accordance with the Supplier's guidelines and procedures ("Commissioning"). Commissioning does not constitute responsibility to the Supplier for the defects of the installation performed by the Customer. The Supplier reserves the right to stop, re-start and re-perform the Commissioning. In no case will the Customer commence or carry out the Commissioning without the involvement of the Supplier as contractually agreed.

**9.3** If services outside the Supply under the Contract are required, or if the Services supplied under the Contract are performed outside Normal Working Time, the Supplier is entitled to charge the Customer in accordance with the Supplier's price list in force at the time of their performance. If Commissioning has not started within eighteen (18) months after Delivery due to reasons attributable to the Customer, any claims of the Customer against the Supplier in this respect will be deemed to be waived and absolutely time barred upon the expiry of nineteen (19) months from the date of Delivery.

**9.4** The Customer will, at no charge, provide the Supplier with all assistance required, including, but not limited to, the provision of suitable labour, tools, other implements required, adequate hoisting gear including operating staff, scaffolding, as well as cleaning, packing and lubricant materials, health and safety equipment and any consumables required. This also applies to any work carried out in connection with any modifications or technical changes during Delivery, installation or Commissioning of the Equipment. Furthermore, the Customer shall, at no charge, supply heating, lighting, water and electricity connections in sufficient capacity and quantity as well as welding gas and other working requirements. The equipment made available by the Customer will be in full working order and in compliance with relevant health and safety regulations as further set out in the health safety and environment (HSE) matrix attached as an appendix to the Contract, if any.

**9.5** On completion of Commissioning, the Supplier will issue a certificate for the completion of commissioning ("Commissioning Certificate"). Such Commissioning Certificate shall be executed by both Parties and constitutes evidence that the Equipment, Services and/or Software is in conformity with the Contract. The issuance of the Commissioning Certificate shall not be delayed or refused due to minor deficiencies not materially affecting the use of the Equipment and/or Software. If the Customer takes, or allows a third party to take, the Equipment and/or Software into commercial use prior to the issuance of the Commissioning Certificate, the Customer is deemed to have waived any warranty claims and the Equipment, Software or Services shall be deemed accepted by the Customer as having been delivered in all respects free of any defects and in full conformity with the Contract.

## **10. TESTS**

**10.1** If applicable, the Customer or its representative and, if required, an internationally recognised inspection service, may witness tests and/or conduct an inspection of the Equipment following its assembly. The place, date and time of the inspection and tests shall be notified to the Customer one (1) week prior. Inspection and testing will be performed in accordance with Supplier's procedures at the factory of the Supplier or other place designated by the Supplier during normal working hours. The Supplier bears the costs and expenses of tests carried out at its factory, excluding any costs and expenses of the Customer. If the Customer is not represented at the tests after having been duly notified, the test report shall be deemed to have been accepted as being accurate by the Customer.

**10.2** If the results of the Supplier's standard acceptance test procedures show that any Equipment or Software are defective or not in accordance with the Contract, the Supplier shall remedy the defect or

non-conformity at its costs as soon as is reasonably possible.

## 11. SOFTWARE TERMS AND INTELLECTUAL PROPERTY RIGHTS

**11.1** Supplier retains all Intellectual Property Rights to the Supply and Services.

**11.2** Subject to Customer's compliance with the terms of clause 11.4 below, Supplier grants Customer a non-exclusive licence to use the Licensed Software in connection with the normal and proper use of the Supply pursuant to the terms of the Contract. Customer may make copies of the Licensed Software only where essential for its lawful operation or for necessary back-up purposes.

**11.3** If any Cloud Service forms part of the Supply then, subject to the Customer's compliance with the terms of clause 11.4 below, Customer may access the Cloud Service for the duration agreed in the Contract. Supplier may make changes and updates to the Cloud Service at its sole discretion except where any variation is materially adverse to the Customer

### 11.4 Software Scope of Use and Restrictions

- a) Except as expressly stated in this clause, Customer shall not (nor allow any other parties to) copy, adapt, modify, create derivative works from, reverse-engineer, disassemble, decompile or otherwise attempt to derive the source code of any Software.
- b) Unless otherwise stated in the Contract, the supply of the Software does not include updates, upgrades, maintenance, support or other additional services and any such items shall be subject to separate written agreement and additional cost.
- c) Customer shall not have any title to or ownership of the Software.
- d) The use of the Software may be subject to separate terms of use as updated from time to time by Supplier
- e) Where the Software includes any third-party software, its use shall be subject to any separate license terms of the third party

**11.5** Any onward supply of the Licensed Software or Cloud Service to Customer's customers or other end users, shall be subject to the applicable terms of the Contract and these Conditions (or substantially equivalent terms), and Customer shall procure that each such customer or end user accepts such terms for the Software before using it. Customer shall make no representations or warranties regarding the Software, to Customer's customers or any other third party, from or on behalf of Supplier, and Customer shall not create or purport to create any obligations or liabilities for Supplier. Supplier will have no obligation to provide support or other services or remedies to Customer's customers or other end users.

**11.6** If any third party claims that the Supply or any part thereof would infringe the Intellectual Property Rights of the third party, Supplier will defend Customer and itself against all such claims and will be fully responsible for the cost of the defense and any reasonable cost or liability caused to Customer as a result thereof. Supplier has the right to decide the course of action to enable the uninterrupted use of the Supply by the Customer. This may include the payment of the claimed license fees or the removal of the claimed infringement at Supplier's cost through a modification or replacement of the object of the claim, subject to retaining the essential original features and functionality of the Supply.

**11.7** Supplier will however not be responsible to the extent the claim results from any act or omission of the Customer, such as (i) use of the Supply contrary to the instructions of Supplier; (ii) a modification of the Supply by the Customer; (iii) combination of the Software with any product not approved by Supplier; (iv) Customer's breach of this Contract; (v) revisions to the Software or other components made without Supplier's written consent; (vi) Supplier's modification of Software in compliance with specifications provided by Customer; (vii) failure of the Customer to implement updates provided by Supplier. Further the Supplier shall not be responsible for a claim arising from any allegation of, or relating to, an infringement of a patent when the patent application is published after the date of the Contract.

## 12. LIABILITY FOR DEFECTS

**12.1** Supplier warrants that, during the period defined below ("Warranty Period"), the Equipment and Spare Parts will be free of defects in material and workmanship and in conformity with the agreed specifications. Licensed Software shall not contain any material non-conformance with the Supplier's technical specification for such software

during the Warranty Period. Cloud Service will perform substantially in accordance with the Contract and Supplier's technical specifications for the duration of the applicable term provided in the Contract. The Supplier also warrants that it will use reasonable skill and care in performing any Services.

**12.2** The Warranty Period in respect of the Equipment, Licensed Software and Services supplied starts at Delivery and expires either

i) twelve (12) months after the date on which the Vessel is handed over to the Customer's customer or the Supply has been taken into use, including use of the Equipment for power production; or

ii) eighteen (18) months from Delivery of the Supply concerned, whichever occurs earlier. The Customer must notify the Supplier in writing of the handing over of the Vessel or taking the Supply into use.

**12.3** In case the Supply is ready for Delivery but the Supplier is not able to deliver the Supply due to reasons attributable to the Customer, the Warranty Period of eighteen (18) months described in Clause 12.2 commences from the date the Delivery of the Supply should have taken place according to the Contract.

**12.4** Under this warranty, and subject always to the terms of this Clause 12, the Supplier shall, at its discretion, either repair or replace any non-conformity with the foregoing warranties discovered during the Warranty Period. This will be the only remedy available to the Customer for breach of such warranty.

**12.5** The Customer must give the Supplier detailed written notice of any defect and the Supply or Services affected without delay, but in any event latest within fourteen (14) days after discovery of the respective defect. If such notice is not given within the period stipulated above, or at all, the relevant Supply or Services are deemed to be free of any such defects.

**12.6** The Customer must, immediately after discovery of any defect, take all appropriate steps to mitigate any loss or damage and to prevent any defect from becoming more serious. The Customer's failure to do so is deemed to constitute a waiver of its rights under this warranty in respect of the relevant defect.

**12.7** Supplier's obligations under this warranty only become effective, and the Customer can only make warranty claims, if the Supplier has received all amounts due under the Contract.

**12.8** The Supplier is obliged to carry out the dismantling and reinstallation of the defective item or part only if such work requires special knowledge. The Customer shall at its own expense arrange for any dismantling and reassembly of other components than Equipment, to the extent that this is necessary to remedy the defect.

**12.9** Unless otherwise agreed, the Supplier will bear the costs of transporting the defective, repaired or replaced parts to and from the Supplier's factory in accordance with the delivery term stated in the Contract, however, the Customer shall under all circumstances be the Importer of Record (IOR) of such parts. The Customer will bear the additional costs of transporting the repaired or replaced parts from or to another destination than the place of Delivery stated in the Contract, including any value added tax, custom and import duties or any other charges. The Supplier is not obliged to pay airfreight of the repaired or replaced part.

**12.10** Unless otherwise agreed, services to be performed under the warranty are based on a Normal Working Time. Services performed outside the Normal Working Time are charged to the Customer as overtime. Any waiting time, for which the Supplier is not responsible, is charged to the Customer as Normal Working Time. When the Supplier carries out any work in connection with this warranty, the Customer's or its customer's personnel or crew of the Vessel will assist at no cost to the Supplier. At the request of the Supplier, any faulty items of Equipment must be returned and will then become Supplier's property.

**12.11** Supplier's warranty pursuant to and in connection with the Contract does not cover defects that are connected with or caused by:

- a) normal wear and tear;
- b) use of parts, spare parts, materials or consumables not supplied or approved by the Supplier;
- c) any use, maintenance, service or operation of the Supply or the Vessel which is not in conformity with the Contract or the Supplier's or its subcontractor's manuals or instructions, or which is otherwise not in accordance with normal industry practice;
- d) negligence or other improper acts or omissions or breach of contract on the part of the Customer, or third parties, or their respective employees or agents;
- e) the improper installation or modifications of the Supply carried

out without the Supplier's prior written consent;

f) the Supply or Services not being compatible or not functioning with other equipment, software or systems not supplied by the Supplier, unless the Supplier has specifically accepted the responsibility for their interface;

g) any of the acts or omissions mentioned in Clause 11.7.

**12.12** The Warranty Period for repaired or replaced Supply or Services pursuant to this warranty commences at the date of the repair or correction or of the delivery of the replacement Supply and expires twelve (12) months thereafter, or upon the expiry date of the original Warranty Period in respect of the Supply or Services, whichever occurs later. The preceding sentence does not apply to original parts of the Supply which are not corrected, repaired or replaced. Under no circumstances shall the Warranty Period in respect of any part of the Supply, whether original or replaced, exceed thirty (30) months calculated from the date of Delivery of the respective Supply.

**12.13** After a notice of a warranty claim has been received, the Customer will arrange for the Supplier or its representative to have free access to the Supply and shall be allowed take samples of fuels, lube oils, cooling liquids and other chemicals and any materials used for the operation of the Equipment or Spare Parts, as well as free access to log books and other records containing operating or maintenance information relating to the Supply.

**12.14** The warranty set out in this Clause 12 is the only warranty applicable to the Supply and Services supplied pursuant to the Contract. This warranty replaces and excludes, to the extent permissible by law, any other guarantee, warranty and/or condition imposed or implied by law, custom, statute or otherwise and/or resulting liabilities, including fitness for purpose or liability for latent defects. Customer accepts the Software "as is" and as available. Supplier does not guarantee that the Licensed Software or Cloud Service will be error-free, virus-free, free from vulnerabilities or uninterrupted, or that Supplier will correct all errors. Customer acknowledges that Supplier does not control the transfer of data over communications facilities, including the internet, and that the Cloud Service may be subject to limitations, delays and other problems inherent in the use of such communications facilities. Supplier is not responsible for any downtime or other problems, in Customer's or any other third party's systems. Supplier is not liable for delays, delivery failures or other damage resulting from such problems. Only those remedies specifically set out in this Clause 12 are available to the Customer in respect of any defective or non-conforming Supply or Services. The Supplier shall not be liable under the Contract or otherwise, for any economic, indirect or consequential losses or costs, including, but not limited to loss of revenue, loss of profit and loss of use. Further the Supplier shall not be liable for expenses arising in connection with craneage, electricity, scaffolding, assistance of any kind, docking, diving, towage, demounting, mounting, calibration, aligning, performance of sea trials or other tests and inspections or loss of intended sale of the Supply or the Vessel.

### **13. LIMITATIONS AND EXCLUSIONS OF LIABILITY**

**13.1** All cases of breach of the Contract and the relevant consequences as well as all rights and remedies available to the Customer are exhaustively defined and covered by the express terms of the Contract.

**13.2** The Supplier shall not be liable under any circumstances, and irrespective of the cause of action, for indirect or consequential losses, such as – but not limited to – commercial or economic losses, loss of production, loss of use, loss of revenue, loss of profit, loss and corruption of data, delay and business interruption and other similar causes or losses, whether direct or indirect. Further, the Supplier is not liable for loss of time, loss of employment or opportunity to utilize the Supply or Services supplied, costs of substituted equipment, towage charges, pollution clean-up costs, docking or diving costs, damage to the Vessel, Customer's property or other assets, demounting or mounting costs or/and costs of sea trials or other tests and inspections.

**13.3** The limitations of liability contained in this Clause 13 however do not apply where such losses are caused by a breach of duty on the part of the statutory representatives or directors of the Supplier constituting unlawful intent, willful misconduct or gross negligence.

**13.4** Insofar as either Party has been held liable in respect of losses or liability excluded or limited by this Clause 13 by the other Party, their insurers or third parties, this other Party will indemnify the Party held liable to the extent of any such liability, including interest and costs.

**13.5** In any event, and whatever the cause of action, Supplier's maximum total liability to the Customer pursuant to and in connection with the Contract – including the obligation to pay penalties, liquidated

damages and regardless of cause, degree of fault, negligence, breach of contract or otherwise – is limited to one third (1/3) of that part of the Contract Price which relates exclusively to the individual Vessel in respect of which the cause of Supplier's liability has arisen.

**13.6** All technical information and/or advice provided by the Supplier, its personnel or subcontractors which is outside the scope of supplies as set out in the Contract or prior to the Contract and not by reference expressly included in the Contract, is intended for informal and confidential information purposes only, and the Supplier assumes no liability for the consequences of the Customer's actions, omissions or decisions made or based on such information or advice or for any losses so caused.

**13.7** The Supplier is not liable for any acts, omission or work carried out or assistance provided by the Customer or by any third party, even though carried out with actual or attributable assistance or knowledge of the Supplier, or based on any recommendation provided as part of the Supply or Services.

**13.8** The Customer shall be liable for any damage and any direct or indirect losses caused by any modifications to any part of the Supply not authorised in writing by the Supplier, or caused by the condition of the Vessel or of any equipment, gear or tool furnished by the Customer and used by Supplier's personnel.

**13.9** The Customer shall indemnify the Supplier for any third party claims relating to the Supply or Services under this Contract or to a failure by the Customer to perform its obligations under this Contract or under any agreement with third parties or any other causes of action arising in tort/delict, product liability or otherwise. The Supplier shall give the Customer written notice of any relevant claim received by the Supplier and give all necessary assistance at the Customer's expense.

**13.10** The Supplier is not liable for any loss or damage to the Supply, the Vessel, or other property of the Customer or any other third party related to incompatibility or inability of the Supply to operate or communicate or control, or to be controlled by, any other equipment or parts of the Vessel not forming part of the supplies made under this Contract.

**13.11** Each party shall obtain a waiver of all rights of recourse and subrogation against the other party from its insurers as well as indemnify and hold the other party harmless for all claims of or by either of the parties' insurers.

### **14. IMPORT AND EXPORT RESTRICTIONS**

**14.1** The Supply and Services shall be delivered subject to all applicable export controls or restrictions imposed on technology and products by any country or organisation or nation, including the United Nations, European Union and United States, which are enforceable in the jurisdiction of the Supplier or any Wärtsilä Company. The Customer acknowledges that the Supply and all related technical information, documents and materials may not be imported or exported, re-exported, transhipped, traded, diverted or transferred, directly or indirectly, contrary to such controls or restrictions.

**14.2** On the Supplier's request the Customer will furnish the Supplier with all relevant certificates relating to export control laws, regulations and restrictions, such as, but not limited to, end-user certificates, in form and content specified by the Supplier.

### **15. ENVIRONMENTAL, HEALTH AND SAFETY RESPONSIBILITIES**

**15.1** The Customer is responsible for all costs and expenses related to the management, handling, clean-up, removal and/or disposal of all waste material or hazardous substances as defined by any legislation or international convention relevant or applicable to the Vessel or the Equipment, Spare Parts or Services supplied.

**15.2** The Customer indemnifies the Supplier in respect of and against any claims, fines, penalties and all related expenses arising in connection with such waste material or Hazardous Materials escaping to or from the Vessel, the Equipment or Spare Parts.

**15.3** With respect to any environmental requirements and regulations the Supplier's sole responsibility is to ensure that the Services, Equipment and Spare Parts meet the requirements set out in the technical specifications during the test(s) at Supplier's or its subcontractor's factory. Any additional safety and/or environmental devices required for the use and/or operation of the Equipment or Spare Parts must be compatible with the Equipment and Spare Parts and shall be provided by and at the exclusive responsibility of the Customer.

**15.4** The Customer is responsible for ensuring that any persons using the Vessel, the Equipment and Spare Parts are aware of all the

necessary safety instructions and that these are followed at all times.

**15.5** The Customer represents and warrants that the Supplier, its personnel and subcontractors will have full and safe access to the Site, and that Supplier's personnel or any equipment of the Supplier or its subcontractors are not subjected to any risks to life, health or risk of loss or damage to property, including, but not limited to, exposure to Hazardous Materials, risks of infectious disease or outbreak of illness, elements or waste of any kind restricted by applicable laws or regulations .

**15.6** If, in the Supplier's reasonable opinion, any health and/or safety risks are present at the Site, or any area necessary to pass to access the Site, the Supplier may evacuate some or all of its Personnel from the Site, suspend its activities, delay their commencement, or remotely perform or supervise the Services or Supply until the danger has been averted. The Customer indemnifies the Supplier in respect of any liabilities and/or losses incurred in connection with any person, for or to whom the Supplier is responsible in any way whatsoever, suffering death or injury or loss of or damage to their equipment or other property as a result of the Customer's breach of this warranty under Clause 15.5.

**15.7** Any suspension or action taken by the Supplier in connection with Clause 15.6 shall be considered an excusable event without any liability to the Supplier.

**15.8** All reasonable additional costs incurred by the Supplier as a consequence of any steps taken by the Supplier pursuant to Clause 15.6 and any subsequent resumption or completion of the Services or Supply shall be reimbursed by the Customer.

## **16. FORCE MAJEURE**

**16.1** Neither Party shall be considered to be in default or otherwise liable for any delay or default in the performance of the Contract, where this is caused by an event or circumstances constituting Force Majeure. Force Majeure means any events or circumstances (whether foreseen or unforeseen) which are beyond the reasonable control of the Party affected, and includes, without limitation, the following: wars whether declared or not, any events involving armunitions of war, civil wars and riots, hostilities, public disorder, acts of terrorism and threat of terrorism, cyber incidents, any measures taken by public authorities in connection with the threat of terrorism, strikes, lockouts or other industrial disputes, epidemics, fires, explosions, acts of God, embargos, any lawful or unlawful restrictions and actions of any public authority or government, abnormally adverse weather conditions, lightning strikes, flooding, natural disasters, destruction of machines, equipment or factories, shortage of transport or the imposition of transport restrictions or failure of a subcontractor of Supplier due to reasons stated above to supply materials, goods or services in time or at all.

**16.2** Once a Party is aware that its performance under the Contract is affected by Force Majeure, the affected Party shall, without undue delay, give written notice to the other Party briefly setting out relevant details of the delay.

**16.3** If the Services or Supply cannot be commenced or continued as a result of Force Majeure, the reasonable costs of maintaining personnel at or near the Site (including, without limitation, wages and lodging) will be borne by the Customer. If the interruption to the Services or Supply continues for more than a week, Supplier may, at its own discretion, withdraw such personnel and all expenses associated with this withdrawal shall be borne by the Customer.

**16.4** In the event that such Force Majeure event continues uninterrupted for six (6) months after receipt of any notice in accordance with Clause 16.2 above, either Party may terminate the Contract by giving one month written notice.

**16.5** Any termination as a result of Force Majeure shall not affect obligations already performed at the time when the termination notice is given, nor does it affect the Supplier's right to receive payment of any amounts due under the Contract in respect of performed obligations.

**16.6** The Parties expressly agree that (i) COVID-19 and related public health measures, (ii) Russian military operations in Ukraine and related supply chain disruptions, and (iii) the unavailability, shortage or long-lead time of components containing semiconductors and other electrical components shall be deemed Force Majeure events under the Contract (whether foreseen or unforeseen at the time of the Contract). Accordingly, any arrangements that are, at the time of the Contract or in the future, affected by the said events shall not be within the control of a Party.

## **17. HARDSHIP**

**17.1** If, due to an event or a change in circumstances beyond the reasonable control of the Supplier, the performance of this Contract becomes excessively onerous on the Supplier, the Parties shall conduct negotiations in good faith to reach a mutually acceptable agreement on adjustment of the terms of this Contract (such as the Contract Price or the delivery dates) to reflect the adverse effects of such event or change in circumstances.

**17.2** If a mutual agreement on the adjustment of Contract has not been reached within thirty (30) days of the date when the Supplier notified the Customer in writing of its willingness to commence negotiations under this clause, the Supplier shall have the right to either: (a) submit the matter to be resolved in arbitration pursuant to clause 26.2, with the arbitration tribunal having full authority to decide upon reasonable adjustment of the Contract Price or Contract terms; or (b) terminate this Contract by a thirty (30) calendar days' written notice to the Customer, in which case the provisions of Clause 16.5 shall apply.

## **18. TERMINATION**

**18.1** The Customer may terminate the Contract by giving seven (7) days termination notice in writing to the Supplier if the Supplier is declared insolvent by way of final court order, and the Supplier or any administrator fails to provide, within one (1) month of the Customer's written request to do so, adequate security for the performance of its obligations under the Contract.

**18.2** In case of a termination of the Contract by the Customer in accordance with Clause 18.1 the Supplier is entitled to receive payment of the proportional Contract Price in respect of the Supply delivered and supplies already made under the Contract. The Customer's right to damages resulting from any termination in accordance with Clause 18.1 shall always be subject to the limitations of liability as set out in Clause 13 and shall under no circumstances exceed fifteen percent (15 %) of the Contract Price.

**18.3** The Supplier may terminate the Contract with immediate effect by giving notice in writing to the Customer in any of the following cases:

a) The Customer fails to provide or extend the validity of security in accordance with the Contract and such failure is not remedied within fourteen (14) days after the Supplier has given notice in writing.

b) The Customer fails to pay any amounts due to the Supplier pursuant to the Contract and such failure is not rectified within fourteen (14) days after the Supplier has submitted a written notice.

c) The Customer has failed to perform a material obligation under the Contract and such material breach of contract has not been rectified within one (1) month after the Supplier has given notice in writing.

d) Any application to commence insolvency or winding up proceedings against the Customer or its assets is filed.

e) The Customer has failed to accept the Delivery of the Equipment within the final reasonable time period given by the Supplier in accordance with Clause 6.3 above.

**18.4** On termination by the Supplier pursuant to Clause 18.3, the Supplier is entitled to payment and compensation in respect of all losses, costs, expenses and liabilities arising as a result of or in connection with the event giving rise to the termination, including, but not limited to, payment for the Supply and Services supplied and any losses or liabilities resulting from early termination of subcontracts and payments made to its subcontractors and suppliers, and is additionally entitled to payment of a termination fee of eight percent (8%) of the Contract Price. Supplier shall not be obliged to return any payments made by the Customer.

## **19. SUSPENSION OF PERFORMANCE**

Without prejudice to any other rights or remedies available, the Supplier has the right to suspend performance of its obligations under the Contract in case of any default by the Customer in the payment of any amounts due, including a delay in providing payment security, or other breach of the Contract, or if any information or documentation requested by the Supplier which relates in any way to the performance of the Contract has not been provided by the Customer or any third party as agreed or at all. The Supplier has an equal right for suspension if it is

reasonably clear from the circumstances that the Customer will not be able to perform its obligations. In case of such suspension the Supplier shall forthwith notify the Customer thereof and any time limits or dates for performance in the Contract shall, at the discretion of the Supplier, be extended by a period equal to or longer than the period of default.

## 20. INVALIDITY OF INDIVIDUAL PROVISIONS

The terms of the Contract are severable. If any provision contained in the Contract is held to be illegal, invalid, void or unenforceable, in whole or in part, the validity of the remaining provisions contained in the Contract shall not be affected thereby. The Parties shall replace or amend any invalid provision or part thereof with a legally acceptable alternative that meets or most closely meets the original intention of the Parties.

## 21. MISCELLANEOUS PROVISIONS

**21.1** The provisions of the Contract are intended for the sole benefit of the Supplier and the Customer and there are no third-party beneficiaries.

**21.2** Each Party must obtain comprehensive insurance covering its personnel, assets and liabilities.

**21.3** The waiver of any breach or failure to enforce any of the terms, covenants or conditions of the Contract does not in any way affect, limit, modify or waive the future enforcement of such terms, covenants or conditions.

**21.4** Any modifications, documentation or approvals relating to the Supply or Services supplied under the Contract which are required by changes in law, international regulations, flag state, or class rules after the date of the Supplier's offer shall be the responsibility of and arranged and paid for exclusively by the Customer.

**21.5** Supplier and Customer agree to provide such information, execute and deliver any instruments and documents, and take such other actions as may be necessary or reasonably requested by the other Party (at the cost and expense of the other Party) in order to give full effect to this Contract and to carry out the intent of this Contract.

## 22. CONFIDENTIALITY AND PUBLICITY

**22.1** The Contract or documentation supplied in its context may contain confidential and commercially sensitive information. No Party, nor their agents or subcontractors, may allow any document or information relating to the subject matter, the technical specifications, Software, description of the scope of supplies, negotiations leading to and the conclusion of the Contract, or any other information that may be commercially sensitive, including information that could affect stock market notations, to be disseminated or otherwise published or used, except as provided below, without the express prior consent in writing from the other Party. Data defined in Clause 23.1 shall not be considered confidential information under this Clause 22.1.

**22.2** Wärtsilä Corporation, Supplier and the Customer are entitled to issue public or other announcements or statements which they regard as necessary under the rules of any stock market or other statutory provisions. Supplier is entitled to use information relating to the Supply, Services and/or Vessel for the purpose of providing references for third parties.

**22.3** Any press or public statements other than those referred to above, are either issued jointly or, if issued by only one Party, are to be approved in writing by the other Party before being published.

## 23. DATA

**23.1** Notwithstanding anything to the contrary, Supplier shall have the right to collect data from sensors, instruments, monitors, data collectors or other industrial control or SCADA devices located at customer's sites or on the equipment delivered, or if agreed between the parties through any digital platform managed by Customer or an authorised third party for storing such data, and use such data for purposes, including but not limited to supporting and developing its products, solutions and services. Data may

be transferred within Supplier and to third parties who act for or on its behalf for processing the data. Supplier shall own any enrichment, report or derivative work developed or derived from such data. Supplier's rights to use the data shall survive any termination or expiration of the Contract.

**23.2** Unless otherwise stated in the Contract, Customer will be responsible for the data connections and other integration of the Equipment or Software in Customer's systems including protection of the same against cyber security threats. Supplier is not liable for cyber incidents or breaches, any unauthorized access, interference, intrusion, leakage and/or theft of data or information within Customer's IT or OT systems and Supplies. In the event that either Party becomes aware of any IT or OT security breach or cyber incident that impacts either Party's ability to perform its duties relevant to the scope of work under the Contract, that Party shall notify the other Party without undue delay.

**23.3** Supplier's personal data processing activities are set out in Supplier's Privacy Notice which is available at: <https://www.wartsila.com/legal-privacy/privacy> and incorporated herein by reference. Parties agree that in relation to any personal data shared between them, unless otherwise provided in the General Data Protection Regulation (EU 2016/679) ("GDPR"), or agreed between the parties, both are acting as data controllers as described in GDPR.

## 24. ENTIRE AGREEMENT AND AMENDMENTS

**24.1** This Contract is the entire agreement between the Parties. There are no other or prior oral and written agreements, obligations, representations and warranties and correspondence with respect to the subject matter of the Contract upon which the parties have relied except those contained in the Contract.

**24.2** The Contract may be amended or varied only if such amendment or variation has expressly been agreed in writing by the authorised representatives of the Parties.

## 25. TIME BAR

**25.1** Subject to Clause 25.2 below, any claims against the Supplier under or in connection with the Contract, will be deemed to be waived and absolutely time barred upon the expiry of twelve (12) months from the date of Delivery.

**25.2** Any claims against the Supplier arising out of or in connection with the warranty set out in Clause 12, will be deemed to be waived and absolutely time barred one (1) month after the expiry of the Warranty Period in accordance with Clause 12 for the Supply or the Services, or any part thereof.

## 26. APPLICABLE LAW, ARBITRATION AND JURISDICTION

**26.1** The Contract shall be construed in accordance with, governed by, and interpreted under the law in force at the registered office of the Supplier.

**26.2** All disputes arising out of or in connection with the Contract shall be settled through friendly consultations between the Parties. In case no agreement can be reached through consultations, the dispute shall be submitted exclusively to arbitration for final settlement in accordance with the Rules of Arbitration of the International Chamber of Commerce with three arbitrators appointed in accordance with the said rules. The arbitration proceedings shall be conducted in English. The place of arbitration shall be Helsinki, Finland.

**26.3** Nothing contained in this Clause 26 precludes the Supplier from bringing any legal suit, action or proceedings against the Customer in the courts of any jurisdiction where the Customer or any of its property or assets may be found or located, and the Customer hereby irrevocably submits to the jurisdiction of any such court.

