Marine Power International FZC (MPI) - General Terms of Sale and Delivery

1. General

1.1 The present Terms of Sale and Delivery shall apply to all business relations of the Supplier (Marine Power International FZC) with other companies (“The Buyer/s”). The Supplier and the Buyer/s shall be jointly referred to as “The Parties”. In particular, the Supplier shall provide all the goods and services and supplies (“The Services”) to the Buyer exclusively on the basis of these General Terms of Sale and Delivery, whether expressly referring to them in a specific case or not.

1.2 These Terms set forth the only warranty applicable to the parts and is in lieu of any other warranties, guarantees, obligations and liabilities express or implied including warranties, guarantees, obligations or liabilities against non-conformity or defects. The Buyer hereby waives all other remedies, warranties, guarantees and liabilities, express or implied, arising by law or otherwise (including without limitation fitness for purpose, merchantability or satisfactory quality).

1.3 At the latest by issuing its declaration of agreement with the Supplier, the Buyer irrevocably accepts these General Terms of Sale and Delivery. No General Terms of Business of the Buyer shall become part of the contract, irrespective of whether the Buyer refers to them and irrespective of the time of receipt of such Buyer’s Terms at the Supplier.

2. Quotation & Acceptance of Order

2.1 All quotations of the Supplier are without obligation and subject to modification. Buyer’s orders not containing a deadline for acknowledgement shall bind the Buyer for at least four weeks.

2.2 Any contracts with the Supplier shall not become effective until written acceptance and acknowledgement of the order by the Supplier (“Order Acknowledgement”).

2.3 Any deviations in the order acknowledgement shall be considered as accepted if the Buyer does not contradict the deviation in question expressly and in writing, within seven days from the receipt of the Order Acknowledgement.

3. Prices and terms of payment

3.1 In case of doubt, the prices serving as the basis of the Contract are to be read as, Ex works prices exclusive of packing, dispatch & the legal applicable taxes.

3.2 Unless otherwise agreed upon different payment terms, the Buyer shall be obliged to pay all invoices at the Supplier’s place of business within 30 days from the date of invoice and without deduction.

3.3 Payment is deemed to be complete only when the entire amount stated in the Invoice or Pro-forma Invoice is credited to Supplier’s account without any deductions. All Bank charges are to be borne by the Buyer.
3.4 In the event of the Buyer failing to pay the purchase price or any other amount which is due, he shall - without prejudice to any damages claim - be obliged to pay the Supplier interest on the due amount at a rate of 21% per annum.

3.5 The Buyer shall not be entitled to refuse to make payment on the grounds of claims arising from actions or omissions on the part of the Supplier where such claims have not been recognised by the Supplier. The Buyer shall also not be entitled to offset any counterclaims against the amount of his payment towards the Supplier unless this latter has expressly recognized such claims in writing.

4. Delivery

4.1 Any delivery date specified in the Order Acknowledgement or otherwise shall be deemed an estimate only, and the Supplier shall not be liable for any loss, damage or expense whatsoever however caused or arising out of any delay in delivery.

4.2 The Buyer shall not be entitled to refuse to accept the Goods because of late delivery.

4.3 Where delivery is made by instalment, each such instalment shall be deemed to be the subject of a separate Contract.

4.4 Unless otherwise agreed between the Supplier and the Buyer and stated accordingly in the Order Acknowledgement, delivery shall be Ex Works at the Premises of MPI.

4.5 In case of any short or wrong delivery, the Buyer has to notify the Supplier within 5 (five) working days on receipt of material, failing which the Buyer shall be deemed to have accepted the quantity & quality of parts delivered.

4.6 All references to trade terms shall be interpreted in accordance with Incoterms® 2020, unless otherwise agreed in writing.

4.7 The Supplier has the right to suspend the performance of its obligations under the contract if it is reasonably clear from the circumstances that the Buyer will not be able to perform its obligations as stated in the contract.

5. Passing of Risk and Property in the Goods

5.1 Where delivery is delayed at the request of the Buyer for more than thirty (30) calendar days, the Supplier shall be entitled to place the Goods in store at the Buyer’s risk and expense.

5.2 The property in the Goods shall not pass to the Buyer, whether or not the Buyer has taken delivery of the Goods or any part thereof, until the Buyer shall have paid to the Supplier the whole of all sums due to the Supplier hereunder.

6. Specifications

6.1 While the Supplier has taken care to ensure the accuracy of any information data or advice included in any catalogue or other literature furnished to the Buyer, the Supplier accepts no liability
in respect of such information, data or advice, whether given negligently or not and the Buyer shall at the time the Contract is made be deemed to have carried out its own investigations and tests of the Goods.

6.2 Subject to the foregoing the Buyer shall inspect the Goods immediately upon arrival at its premises and shall within Fourteen (14) calendar days of their arrival notify the Supplier of any damage, shortage, loss or other particulars by reason of which it alleges that the Goods supplied do not conform with the Contract. If no such notice is received, the Goods shall be deemed to have been supplied in accordance with the Contract and to have been accepted by the Buyer.

6.3 Where the Buyer gives notice to the Supplier by virtue of sub-clause 6.2, the Buyer shall preserve the Goods intact and as delivered for a period of thirty (30) calendar days after receipt by the Supplier of the notification, during which period the Supplier’s agents or employees shall be at liberty to attend the Buyer’s premises to investigate the complaint.

6.4 If the Buyer fails to comply with either of sub-terms 6.2 or 6.3 it shall be deemed to have waived all or any claim actions or rights or remedies it may have in respect of the non-conformity of the Goods to the Contract.

6.5 If upon inspection by the Supplier, the Goods are found to be damaged, short or otherwise not in conformity with the Contract, the Supplier shall in its absolute discretion at its own expense replace or otherwise make good the same.

6.6 Damage, shortage, loss or other non-conformity with the Contract which is present only in a proportion of the Goods shall entitle the Buyer to the remedies given by this Term only is respect of that proportion or instalment.

7. Supplier’s Warranty

7.1 For a period of twelve (12) months from the date of invoice or six (6) months from date of installation, whichever occurs earlier, the Supplier will exchange or repair (at the Supplier’s discretion) any part or parts thereof requiring replacement or repair by reason of faulty design, workmanship or material.

7.2 The Supplier will not be responsible for any expenses which the Buyer and/or subsequent user may incur in removing or having removed or replacing any part or parts of the Goods sent for inspection or fitting or having fitted any replacement or new parts supplied in lieu thereof.

7.3 The Supplier is released from any other form of liability, including consequential damages, arising by reason on the goods not being of the type or quality ordered or by reason of the Goods being delayed or be reason of any other matter whatsoever.

7.4 No claim for exchange or repair can be considered unless the defective part or parts are returned at sole cost of the Buyer to the Supplier’s / Manufacturer’s works together with the following information: (i) The Supplier’s reference on the Goods from which the part or parts were taken. (ii) The defects claimed and the reasons for them. (iii) The date of purchase and the source from which the Goods were purchased.
7.5 This Warranty does not extend to any defect which in the opinion of the Supplier / Manufacturer (whose opinion shall be final) was attributable to: (ii) Any form whatsoever of improper use. (ii) Wear and tear. iii) Non-compliance with any instructions issued by the Supplier or Manufacturer. (iv) Incorrect fitment howsoever caused. (v) Neglect of others. (vi) Abnormal corrosive or abrasive conditions. (vii) Any alteration or modification having been made to the Goods or any parts thereof or any connected parts without the express approval of the Supplier given in writing.

7.6 The Warranty period will start when the parts are ready for delivery, but the Supplier is not able to deliver the parts for reasons attributable to the Buyer.

7.7 With respect to the parts which are repaired or replaced under Warranty, the Warranty period shall expire 6 (Six) months after repair/replacement or on expiration of warranty period to the originally supplied part, whichever occurs later.

7.8 In no event, whether as a result of breach of contract, breach of warranty, tort liability (including negligence or strict liability), or otherwise, shall the Supplier be liable for any indirect, contingent, special, consequential or incidental damages, however caused or arising (whether actual or anticipated) nor for losses or damages (whether actual or anticipated) caused by reason of unavailability of the equipment or the facility, shutdowns or service interruptions, loss of power generation, loss of propulsion, loss of use, loss of profits or revenue, loss of savings, loss of reputation, inventory or use charges, cost of purchased or replacement power, interest charges or cost of capital any claims of the Buyer’s customers, punitive or exemplary damages, the cost of substituted equipment, spare parts or services or replacement, removal or reinstallation service work not arising from the warranty provided herein, towage charges, pollution remediation costs, costs of docking, diving or sub-sea work, damage to any vessel, engine room or power plant site, yard or other property (including damage to goods owned by the Buyer), damage to any equipment or property other than the equipment, components and parts delivered hereunder, costs for any additional tests, sea trials, debris removal or for loss of time or use of any equipment, installation system, operation or service.

7.9 Notwithstanding any other provision of the contract, in no event shall the Supplier’s aggregate liability to the Buyer under this contract, whether in contract, tort (including negligence or strict liability) or any other legal or equitable theory, exceed thirty percent (30%) of the Contract price.

7.10 Notwithstanding any other provision of the contract, no warranty or guarantee from the Supplier is applicable if payment in full is not received by the Supplier in accordance with clause 3 of these Terms.

8. Buyer’s Undertakings

8.1 The Buyer accepts full liability for and shall at all times indemnify the Supplier against all actions claims demands costs charges and expenses whatsoever arising out if any loss or damage to any person, firm, company or property.

8.2 The Buyer hereby grants to the Supplier a continuing security interest, and when applicable a maritime lien for necessaries, in and to the parts, together with all goods into which the parts are
attached at any time, and all products and proceeds derived from the sale or lease thereof as security
for the payment in full of such parts

8.3 The Buyer shall pay, where applicable, all duties, withholding and other taxes, customs fees and
charges and all charges and fees by a classification or inspection society. All such documentation or
approvals which are required by applicable laws, and any applicable modifications of such laws, shall
be the responsibility of and paid by the Buyer.

Any part being supplied from the European Union (EU) is exempted from Value Added Tax (VAT) on
the condition that the parts are exported out of the EU within one hundred and fifty (150) days from
the supply. In accordance with the EU customs and vat laws, the Buyer must provide the Supplier with
valid proof of exportation. If the Buyer does not provide the Supplier with such proof within one
hundred and fifty (150) days, the Supplier has the right to charge VAT according to national laws which
shall be immediately remitted by the Buyer.

Any part being supplied from the United Arab Emirates (UAE) is exempted from Value Added Tax (VAT)
and custom duty on the condition that the parts are exported out of UAE within thirty (30) days from
the supply. In accordance with the UAE customs and vat laws, the Buyer must provide the Supplier
with valid proof of exportation in the format required by the regulatory authorities. If the Buyer does
not provide the Supplier with such proof within thirty (30) days, the Supplier has the right to charge
VAT and duty according to national laws which shall be immediately remitted by the Buyer.
9. Termination of the Contract by the Supplier

9.1 The Supplier may terminate the Contract forthwith by written notice to the Buyer upon the happening of any of the following events: (i) Where full payment in respect of the Goods or any instalment of the Goods has not been received by the Supplier by the date specified as the date for payment (ii) Where the Buyer has failed to provide any Commercial security required by the Contract. (iii) Where the Buyer commits any act of bankruptcy or goes into liquidation or has a receiver Appointed. (iv) Where the Buyer is in breach of any of these Terms.

9.2 The granting by the Supplier to the Buyer of time or any other indulgence, forbearance or concession shall in no way prejudice or constitute a waiver of the Supplier’s entitlement to enforce any of its rights under these Terms

9.3 If the Supplier terminates the Contract in accordance with this Clause, then, without prejudice to any other rights the Supplier may have, it shall be entitled to retain any advance payment made by the Buyer.

10. Cancellation by the Buyer

The Contract may be cancelled by the Buyer only with the Supplier’s written consent, which shall be given or withheld, at the sole discretion of the Supplier and upon such terms as the Supplier may deem fit. Unless otherwise agreed upon, minimum 25% cancellation charges will be applicable on all the orders if cancelled prior to dispatch. After dispatch of the order by the Supplier, 100% cancellation charges will be applicable.

Notwithstanding the above, for parts or items being specifically arranged for the Buyer, 100% cancellation charges will be applicable irrespective of the time of cancellation.

11. Force Majeure

In the event of: civil disturbance, industrial disputes, Act of God, or war (whether declared or in Act) perils of the sea, breakdown in machinery, shortages of raw material or fuel or labour, or sub-contractors of the Supplier or any other unforeseen or exceptional circumstances whatsoever affecting the performance of the Contract, the Supplier may in its discretion either:

(I) Terminate the Contract and return any advance payment made in respect thereof of the Buyer;

or

(ii) Delay delivery for such period or periods as it shall consider necessary

In either case the Buyer shall have no claims whatsoever and howsoever arising against the Supplier in respect of such termination or delay.

12. Confidentiality

12.1 Any drawings or technical documents intended for use in manufacture or construction of the Goods and submitted to the Buyer prior or subsequent to the formation of the Contract remain the
Supplier’s exclusive property. Such drawings or technical documents may not without the Supplier’s consent be utilised by the Buyer or copied, reproduced, transmitted or communicated to a third party. The said drawings and documents shall become property of the Buyer only if it is expressly so agreed in writing by the Supplier.

12.2 In the event that an Order or Contract is not proceeded with for any reason whatever, each party shall upon demand return to the other all such materials is referred to in the preceding sub-clause and undertake to destroy any copies thereof which may have been made by it.

13. Assignment

The Contract is personal to the Buyer, which shall not assign or charge the benefit thereof in any manner whatsoever without the Supplier’s express written consent.

14. Law

The Contract shall in all respects be constructed and operate in accordance with UAE law, and the Buyer hereby submits to the exclusive jurisdiction of the UAE courts.

15. Variation

After the formation of the Contract any alterations, amplifications modifications, limitations or additions thereto must be agreed by the parties, made in writing, refer to the Contract, and be annexed to the Confirmation of Order.

16. Notices

Notices shall be made in writing and posted in a first-class pre-paid envelope to the Buyer’s or Supplier’s address as shown respectively on the Order and Confirmation of Order or failing those to the address at which one party reasonably believes the other to be carrying on business.

17. Construction

The clause headings hereto shall not affect the construction of these Terms