

Zodiac Maritime Terms & Conditions for Purchase Orders

Definitions - In these conditions:

- “Contract” means the agreement between the Customer and Contractor comprising the Contractor’s quotation, tender, statement of works or any other particulars of the order and the Customer’s acceptance thereof, including this Purchase Order, and any documents referred to therein.
- “Contractor” means the supplier of any Goods or Services under the Contract.
- “Customer” means Zodiac Maritime Limited, or any other group company as specified on Purchase Order Documentation.
- “Days” means calendar days save where the context otherwise requires.
- “Data Protection Legislation” means the GDPR, the Data Protection Act 2018 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.
- “FOIA” means the Freedom of Information Act 2000.
- “Goods” means anything supplied or to be supplied to the Customer under the Contract.
- “GDPR” means the General Data Protection Regulation (EU 2016/679).
- “Purchase Order” means the document issued by the Customer relating to the order for Goods and/or Services to be supplied by the Contractor to the Customer in accordance with the terms of the Contract.
- “Services” means all the Services that the Contractor is required to carry out under the Contract.

1. Conditions for the supply of Goods - Contractor’s duties

- (i) The Contractor shall supply the Goods to the Customer in accordance with the terms of the Contract.
- (ii) The Contractor shall ensure that the Goods shall:
 - a. be free from defects in materials and workmanship and remain so for 12 months after delivery;
 - b. be of satisfactory quality (within the meaning of the Sales of Goods Act 1979) and fit for any purpose held out by the Contractor or made known to the Contractor by the Customer, expressly or by implication, and in this respect the Customer relies on the Contractor’s skill and judgment;
 - c. conform with the specifications, drawings, descriptions given in any material (in whatever format made available by the Contractor) supplied by, or on behalf of, the Contractor; or such custom specifications as directed by the Customer;
 - d. be free from design defects;
 - e. comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- (iii) The Contractor shall ensure that:
 - a. the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
 - b. each delivery of the Goods is accompanied by a delivery note correctly addressed to the Customer which shows the Purchase Order number, order and dispatch dates, the type and quantity of the Goods, returns instructions and, in the case of part delivery, the outstanding balance remaining to be delivered;

- c. if the Contractor requires the Customer to return any packaging material for the Goods to the Contractor, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Contractor at the cost of the Contractor;
 - d. it shall comply with all applicable laws at all times.
- (iv) The Contractor shall deliver the Goods:
- a. on the date specified in the Purchase Order or, if no such date is specified, then within 7 days of the date of the Purchase Order;
 - b. to the address specified in the Purchase Order or as instructed by the Customer before delivery;
 - c. between 9 am and 4 pm Monday to Fridays, or as instructed by the Customer;
- (v) Where the Contractor fails to deliver the Goods (or part of the Goods) or the Goods (or part of the Goods) do not comply with the provisions of clause 1 (ii), then without limiting its other rights or remedies implied by statute or common law, the Customer shall be entitled:
- a. to terminate the Contract;
 - b. request the Contractor, free of charge, to deliver substitute Goods within the timescales specified by the Customer;
 - c. to require the Contractor, free of charge to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
 - d. to reject the Goods (in whole or part) and return them to the Contractor at the Contractor's own risk and expense and the Customer shall be entitled to a full refund on those Goods or part of Goods duly returned;
 - e. to buy the same or similar Goods from another supplier and to recover any expense incurred in respect of buying the goods from another supplier which shall include but not be limited to administration costs, chargeable staff time and extra delivery costs.

2. Conditions for the supply of Services - Contractor's duties

- (i) The Contractor shall supply the Services to the Customer in accordance with the terms of the Contract.
- (ii) In supplying the Services, the Contractor shall:
- a. co-operate with the Customer in all matters relating to the Services and comply with all the Customer's instructions;
 - b. perform the Services with all reasonable care, skill and diligence in accordance with best industry practice in the Contractor's industry, trade or profession;
 - c. use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Contractor's obligations are fulfilled in accordance with this Contract;
 - d. ensure that the Services shall conform with all descriptions and specifications set out in the Contract;
 - e. comply with all applicable laws;
 - f. provide all equipment, tools and vehicles and other items as are required to provide the Services;
 - g. observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises.

3. Charges and Payment

- (i) The charges for the Goods and/or Services shall be as set out in the Purchase Order and shall be the full and exclusive remuneration of the Contractor in respect of the supply of the Goods and/or Services. Unless otherwise agreed in writing by the Customer, the charges for the Goods and/or Services shall include every cost and expense of the Contractor directly or indirectly incurred in connection with the supply of the Goods and/or Services. In respect of the supply of Goods, this shall include but not be limited to the costs of packaging, insurance, delivery, unloading, stacking and carriage.
- (ii) The Contractor shall submit an invoice within 28 days of supplying the Goods or Services to the satisfaction of the Customer. The invoice shall be on letterhead paper correctly addressed to the Customer and include such supporting information required by the Customer to verify the accuracy of the invoice, including but not limited to the relevant Purchase Order number, a breakdown of the Goods and/or Services supplied and the amount of VAT payable.
- (iii) Whenever under the Contract any sum or sums of money shall be recoverable from or payable by the Contractor to the Customer, that amount may be deducted from any sum then due, or which at any later time may become due, to the Contractor under the Contract or under any other contract with the Customer.

4. Prevention of Fraud and Corruption

The Contractor shall not receive or agree to receive from any person, or offer or agree to give to, or procure on behalf of any person in the employment of the Customer, any gift or consideration of any kind as an inducement or reward for doing or not doing anything, or for showing favour or disfavour to any person in connection with the Contract.

5. Data Handling

- (i) The Contractor shall comply with any notification requirements under the Data Protection Legislation and shall duly observe all their obligations under the Data Protection Legislation which arise in connection with the Contract.
- (ii) When handling the Customer's data (whether or not personal data), the Contractor shall ensure the security of the data is maintained in line with the security requirements of the Customer as notified to the Contractor from time to time.
- (iii) Notwithstanding the general obligation in sub-clause 5(i), where the Contractor is processing personal data for the Customer as a data processor (as defined by the GDPR) the Contractor shall:
 - a. ensure that it has in place appropriate technical and organisational measures to ensure the security of the personal data (and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data);
 - b. provide the Customer with such information as the Customer may reasonably request to satisfy itself that the Contractor is complying with its obligations under the Data Protection Legislation;
 - c. promptly notify the Customer of any breach of the security requirements of the Customer;
 - d. promptly notify the Customer of any request for access to or a request to rectify or erase personal data; and

- e. ensure that it does not knowingly or negligently do or omit to do anything which places the Customer in breach of the Customer's obligations under the Data Protection Legislation;
 - f. ensure that its staff are suitably trained;
 - g. ensure that personal data is not transferred outside the European Economic Area without the Customer's prior written consent.
- (iv) In addition to the above, when handling the Customer's personal data, the Contractor shall comply fully with the requirements set out in the Customer's Data Processing and Sharing Requirements Schedule.

6. Disclosure of Information

- (i) The Contractor shall not disclose any confidential information received from the Customer, shall safeguard it accordingly and shall not disclose it to any other person without the prior written permission of the Customer, unless such disclosure is required by law, any governmental or regulatory authority or by a court of competent jurisdiction.
- (ii) The Contractor shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the Contractor's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the contract.
- (iii) The Contractor shall not disclose any other information, which is not confidential information, relating to the Contract or the Customer's activities without the prior written consent of the Customer, unless such information is already in the public domain.
- (iv) This clause shall survive termination or expiry of the Contract.

7. Sub-contracting and assignment

The Contractor shall not sub-contract or transfer, assign, charge, or otherwise dispose of the Contract or any part of it without the prior written consent of the Customer.

8. Ownership of Title and Intellectual Property Rights

- (i) In respect of any Goods that are transferred to the Customer as part of the Services under this Contract, the Contractor warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the Customer, it will have full and unrestricted rights to sell and transfer all such items to the Customer.
- (ii) The Contractor hereby grants the Customer a perpetual, royalty-free, irrevocable, non-exclusive worldwide licence to use all intellectual property rights in the materials created or developed pursuant to the Contract.
- (iii) The Contractor shall keep the Customer indemnified against all liabilities, costs, expenses, damages and losses suffered incurred by the Customer as a result of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services, to the extent that the claim is attributable to the acts or omissions of the Contractor, its employees, agents or subcontractors.
- (iv) This clause shall survive termination or expiry of the Contract.

9. Termination

- (i) Without limiting its other rights or remedies, the Customer may terminate the Contract:
 - a. in respect of the supply of Services, at any time by giving the Contractor one month's (or, if the Contract is less than 3 months in duration, at least 10 working days') written notice; and
 - b. in respect of the supply of Goods, in whole or in part at any time before delivery with immediate effect by giving written notice to the Contractor, whereupon the Contractor shall discontinue all work on the Contract. The Customer shall pay the Contractor reasonable costs necessarily and properly incurred by him as a result of the termination, excluding loss of profit and consequential losses, provided that the amount shall not exceed the total cost of the Contract termination, excluding loss of profit and consequential losses, provided that the amount shall not exceed the total cost of the Contract.

- (ii) Without prejudice to any other right or remedy it might have, the Customer may terminate the Contract by written notice to the Contractor with immediate effect if the Contractor:
 - a. is in material breach of any obligation under the Contract;
 - b. repeatedly breaches any of the terms and conditions of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Contract;
 - c. breaches any of the provisions of clauses 4, 5, 6 and 7; or
 - d. becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Contractor (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Contractor's assets or business, or if the Contractor makes any composition with its creditors or takes or suffers any similar or analogous action in consequence of debt in any jurisdiction.

- (iii) Termination or expiry of the Contract shall not affect the rights of the parties to the Contract that may have accrued prior to termination or expiry and shall not affect clauses which expressly or by implication survive termination or expiry of the Contract.

- (iv) Upon termination or expiry of the Contract, the Contractor shall:
 - a. give all reasonable assistance to the Customer and any incoming supplier of the Goods and/or Services; and
 - b. return all requested documents, information and data to the Customer as soon as reasonably practicable.

10. Loss or Damage

- (i) The Contractor shall, without delay and at the Contractor's own expense, reinstate, replace or make good to the satisfaction of the Customer, or if the Customer agrees, compensate the Customer, for any loss or damage connected with the performance of the Contract, except to the extent that such loss or damage is caused by the neglect or default of the Customer.
- (ii) "Loss or damage" includes but is not limited to: loss or damage to property; personal injury, sickness or death; and loss of profits or loss of use suffered as a result of any loss or damage.
- (iii) This clause shall survive termination or expiry of the Contract.

11. Insurance

The Contractor shall effect and maintain an adequate level of insurance cover in respect of all risks that may be incurred by him in the performance of this Contract.

12. Notices

A notice may be served: by delivery to the Contractor; by sending it by email to him; or by ordinary first class post to the Contractor's last known place of business or registered office. A notice shall be deemed served at the time of delivery, at the time of receipt for an email, or on the second working day after posting.

13. Governing law and Jurisdiction

The Contract shall be governed by and interpreted in accordance with English Law. The courts of England and Wales shall have exclusive jurisdiction to settle any claim arising out of or in connection with this Contract.

14. Variations to the Contract

The Contract may only be varied if it is in writing and signed by the Contractor and Customer.

15. General

- (i) Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Contract shall be valid only if it is communicated to the other party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.
- (ii) Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- (iii) If any provision of the Contract is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Contract and rendered ineffective as far as possible without modifying the remaining provisions of the Contract, and shall not in any way affect any other circumstances of or the validity or enforcement of the Contract.