

TERMS AND CONDITIONS

A. GENERAL PROVISIONS APPLICABLE TO GOODS AND SERVICES.

It is understood and agreed that the terms and conditions of this Order are applicable to both the sale of goods and/or services to Buyer, its vessels, equipment and/or other property. The following terms and conditions shall apply in all cases:

1. **Definitions:** The term "Buyer" includes the ultimate consumer of the goods and/or recipient of the services and all rights, benefits and remedies conferred upon Buyer by this Order shall also accrue to and be available to and are for the express benefit of said consumer or recipient, sometimes designated as successor in interest. The term "goods" includes personal property of every type, kind and description, as specifically described on the reverse side hereof. The term "services" includes all design, delivery, installation, inspection and testing specified or required to furnish the goods and/or provide the repair, improvement, and/or other work as specifically described on the reverse side hereof. The term "property" includes the vessel, equipment and/or other items of Buyer for which Seller is to provide services.

2. **Entire Agreement:** This Order and any attachments hereto or referred to specifically herein constitute the entire agreement between the parties with respect to the subject matter hereof. Seller's acceptance of this Order is limited to the terms and conditions hereof. Any written confirmation of this Order, or of any oral understanding upon which this Order is based, containing proposals or terms additional to or different from those set forth herein are not binding on Buyer unless Buyer expressly agrees to any such proposal or term in writing.

3. **Changes in Order:** Buyer shall have the right to order changes from time to time in the performance required of Seller under this Order, and Seller shall without delay conform to any such change order. In the event of any such change in this Order, the prices or times of performance, or both, shall be adjusted within reasonable and appropriate limits; provided, however, that Buyer shall have no obligation to pay, and the right to refuse payment of any claim by Seller for increase in price or time of performance required which is not received by Buyer in writing within ten (10) calendar days after the date the change is ordered. No change shall be made by Seller in the performance required by this Order except as such change is specified in writing and signed by an authorized representative of Buyer.

4. **Acceptance of Shipments and Inspection:** All goods and services covered by this Order are subject to inspection by Buyer at any time or place and may be rejected if not strictly in accordance with all terms, conditions and provisions herein contained or attached. Payment for shipments and/or progress payments for work in progress shall not constitute acceptance thereof, and defective shipments or performance and/or shipments not in accordance with this Order will, at Buyer's option, be held for Seller's instructions at Seller's risk, or will be returned to Seller. Seller will be responsible for transportation charges on returned shipments both ways. Any prior payment made by Buyer on such rejected goods or services shall be immediately refunded, and the rejected goods or services shall not be replaced or re-performed without an additional order from Buyer. At Buyer's option, inspection and tests before delivery may be made by Buyer or Buyer's customers at Seller's premises or elsewhere, at reasonable times and places, and Seller will provide sufficient safe and proper facilities for such inspection or testing; but, notwithstanding such inspection and tests, or inspections and tests made prior to the issuance of this Order, the goods and services covered by this Order are subject to rejection upon final test. Inspection and use upon delivery to the premises of Buyer and Buyer's customer. Buyer's count shall be accepted as final on all shipments whether or not accompanied by a packing list.

5. **Permits and Approvals:** All necessary permits, bonds, testing, inspection and approval of materials or workmanship by the proper authorities is to be provided and arranged by Seller at no additional cost to Buyer unless authorized herein.

6. **Performance and Waivers:** Any waiver by Buyer of strict performance with regard to any of the terms, conditions or provisions of this Order must be in writing, executed by Buyer to be effective, and such waiver shall not be deemed a waiver of Buyer's rights to insist upon strict performance of all portions of this Order not waived, and strict performance thereafter of provisions presently waived.

7. **Default:** Buyer reserves the right to cancel this Order in its entirety, or in part, on account of defects in materials, workmanship or quality, or if the Seller fails to comply with or perform any of the terms and conditions, provisions, promises or warranties of this Order. Seller shall also be liable for all damages and costs of Buyer resulting from such default, regardless of any action taken or not taken by Buyer to cancel this Order entirely or in part.

8. **Compliance with Laws:** Any reference in these Terms to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time. Seller shall comply with all applicable laws and regulations of government authorities, including among other things, Executive Order 11246, as amended, 38 USC 4212 on the Vietnam Era Veterans Readjustment Assistance Act of 1974, Section 503 of the Rehabilitation Act of 1973, as amended, and the regulations at 41 CFR Part 60-1 through 60-60, 60-250, and 60-741, matters involving the Civil Rights Act of 1964, wages, hours, materials, race, color, sex and creed of workmen, price regulations and renegotiation provision, and other matters, whether or not specifically mentioned herein. Seller shall comply with the provisions of the Occupational Safety and Health Act of 1970, the standards and regulations issued hereunder and all pertinent State occupational safety and health laws such as "Right-to-Know" regulations. Hazard communication information such as complete Material Safety Data Sheets (MSDS) shall be supplied to Buyer for all hazardous material. Seller further agrees to indemnify and hold harmless Buyer for any loss, damage, fine, penalty or any expense whatsoever as a result of Seller's failure to comply with such laws and regulations.

9. **Time:** Time is hereby declared as the essence of this Order.

10. **Drawings:** Seller shall furnish for the approval of Buyer all shop drawings as Buyer may require, and all workmanship and materials shall be in strict accordance with the approved drawings. All plans, specifications and drawings provided by Buyer to Seller in connection with this Order or provided by Seller especially for performance hereunder shall be the property of Buyer and may not be used at any time for any other purpose by Seller.

11. **Assignment and/or Subcontracting:** Seller may not assign or subcontract any portion of its obligations under this Order nor assign or otherwise transfer any monies due or to become due hereunder, without first obtaining the written consent of Buyer.

12. **Advertising:** Seller shall not, without first obtaining the written consent of the Buyer, in any manner advertise or publish the fact that Seller has either contracted to furnish or has sold to Buyer the goods or services herein mentioned.

13. **Indemnity:** To the extent permitted under law, Seller shall indemnify, save harmless and defend Buyer from and against any and all suits, legal proceedings, claims, demands, damages, costs and expenses of whatsoever kind or character (including, but not limited to, reasonable attorney's fees and expenses) arising out of any injury (including death) or damage to any persons or property in any manner, caused or occasioned by any defect in the goods or services or any act, omission, fault, negligence or default of any person, firm, corporation or other entity (including but not limited to, Seller, Buyer or anyone acting on their respective behalfs), in connection with or incident to this Order or work to be performed hereunder, even if the same be, or is alleged to be, due to the sole active negligence of Buyer or anyone acting on its behalf.

14. **Termination:** Buyer may terminate this Order, in whole or in part at any time by written or telegraphic notice, stating the extent and effective date of such termination. Upon receipt of

notice Seller will, as and to the extent directed by Buyer, stop work under this Order and the placement of further orders or subcontracts hereunder terminate work under orders and subcontracts outstanding hereunder, and take any necessary action to protect property in Seller's possession in which Buyer has or may acquire an interest. Buyer's sole liability to Seller in case of termination shall be reimbursement of Seller's expenses incurred up to and including the date and time of termination.

15. **Consequential Damages:** In no event shall buyer be responsible for indirect or special damages including without limitation extra expense, loss of use of property, delay or damages consequential upon loss of use, whether resulting from negligence or breach or otherwise and even if the possibility of such damages is foreseeable by Buyer.

16. **Taxes:** Unless otherwise expressly provided on the face of this Order, all taxes, duties, tolls, fees, import charges or other governmental exactions shall be deemed included in the purchase price, and Buyer shall have no liability to pay Seller any amount in excess of the purchase price specified herein.

17. **Extension of Benefits:** All exceptions, exemptions, defenses, immunities, limitations of liability, privileges and conditions granted or provided by this Order to the benefit of Buyer shall also apply to and for the benefit of all corporations parent of, subsidiary to, affiliated with or under the same management as Buyer, as well as all directors, employees and agents of said entities.

18. **Vendor Code of Conduct:** Seller shall refer to and comply with the [CROWLEY VENDOR CODE OF CONDUCT](#), incorporated and made apart hereof.

19. Miscellaneous

(a) The Order is personal to the Seller and the Seller shall not assign or transfer or purport to assign or transfer to any other person any of its rights or sub-contract any of its obligations under the Contract.

(b) A notice required or permitted to be given by either party to the other under these Terms shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may be at the relevant time have been notified under this provision to the party giving the notice.

(c) No waiver by the Buyer of any breach of the Contract by the Seller shall be considered as a waiver of any subsequent breach of the same or any other provision.

(d) If any provision of these Terms is held by any court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms and the remainder of the provision in question shall not be affected.

(e) The Contract, these Terms and the Order shall be construed in accordance with, and all disputes shall be governed by, the laws of the State of Florida specifically including the provisions of the Uniform Commercial Code as adopted by that state, and the Seller agrees to submit to the jurisdiction of the courts of U.S. District Court for the Middle District of Florida located in Jacksonville in the event of any proceedings therein in connection herewith.

B. PROVISIONS APPLICABLE ONLY TO GOODS.

In addition to the provisions of Part A above, the following terms and conditions shall apply to the sale of goods hereunder.

1. **Title:** Title and risk of loss to the goods shall pass to Buyer upon Buyer's acceptance of delivery at the place specified on the face hereof. Shipping tickets and/or packing slips must show in detail any goods shipped and must accompany all deliveries.

2. **Crating, Cartage, Storage:** No charges will be accepted by the Buyer for crating, boxing, cartage, storage or like services, unless specifically agreed to in writing prior to performance hereunder.

3. **Warranties:** Seller warrants clear and merchantable title to the goods free of any security interest, lien or encumbrance and agrees to indemnify Buyer against all liability for patent, copyright or other infringement on account of sales and use of the goods. Seller further warrants that the goods shall be merchantable, of the quality specified, and shall be fit for the purpose intended. All implied warranties of the Uniform Commercial Code and warranties implied by usage of trade are reserved by Buyer and incorporated herein.

4. **Transportation Costs:** Seller warrants that any transportation costs included in the price will not exceed actual transportation costs paid by Seller. If this Order calls for payment of any transportation costs by Buyer, Buyer shall in no event be liable or accountable for any amount in excess of the actual costs of transportation. Seller shall be accountable for and shall pay any excess transportation costs arising from Seller's failure to make delivery to the FOB point or to follow shipping instructions furnished by Buyer.

C. PROVISIONS APPLICABLE ONLY TO SERVICES.

In addition to the provisions of Part A above, the following terms and conditions shall apply to the sale of services hereunder.

1. **Manner and Materials:** Seller shall perform the services for the property in a workmanlike manner, at the location designated by Buyer in accordance with the specifications of Buyer. All plans, drawings, materials, machinery, equipment, outfitting and workmanship involved in performance of the services shall be supplied by Seller and shall be of a quality conforming to the best commercial practice for property of this type.

2. Warranties:

(a) Seller shall keep the property free and clear of all liens, security interests, encumbrances and claims of every nature, including statutory and maritime liens in favor of workman, materialmen, subcontractors, or others arising by, through or under Seller. Seller shall discharge all such liens and other claims at once. Seller hereby waives all liens, whether possessory or otherwise, in its favor which would otherwise attach to the property.

(b) Seller shall correct to the satisfaction of Buyer all defects in workmanship or in materials furnished by Seller hereunder, which developed within a period of one year (or other period as may be specified on the face side hereof) after completion of the services.

3. **Care of the Property:** At all times during the term of this Order, Seller shall protect the property from any and all damage. At all times while the property is on Seller's premises, Seller shall assume all risk of damage to or loss of the property (or of any machinery, equipment, materials and outfitting obtained or intended for the property) from any cause whatsoever except acts of God or the sole negligence of Buyer.

4. **Insurance:** Seller, at its sole cost and expense (including the cost of all deductibles), shall procure and maintain in force during the term of this Agreement the following insurance coverages which shall apply independently of indemnity obligations contained within these Terms and Conditions.

A. Workers Compensation insurance as required by law for all employees, agents and subcontractors of Seller; and, Employer's Liability insurance in an amount not less than \$1,000,000 each accident. Such insurance shall provide coverage in the location in which the work is performed and the location in which the Seller is domiciled. If there is an exposure of injury or illness under the U.S. Longshore and Harbor Workers Compensation Act (including the Outer Continental Shelf Lands Act), the Jones Act, Admiralty Act, Death on the High Seas Act and/or other statutes applicable to maritime employees, Seller agrees to maintain insurance for such injuries or illnesses, and to provide evidence of such insurance as applicable.

B. Commercial General Liability insurance, on a per occurrence basis, endorsed to cover premises, operations, products/completed operations, personal injury and contractual liability; with watercraft exclusions deleted and "in rem" coverage as may be applicable; at a minimum limit of \$1,000,000 any one accident or occurrence.

C. Automobile Liability insurance, covering Seller's owned, rented, leased, non-

owned and hired vehicles; Limits of liability not less than \$1,000,000 any one occurrence.

D. As applicable:

1. If Consulting Services are being performed under this Agreement: Professional Liability/Errors & Omissions Liability insurance with limits not less than \$5,000,000 any one occurrence.

2. With respect to the delivery of fuel or other hazardous products, or waste disposal operations performed by Seller: Pollution insurance or Environmental Impairment insurance with limits of liability not less than \$5,000,000 per occurrence, and any other public liability or environmental impairment coverage required by Federal, State or local regulatory authorities.

3. Should the Services supplied under this Agreement include use of Seller's vessels: (a) Protection & Indemnity insurance to be evidenced through a full entry with an international P&I Club, including collision liability, tower's liability, and liability for seepage, pollution, containment and cleanup, with extensions for marine contractual liability, removal of wreck, etc., subject to a minimum limit of liability of \$5,000,000 any one accident or occurrence. Alternatively, if a full entry in an international P&I Club is not available or applicable, maritime liability coverage should be evidenced on an SP-23 form or equivalent including collision liability, tower's liability and third-party statutory liability for seepage, pollution, containment and cleanup, with extensions for marine contractual liability, wreck / debris removal, subject to a minimum limit of liability of \$5,000,000. (b) Hull & Machinery insurance including collision liability with sistership clause unamended, with limits of liability at least equal to the full value of all vessels used in connection with performance of the Work required under this Agreement, and with navigational limitations adequate for the Seller to perform the specified Work. Where vessels engage in towing operations, said insurance shall include full tower's liability with sistership clause un-amended

(c) If the performance of the Work requires the use of any aircraft that are owned, leased, rented or chartered by Seller or any of its subcontractors, Aircraft Liability or Non-Owned Aircraft Liability insurance shall be maintained, as applicable, with a minimum limit of \$5,000,000 per occurrence, including passengers and crew.

The Workers Compensation/Employers Liability insurance policy shall be endorsed to waive all rights of subrogation against Crowley, (and the Vessel if applicable), and shall contain an "In Rem" endorsement, along with an endorsement providing Crowley with thirty (30) days advance written notice of cancellation. Sellers in states with "State Fund" Workers Compensation must provide proof of coverage through the State Fund.

All other policies shall be endorsed to name Crowley, its parent, subsidiary or affiliated companies and their shareholders, officers, directors, agents and employees (and the Vessel if applicable) as Additional Insureds with a Waiver of Subrogation, along with an endorsement providing Crowley with thirty (30) days advance written notice of cancellation

In no event shall the amount or scope of insurance described herein place any limitation on the liability assumed by Seller, and should Seller maintain insurance limits higher than the limits listed above, Crowley shall benefit from those higher limits. Seller shall require their subcontractors performing hereunder to maintain insurance of the types and amounts required of Seller. Policies of Seller shall be primary to any insurance carried by or available to Crowley and any "other insurance" clauses under Seller's policies shall be amended accordingly. Should Seller fail to procure or maintain any of these insurance coverages, or by any act or omission vitiate or invalidate any of the aforesaid insurance coverages, Seller shall pay to Crowley all losses and indemnify Crowley against all claims and demands which would otherwise have been covered by such insurance. Irrespective of the requirements as to insurance to be carried by Seller or their subcontractors as provided herein, insolvency, bankruptcy, or failure of any insurance company to pay all claims accruing shall not be held to relieve Seller of any of its obligations.

Such insurance shall be written with Insurers carrying no less than a "B" rating from A.M. Best's. Commencement of operations without receipt of the required Certificates of Insurance shall not constitute a waiver of the obligation of the Seller to maintain the required insurance coverages and to provide Crowley with Certificates of Insurance (at the following address).

Crowley Risk Management Department
9487 Regency Square Boulevard
Jacksonville, FL 32225
Email: vendor.insurance@crowley.com
Fax: (904) 805-1639

5. **Independent Contractor:** Seller shall determine the manner and method of performing the services and shall operate as an independent contractor and not as an agent or employee of Buyer.

6. **Nature of Work:** The nature and location of the services and all conditions which may affect its completion have been carefully inspected and considered by Seller, who assumes all risk of loss and unanticipated expense, however caused and whether or not foreseeable.

7. **Safety, Health and Environmental:** Seller shall refer to and comply with procedure [SHE-ALL-020](#), incorporated and made a part hereof.