

## WILLARD MARINE'S PURCHASE ORDER TERMS AND CONDITIONS

**1. AGREEMENT.** WILLARD MARINE, INC., a California corporation, which has its primary place of business at 1250 N. Grove St., Anaheim, CA 92806 (“**Willard Marine**”), and the supplier listed on the Purchase Order issued by Willard Marine (“**Supplier**”), hereby agree to the terms and conditions set forth herein (“**Terms and Conditions**”), and further agree that these Terms and Conditions (including attached exhibits, schedules and annexes) will apply to and control the terms of Willard Marine’s purchase of equipment, item(s) and/or service(s) (individually, “**Products**” and “**Services**,” respectively, or collectively, “**Products and/or Services**”) from Supplier pursuant to written purchase order(s) issued from time to time by Willard Marine and referencing these Terms and Conditions (“**Purchase Order(s)**”), and shall supersede all prior written or oral discussions, agreements and understandings of the parties, if any, relating to the Products and/or Services. In the case of any inconsistency or conflict between these Terms and Conditions herein with respect to any Products and/or Services ordered by Willard Marine and any terms and conditions set forth on the face of the Purchase Order or purchase change order (excluding preprinted terms), the terms of the Purchase Order shall prevail. The terms and conditions of any other (preprinted or otherwise) acceptance document, purchase change order, quote, acknowledgement, bill of lading, confirmation, invoice or other document issued by Supplier or on behalf of Supplier, or any course of dealing or practice between the parties shall not be binding on the parties or constitute a modification or amendment of these Terms and Conditions or the Purchase Order unless or to the extent that a written agreement signed by authorized representatives of both parties expresses the intent of the signing parties to be bound by such deviation. Supplier acknowledges and agrees that, without exception (i) only Willard Marine’s Purchasing Department is authorized to issue Purchase Orders; and (ii) each Purchase Order must have Willard Marine’s Purchase Order Number on the face page. Any deviation from the foregoing sentence will be deemed an unauthorized purchase order for which Willard Marine shall not be responsible. Supplier’s acceptance of the Purchase Order or fulfillment of any portion of the Purchase Order shall evidence Supplier’s express acceptance of and agreement to its agreement of this Section 1.

**2. CHANGES IN ORDER.** Supplier shall not modify or deviate from any requirements specified in the Purchase Order or from any other specifications or requirements applicable to the Product(s) and/or Services, including Willard Marine's specifications, if any, all published Product specifications and samples approved by Willard Marine, if applicable (collectively, the “**Specifications**”) without Willard Marine’s prior written consent. If Supplier anticipates or encounters any problems with fulfilling Willard Marine’s Purchase Order, Supplier shall notify Willard Marine’s Purchasing Department within twenty four (24) hours after Supplier becomes aware thereof. Willard Marine may, at any time prior to the shipment of a Product(s), request changes to the Specifications, method of packing or shipment and/or the place of delivery of such Product(s) (collectively, “**Changes**”). Within ten (10) days after receiving a request for a Change and prior to implementing the Change, Supplier shall deliver to Willard Marine a written statement indicating the feasibility of the Change, the implementation and effective date of the Change and the impact of the Change upon all existing pricing, lead-time and delivery schedules. Willard Marine will have the right to approve or disapprove any Change after reviewing Supplier’s written statement. Supplier will not implement any Change unless and until authorized representatives of Willard Marine’s Purchasing Department and Supplier have signed a written purchase change order amending any applicable Specifications, prices, delivery schedules or other requirements applicable to such Product(s). In the event Willard Marine disapproves of a Change after receiving Supplier’s written statement, Supplier agrees to deliver the Product(s) in accordance with the unchanged Purchase Order including all then-existing Specifications, pricing schedules, lead-time schedules, delivery schedules or other requirements applicable to such Product(s) and such Purchase Order.

**3. PRICE.** The price of a Product(s) and/or Service(s) shall be as set forth on the face of a Purchase Order (the “**Price**”), which Price shall include (by line item): (i) all charges for packing, crating, hauling, storage and transportation to the point of delivery in accordance with Willard Marine's express packaging and shipping instructions (and, if none, in accordance the requirements of Section 7 hereof), and (ii) export/import license fees, if any. Willard Marine is a reseller, is therefore subject to exemption, and is not subject to payment of, nor shall Supplier collect from Willard Marine, sales or other taxes. In the event any tax included in an invoice was not required, Supplier will promptly take all necessary and proper steps to procure a refund and, when received, will pay it to Willard Marine. The Price shall not increase from that set forth on the Purchase Order, but Supplier shall provide to Willard Marine the benefit of any Price reductions between the time of the Purchase Order and the date of shipment or provision of the Product or Service.

**4. BEST PRICES.** Notwithstanding anything to the contrary herein, Supplier hereby represents and warrants to Willard Marine that the Price charged for any Product(s) and/or Service(s) (including any related rebates or other offsetting discounts or credits) are not in excess of the lowest prices offered by Supplier to other customers for similar products and/or services and with similar quantity and delivery requirements (determined up to the actual date of shipment or

performance). Supplier hereby covenants to promptly refund or credit to Willard Marine, at Willard Marine's discretion, all excess amounts so charged.

**5. PAYMENT.** Payment of invoices associated with any Product(s) and/or Service(s) shall be in accordance with the terms set forth on the Purchase Order. In the absence of any such terms, Willard Marine shall be required to make payment on undisputed amounts for the Product(s) and/or Service(s) net thirty (30) days following the later of: (i) receipt of a correct invoice for such payment; and (ii) "Acceptance" in accordance with Section 9 below. Each invoice shall be submitted by Supplier as directed by Willard Marine and shall contain at a minimum (a) Willard Marine's Purchase Order Number; and (b) Willard Marine's stock number. Payment for Product(s) and/or Service(s) shall not constitute an unconditional acceptance of the Product(s) and/or Service(s) and shall not impair any of Willard Marine's remedies with respect thereto.

**6. RIGHT TO OFFSET.** Willard Marine reserves the right to offset, against any debt, credit or other obligation due to Supplier hereunder or otherwise (regardless when due), any amounts due to Willard Marine from Supplier with respect to any claim arising out of any Purchase Order for Product(s) and/or Service(s) purchased by Willard Marine or any other transaction between Supplier and Willard Marine. If no such offsets are available, then said amounts will be paid by Supplier to Willard Marine within thirty (30) days from Supplier's receipt of a written request for payment.

**7. DELIVERY; TITLE AND RISK OF LOSS; RESCHEDULING; CANCELLATION.** All deliveries of Product(s) and/or Service(s) shall be in strict conformance with these Terms and Conditions and the Purchase Order. Unless otherwise specified in writing by Willard Marine, shipments shall be F.O.B. Willard Marine's facility as specified in the Purchase Order for deliveries in the United States, and title and risk of loss or damage shall pass to Willard Marine upon Willard Marine's receipt of the Product(s). Supplier agrees to package and ship the Product(s) in accordance with Willard Marine's express packaging and shipping instructions and via the common carrier designated by Willard Marine. Supplier's packing slips must contain Willard Marine's Purchase Order number and Willard Marine's stock number. If the Purchase Order does not so specify, then Supplier shall package the Products as required pursuant to best practices to ensure the safe delivery of the Product and shall ship such Product using the best, most efficient method and carrier to ensure timely, safe delivery to Willard Marine, F.O.B. Willard Marine's facility. Willard Marine may by written notice to Supplier reschedule the delivery of any Product(s) and/or Service(s) without charge at any time prior to ten (10) days from the original delivery date therefor or modify the delivery location. In the event that after receipt by Willard Marine, Willard Marine cancels the Purchase Order and returns the Product (for other than a defect or failure of such Product to meet the Final Acceptance Test) then Willard Marine shall be subject to Supplier's normal and customary re-stocking fee, but not to exceed 10% of the net Price of the Product (excluding shipping, insurance and other fees).

**8. PRE-SHIPMENT EXAMINATION; SHIPMENT AUTHORIZATION.** Willard Marine reserves the right to perform, at Supplier's manufacturing facility and at Supplier's cost, a progress or pre-shipment examination of the Product(s) (the "**Pre-Shipment Examination**"). Willard Marine and Supplier will mutually agree upon the date(s) and time(s) for the Pre-Shipment Examination. A complete inventory of the Product(s) must be provided to Willard Marine prior to the Pre-Shipment Examination. For the Pre-Shipment Examination, the complete Product(s) as ordered by Willard Marine will be available for inspection unless some portion of the shipment is an add-on at Willard Marine's facility. Supplier will immediately remedy any discrepancies noted by Willard Marine during such examination. Supplier must notify Willard Marine at least fourteen (14) days prior to the scheduled shipment date to obtain written authorization to ship the Product(s) (the "**Authorization to Ship Notice**"), which may be via email. Supplier may not release any Product(s) for shipment to Willard Marine unless and until Supplier has received the Authorization to Ship Notice signed by an authorized purchasing representative of Willard Marine.

**9. INSTALLATION; FINAL ACCEPTANCE TEST.** If so specified in the Purchase Order, Supplier will furnish all labor, materials, tools, transportation and lodging for installation of the Product(s) and will install such Product(s) at Willard Marine's designated facilities and without charge to Willard Marine, which installation will include the uncrating, unpacking, assembly and set-up of the Product(s) in the environment in which it is to operate. Notwithstanding any prior inspection, testing or payment by Willard Marine, all Products shall be subject to final inspection and acceptance after delivery and installation by Willard Marine (or at Willard Marine's request pursuant to the preceding sentence, by Supplier) at Willard Marine's facility in accordance with Willard Marine's post-installation test / final acceptance criteria (the "**Final Acceptance Test**"). "Acceptance" of the Product(s) shall occur upon Willard Marine's written acknowledgement that the Product(s) has passed the Final Acceptance Test. If the Product(s) does not pass the Final Acceptance Test within thirty (30) days after installation, Willard Marine may, in its sole discretion, either: (i) cancel all or any portion of the Purchase Order without further obligation or liability to Supplier; or (ii) extend the time for completion

of the Final Acceptance Test and provide Supplier with an opportunity to repair, modify or replace the Product(s) or any component thereof in order to complete and pass the Final Acceptance Test. In the event Willard Marine chooses clause (i) above, (a) Willard Marine may return such Product to Supplier, at Supplier's cost and expense, or (b) at Willard Marine's request, Supplier will promptly and at its own expense remove the Product(s) from Willard Marine's facility, and in either case, Supplier shall refund to Willard Marine all monies paid by Willard Marine and cancel all outstanding invoices applicable to such Product(s).

**10. INSTRUCTION MANUALS; MSDS; TRAINING; SUPPORT.** At least thirty (30) days prior to shipment of the Product(s) to Willard Marine, Supplier will deliver a minimum of two complete hard copy sets and one complete electronic set of operation and maintenance instructions (in the English language) as well as any Material Safety Data Sheets ("MSDS") for the Product(s) for use by Willard Marine and its customers. Supplier will further deliver to Willard Marine all modifications or updates to such instructions or MSDS as promptly as practicable following their availability and at no additional charge to Willard Marine. If requested on the Purchase Order, trained and knowledgeable employees of Supplier shall be available at Willard Marine's facility following installation of the Product(s) to begin the start-up and Final Acceptance Test of the Product(s). Such Supplier's employees will continue to be available to assist Willard Marine as reasonably requested until the Final Acceptance Test is complete and to provide technical assistance and training to Willard Marine's employees as reasonably requested and in accordance with the requirements of the Purchase Order (which costs shall be borne by Supplier until the first anniversary of completion of the Final Acceptance Test). During the Warranty Period, Supplier shall support all Product(s) with commercially reasonable response times and service in keeping with industry standards and best practices. After the Warranty Period, Supplier will maintain support capabilities for the Product(s) for a minimum of five years on terms and conditions to be mutually agreed upon by Willard Marine and Supplier.

**11. WARRANTIES.**

11.1 Supplier hereby represents and warrants to Willard Marine that the Product(s) will (i) conform strictly to the Specifications, (ii) conform strictly to the requirements of the Purchase Order, and (iii) be free from errors, faults and defects and in conformance with the requirements of these Terms and Conditions for a period of one (1) year (or such longer period as may be specified in the Purchase Order) following "Acceptance" of the Product(s) in accordance with Section 9 above (the "**Warranty Period**"). Supplier further represents and warrants to Willard Marine that (i) Supplier has full power and authority to provide the Product(s) and/or Service(s) to Willard Marine and to grant Willard Marine the rights granted herein, (ii) the Product(s) is free from defects and in compliance with the Specifications, and all accompanying documentation are free of any and all liens, encumbrances, restrictions, settlements, judgments or other adverse claims, and (iii) the Product(s) will be of merchantable quality, new and unused and fit and suitable for the purposes intended by Willard Marine. The foregoing warranties shall constitute conditions to Willard Marine's performance hereunder and are in addition to all other warranties, whether expressed or implied. The foregoing warranties shall also survive (and not be relieved by) any prior testing or approval of materials, Specifications, designs, drawings or samples or any prior inspection, delivery, acceptance or payment by Willard Marine and will include parts, labor and travel expenses for Supplier's service personnel. Notwithstanding anything to the contrary herein, the Warranty Period will be extended one day for each day that the Product(s) is made unavailable to Willard Marine as a result of Supplier's breach of the foregoing warranties (including any unavailability resulting during Supplier's repair or replacement of such Product(s) or any component thereof).

11.2 Supplier represents and warrants that all Services shall be performed in a professional manner and in accordance with Willard Marine's specifications and generally accepted industry standards.

11.3 In the event of a breach of any of the warranties in Section 11.1 above, in addition to any other remedies available to Willard Marine at law or in equity, Willard Marine may, at its sole election and without additional cost, require Supplier to (i) repair the Product(s) or any component thereof causing or resulting in such breach (using best efforts to complete such repair within three (3) business days after notice of such breach), (ii) promptly replace the Product(s) or component thereof, (iii) refund to Willard Marine all amounts paid by Willard Marine for the Product(s) and the cost of removing such Product(s) from Willard Marine's facility, or (iv) reimburse Willard Marine for the costs incurred by Willard Marine to have a third party correct the non-conformance or provide substitute Product(s) or Service(s). In the event of a breach of any of the warranties in Section 11.2 above, in addition to any other remedies to Willard Marine at law or in equity, Willard Marine may, at its sole election and without additional cost, require Supplier to (i) re-perform the Service(s), or (ii) refund to Willard Marine all amounts paid by Willard Marine for the Service(s).

**12. SPARE PARTS.** Supplier will deliver to Willard Marine on or prior to delivery of the Product(s) a recommended spare parts list for the Product(s) that will include not only Supplier's part number but also the original equipment manufacturer name and part number. A recommended spare parts list will also be made available to Willard Marine for any future requirements for parts not identified on the original recommended spare parts list should the need arise. Supplier will maintain an adequate stock of spare parts and will ship spare parts (from normal stock) within one (1) business day after notification by Willard Marine of a downtime situation. For all other requests for spare parts, Supplier agrees to ship to Willard Marine spare parts (from normal stock) within one (1) business day after receipt of a purchase order from Willard Marine. The warranties in Section 11 above shall apply to all spare parts for the Product(s). Supplier agrees to promptly notify Willard Marine in writing in the event that it plans or anticipates an end-of-life of any spare part used in the Product(s) and further agrees to provide Willard Marine an opportunity to purchase an adequate supply of such spare parts as Willard Marine determines is necessary for future maintenance of the Product(s).

**13. SOFTWARE.** Supplier hereby grants to Willard Marine a perpetual, irrevocable, non-exclusive, worldwide, transferable, royalty-free license to use all operating software, source code and other software contained in or used by the Product(s) and/or furnished by Supplier, which includes any documentation accompanying the Software and all updates, enhancements, revisions, corrections or new developments to the Software or the documentation (the "**Software**") and to incorporate such Software into other Willard Marine products for resale to others. Willard Marine may make copies of the Software only for its internal use and for use only in connection with the Product(s). Supplier agrees to deliver to Willard Marine all updates, enhancements, revisions, corrections or new developments to the Software or any documentation accompanying the Software as promptly as practicable following their availability and at no additional charge. Supplier represents and warrants that it has full power and authority to license the Software as provided in this Section 13.

**14. BUYER TOOLING.** Any special tooling, Specifications, requirements, drawings, chemicals, technical information, data, tools, die patterns, masks, gauges, test equipment, fixtures and other material furnished by or at the expense of Willard Marine ("**Willard Marine Materials**") shall be the confidential and proprietary property of Willard Marine and shall (i) be kept confidential, (ii) remain and/or become Willard Marine's property, (iii) be used by Supplier exclusively for Willard Marine's order(s), (iv) be clearly marked "Property of Willard Marine," (v) be marked and segregated when not in use, and (vi) be kept in good working condition at Supplier's expense. Supplier is responsible for the protection, calibration, maintenance and care (other than normal wear and tear) of all Willard Marine Materials. The Willard Marine Materials shall be subject to inspection upon notice and shall be returned to Willard Marine in good working condition upon demand or notice. Upon the completion of all outstanding obligations under the Purchase Order or upon Willard Marine's written request, all Willard Marine Materials shall be disposed of or returned to Willard Marine as Willard Marine shall direct. Title to all such Willard Marine Materials, in all stages of production, shall be and remain in Willard Marine.

**15. INTELLECTUAL PROPERTY.** All intellectual property rights (including, without limitation, all worldwide patent rights, copyrights, trademarks and trade secrets) conceived, developed, made or reduced to practice in the performance for Willard Marine of development, customization, design or similar services (including work based upon or related to property provided or disclosed to Supplier by Willard Marine) shall be the exclusive property of Willard Marine, and Supplier hereby irrevocably assigns to (and shall cause Supplier's employees and others with a duty to assign intellectual property rights to Supplier to assign to) Willard Marine all worldwide rights, title and interests therein. Supplier agrees to execute, when requested, all applications, assignments and any other lawful documents deemed necessary by Willard Marine to carry out the purpose of the foregoing, and if Willard Marine is unable for any reason to secure Supplier's signature, Supplier hereby irrevocably designates and appoints Willard Marine and its duly authorized officers and agents as its attorneys-in-fact to act for and in its behalf to execute and file any document and to do all other lawfully permitted acts to further the purposes of the foregoing with the same legal force and effect as if executed by Supplier. To the extent necessary or useful to enable Willard Marine to use or exploit the Products, the work product of the Services and the rights assigned to Willard Marine under this section (collectively, the "**Work Product**") in the manner contemplated in these Terms and Conditions, Supplier hereby grants to Willard Marine and its subsidiaries and affiliates a perpetual, irrevocable, non-exclusive, worldwide, royalty-free license under Willard Marine's intellectual property rights, to exploit, modify, enhance, make, have made or otherwise use the Work Product.

**16. NO ASSIGNMENT OR SUBCONTRACTING.** Supplier shall not, directly or indirectly, in whole or in part, assign or transfer the Purchase Order or any of these Terms and Conditions (whether by operation of law, sale of all or substantially all of its assets, sale or disposition of greater than 50% of its outstanding voting power or otherwise), or delegate or subcontract any of its obligations under the Purchase Order or any of these Terms and Conditions, without Willard Marine's written consent. Any attempted assignment, transfer, delegation or subcontract without such prior

written consent will be void and unenforceable. Without limiting the foregoing, the Purchase Order and these Terms and Conditions will be binding upon and inure to the benefit of the parties and their permitted successors and assigns.

**17. INDEMNIFICATION.** Supplier hereby agrees to defend, indemnify, protect and hold harmless Willard Marine, its subsidiaries and affiliates and its and their respective officers, directors, employees and agents from and against any and all claims, losses, liens, demands, attorneys' fees, damages, liabilities, expenses, costs, obligations, causes of action, suits and/or costs of investigation (including all legal fees and costs) ("**Losses**") caused by, arising out of or in any way connected with: (i) any act or omission, whether active or passive and whether actual or alleged, or willful misconduct of Supplier or its employees, subcontractors or agents, to the maximum extent permitted by law, (ii) the breach or violation by Supplier or its employees, subcontractors or agents of any of its contractual obligations, covenants, undertakings or representations, warranties or promises in the Terms or Conditions or of any other requirements applicable to Willard Marine's purchase of Product(s) and/or Service(s) (whether stated in a written purchase order issued by Willard Marine and applicable to such Product(s) and/or Service(s) or otherwise), (iii) any product liability claim arising out of or relating to the Product(s) or any component thereof, and (iv) any claim that the Product(s), any component thereof, the Software or any Service(s) constitutes an unauthorized use or infringement of any existing or future U.S. or foreign patents, trademarks, trade secrets, mask works, copyrights or other intellectual property rights of any third party. If the use or combination of any Product(s) and/or Service(s) furnished by Supplier to Willard Marine is enjoined (the "**Infringing Product**"), Supplier will, in addition to its indemnification obligations in clause (iv) above and at its sole cost and expense, exercise one of the following remedies: (a) procure for Willard Marine the right to continue using the Infringing Product or component thereof unmodified; (b) replace the Infringing Product or component thereof with a non-infringing product of equivalent quality, function and performance; (c) modify the Infringing Product or component thereof to be non-infringing without detracting from the quality, function or performance of the Product; or (d) if, after using commercially reasonable efforts, Supplier cannot accomplish either (a), (b) or (c), Supplier shall remove the Infringing Product and return to Willard Marine the Price therefor and all shipping, insurance and other costs previously paid by Willard Marine with respect to such Infringing Product.

**18. TERMINATION.**

18.1 Either party has the right to terminate the Purchase Order, in whole or in part, if the other party breaches or is in default of any material obligation thereunder, which default is incapable of cure or which, being capable of cure, has not been cured within ten (10) days after receipt of notice of such default (or such additional cure period as the non-defaulting party may authorize). Supplier shall also be deemed to be in default if any Product(s) delivered to Willard Marine exhibits defects, causing serious disruption of use and/or repeated periods of downtime, notwithstanding Supplier's remedial or maintenance efforts, over a continuous period of three (3) months or more.

18.2 Willard Marine reserves the right to terminate the Purchase Order, in whole or in part, without liability and for its sole convenience, upon fifteen (15) days written notice to Supplier. In such event and at Willard Marine's discretion, Supplier shall either (i) deliver to Willard Marine all Product(s) for which such termination relates that is completed or in progress up to the date of termination, or (ii) use its commercially reasonable efforts to salvage or resell any completed Product(s) or parts thereof to which such termination relates in order to mitigate Willard Marine's obligation to Supplier hereunder (which in any case shall not exceed a 10% re-stocking fee pursuant to Section 7). In case of any partial termination, Supplier shall continue to perform any portion of such purchase order not terminated.

**19. DISPUTES, APPLICABLE LAW AND FORUM.** Should Supplier or Willard Marine institute any action or proceeding to enforce or interpret any of these Terms and Conditions or the Purchase Order controlled by these Terms and Conditions, the prevailing party in any such action or proceeding shall be entitled to recover from the other party all reasonable costs and expenses, including but not limited to reasonable attorney fees, incurred by such prevailing party in connection with such action or proceeding. This Purchase Order and these Terms and Conditions shall be governed in accordance with the internal laws of the State of California, without giving effect to its choice or conflict of laws provisions, and with applicable U.S. federal law. The United Nations Convention on the International Sale of Goods shall not apply to these Terms and Conditions or any written purchase order controlled by these Terms and Conditions. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of state or federal courts located in the State of California in connection with any proceeding arising out of or related to the interpretation or implementation of the Purchase Order and these Terms and Conditions.

**20. COMPLIANCE WITH LAWS AND REGULATIONS.** Supplier hereby represents and warrants that the performance of its obligations hereunder with respect to the manufacture, production, shipment and delivery of Product(s)

and/or the provision of Service(s) will, at all times, comply with all federal, state and municipal laws, rules or regulations which may apply, including, but not limited to those relating to (collectively, "**Applicable Law**"): (i) import, export and re-export of commodities, materials, technical data and software, the Patriot Act, the US Foreign Corrupt Practices Act, the Money Laundering Act, the U.S. Export Administration Regulations and International Traffic in Arms Regulations, (ii) health and safety, (iii) labor and employment, (iv) the environment, and (v) use, treatment, disposal and hazardous chemicals and materials. Supplier understands and acknowledges that Applicable Law may require that all of its suppliers in turn comply with all such Applicable Laws. Upon Willard Marine's request, Supplier agrees to deliver (and shall cause its suppliers to deliver) to Willard Marine a certificate of compliance therewith.

**21. INSURANCE AND SECURITY.** Supplier shall maintain workers' compensation insurance as required by law or regulation having jurisdiction over Supplier's personnel, employer's liability insurance and general comprehensive liability insurance covering each occurrence of bodily injury and property damage in the amount of not less than \$2,000,000 combined single limit with special endorsements providing coverage for: (i) Products and Completed Operations Liability; (ii) Blanket Broad Form Supplier's Liability, (iii) Blanket Contractual Liability; and (iv) Automobile Liability. If requested, Supplier shall furnish Willard Marine with a certificate evidencing the required insurance. If Supplier or any of its employees, consultants or agents enter Willard Marine's premises in the course of fulfilling the Purchase Order, they shall at all times comply with Willard Marine's safety and security policies, a copy of which is available upon request.

**22. LIMITATION OF LIABILITY.** OTHER THAN WITH RESPECT TO SUPPLIER'S INDEMNIFICATION OBLIGATIONS IN SECTION 17 ABOVE, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS) ARISING OUT OF OR IN CONNECTION WITH THE PURCHASE ORDER, REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED IN CONTRACT OR TORT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**23. NON-DISCLOSURE.**

23.1 Confidential and proprietary information disclosed by one party to the other in connection with these Terms and Conditions or the Purchase Order shall be subject to the terms of any existing nondisclosure agreement executed by the parties ("**NDA**"). Except as required by law, Supplier shall not disclose the existence of the Purchase Order or that a commercial relationship exists between Willard Marine and Supplier without the prior written consent of Willard Marine

23.2 In the event that there is no NDA, then the following provisions shall apply:

(a) Confidential Information. Neither Supplier nor Supplier's agents, employees, or permitted subcontractors shall use or disclose to any person or entity any Confidential Information of Willard Marine (whether in written, oral, electronic or other form), which is obtained from Willard Marine or otherwise prepared or discovered either in the performance of the Purchase Order and these Terms and Conditions, through access to Willard Marine's Information Systems, while on Willard Marine premises or otherwise. Supplier may only use Willard Marine Confidential Information as necessary to perform its obligations under the Purchase Order and these Terms and Conditions, and Supplier may share Willard Marine Confidential Information only with those of its agents, employees and permitted subcontractors who have a need to know such information in order to so perform. As used herein, the term "**Confidential Information**" shall include all Work Product as defined herein, all information designated by Willard Marine as confidential, all information or data concerning or related to Willard Marine's products (including the discovery, invention, research, improvement, development, manufacture, or sale thereof), processes, or general business operations (including sales costs, profits, pricing methods, organization, and employee lists), and any information obtained through access to any of Willard Marine's information systems (including but not limited to computers, networks, voice mail, etc.) ("**Information Systems**") or in any way relating to Willard Marine's physical facilities or security systems or which, if not otherwise described above, is of such a nature that a reasonable person would believe it to be confidential or proprietary. Supplier will protect the confidentiality of Confidential Information with the same degree of care as Supplier uses for its own similar information, but in no event less than reasonable care. Supplier shall be liable for any breach of this Section by any of its agents, personnel or subcontractors.

(b) Exclusions. The foregoing confidentiality obligations will not apply to Confidential Information that (i) as conclusively proven by Supplier's written records, is in the possession of Supplier prior to its receipt of the Confidential Information; (ii) is or becomes a matter of public knowledge through no fault of Supplier; (iii) is lawfully received from a

third party by Supplier without a duty of confidentiality or other restriction on disclosure; (iv) is independently developed by Supplier without use or reference to the Confidential Information; (v) must be disclosed by Applicable Law, provided Supplier immediately notifies Willard Marine of such Applicable Law, asserts any applicable privileges available to it with respect to such law or order and cooperates with Willard Marine in seeking confidential treatment of such Confidential Information or other appropriate relief from such law or order; or (vi) is disclosed by Supplier with the prior written approval of Willard Marine.

(c) Agreement by Personnel and Permitted Subcontractors. Supplier will inform each of its personnel and permitted subcontractors who are to perform under the Purchase Order of the confidentiality obligations contained herein.

(d) Continuing Obligations. Unless otherwise agreed in writing, the obligations under this section continue and survive for a period of five (5) years from the termination or expiration of this Agreement; provided that confidential information belonging to third parties (including but not limited to any governmental agencies or instrumentalities thereof) shall remain confidential until such third parties notify Supplier that they are waiving such confidentiality.

(e) Retention. Upon request by Willard Marine at any time, all tangible embodiments of Confidential Information, together with any copies of same, shall be, as determined by Willard Marine, returned thereto or certified in writing to have been destroyed by Supplier. All Confidential Information shall remain the property of Willard Marine.

**24. AUDIT RIGHTS.** Willard Marine reserves the right to have an authorized Willard Marine representative (which may include Willard Marine's customer), at Willard Marine's (or such customer's) cost unless otherwise set forth herein, audit Supplier's records relative to the Products, Services and transactions covered by the Purchase Orders (the "Audit"). Upon demand and at Supplier's sole cost and expense, Supplier shall provide access to such records during normal business hours at Supplier's location(s) and provide such assistance to the Willard Marine representative as Willard Marine reasonably deems necessary. In the event the Audit reveals any fraudulent reporting, documents or activity, Supplier shall be responsible for all costs and expenses of such Audit and shall make payment to Willard Marine immediately upon receipt of Willard Marine's invoice for such Audit. Supplier agrees to maintain all such records by location for a minimum of ten (10) years.

## **25. APPLICABLE LAWS.**

25.1 USFC. Supplier shall take no action which, if taken by or with the knowledge of Willard Marine, could be construed as or constitute a violation of the United States Foreign Corrupt Practices Act. By way of example, but not of limitation, Supplier shall not, directly or indirectly, offer, pay, promise to pay, or authorize the payment of any money or offer, give, promise to give, or authorize the giving of anything of value (i) to any official of the government of any country or any instrumentality thereof, or (ii) to any person, while knowing or having reason to know that all or a portion of such money or thing of value will be offered, given or promised directly or indirectly to any official of the government of any country in the Territory or any instrumentality thereof, for purposes of:

(A) influencing any act or decision of such official in his official capacity, including a decision to fail to perform his official functions; or

(B) inducing such official to use his influence with the government of any country or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to obtain or retain business for or with, or direct business to, any person.

25.2 Compliance with Executive Order 13224 and the Patriot Act. Supplier hereby represents, certifies and warrants to Willard Marine as follows: (i) neither Supplier nor any of its officers, directors or managing members is a person or entity with whom United States persons or entities are restricted from doing business under regulations of the United States Treasury Department's Office of Foreign Asset Control ("OFAC")(including those persons and entities named on OFAC's Specially Designated and Blocked Persons List ("SDN List") or under Executive Order 13224 (the "Executive Order") signed on September 24, 2001, and entitled "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism," as may be amended from time to time.), or under other governmental action; (ii) that Supplier is not engaged in, conspiring to engage in, or facilitating any transaction that evades or avoids, or has the purpose of evading or avoiding, or violates, any of the prohibitions set forth in the Executive Order or the Uniting and Strengthening America by Providing Appropriate Tools Required To Intercept and Obstruct Terrorism Act of 2001 (as amended from time to time, the "Patriot Act"); (iii) that Supplier's activities do not violate the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001, any other applicable laws regarding money laundering activities, or the regulations or orders promulgated under the foregoing (as any of the foregoing may be amended from time

to time, the “**Money Laundering Act**”); and (iv) that, throughout the Term of this Terms and Conditions, Supplier shall comply with the Executive Order, the Patriot Act, and the Money Laundering Act. Notwithstanding anything in this Terms and Conditions to the contrary, Supplier acknowledges and agrees that any breach of the foregoing representations, certifications and warranties shall be a default under this Terms and Conditions (not subject to any notice or cure period) and Willard Marine shall have all rights and remedies under this Terms and Conditions, and at law and in equity. Supplier hereby agrees to defend, indemnify and hold harmless Willard Marine from and against any and all Losses arising from or related to any breach of its obligations under, or of its representations, certification and warranties set forth in, this Section 25.

**26. MISCELLANEOUS.** If Supplier is ISO certified, Supplier shall provide a copy of its ISO certification to Willard Marine’s Purchasing Department. All deliveries of Products and/or Services shall be in strict conformance with the Purchase Order and these Terms and Conditions. **TIME IS OF THE ESSENCE** hereunder for the performance of all covenants and conditions contained herein. These Terms and Conditions may be modified, supplemented or changed only by an agreement in writing that makes specific reference to these Terms and Conditions and that is signed by an authorized representative of each of Supplier and Willard Marine’s Purchasing Department. No waiver, or failure by either party at any time to enforce any of its rights hereunder, shall constitute a continuing waiver for any particular breach or a waiver of any subsequent or different breach. In the event that any provision contained in these Terms and Conditions is held to be invalid or unenforceable by a court of competent jurisdiction, then the remaining terms shall be construed and carried out according to their original terms. Supplier’s obligations under Sections 1-3, 6, 10-19 and 21-26 shall survive the completion or termination of the Purchase Order.