

**TERMS AND CONDITIONS OF SALE (EXPORT)  
EMCO WHEATON GMBH**

**SAVE TO THE EXTENT THAT WE HAVE OTHERWISE AGREED IN WRITING, THESE TERMS AND CONDITIONS GOVERN ALL OUR CONTRACTS TO THE EXCLUSION OF OTHER TERMS AND CONDITIONS. OUR QUOTATIONS AND ESTIMATES ARE NOT OFFERS CAPABLE OF ACCEPTANCE BY YOU, AND ANY ORDER PLACED BY YOU WILL ONLY BE ACCEPTED BY OUR WRITTEN CONFIRMATION OF SUCH ORDER.**

**1. BASIS OF CONTRACT**

(a) **Emco Wheaton GmbH**, Registered Office: Emcostrasse 2-4, D-35274 Kirchhain (the "Company") – designs, manufactures, markets and installs marine loading systems, advanced chemical and petroleum distribution arms and related spare parts, and provides ancillary goods and services ("the Products").

(b) No representation, undertaking or promise shall be taken to have been given or implied from anything said or written in negotiations between the parties prior to the date of this Contract except as expressly stated in this Contract. The Customer's only remedies shall be for breach of contract as provided for in these terms.

(c) This Contract shall be construed in accordance with the laws of Germany and subject to the exclusive jurisdiction of the courts of Munich, Germany.

**2. TIMING OF DELIVERY**

(a) In the event of delay beyond any date agreed for the Company's performance of its obligations under this Contract that is caused by circumstances beyond either party's control and/or otherwise than as provided for in sub-clause (c) below, the Company will be entitled to a reasonable extension of time. In the event of any such delay that is caused by the Customer, the Company will be entitled to a reasonable extension of time and to compensation for any costs, expenses and losses it suffers by reason thereof. In the event shipment is postponed at the Customer's request or if Customer is unable to accept delivery when tendered by the Company, the Customer will pay the Company a storage fee. Risk of loss during such storage will be on the Customer. The Customer shall deliver to the Company evidence of insurance in appropriate amounts and with responsible companies insuring the goods during storage. In the event the Customer fails to deliver such evidence of insurance, the Company may obtain insurance at the Customer's expense.

(b) While dates or periods for readiness for dispatch or delivery of goods are given in good faith the same are not of the essence of or in any way terms of the contract or representations of fact.

(c) Unless otherwise specified in this proposal, the goods described herewith shall be sold and delivered on an Ex Works (EXW, Incoterms 2010) Company's plant unpacked basis. Upon request, the Company may accept a delivery method other than Ex Works. Whenever the Company accepts delivery other than Ex Works, the Company reserves the right to use its own appointed forwarder and/or arrange for the transportation of the goods to the delivery point. In all events, risk of loss of the goods during transport shall be on the Customer. Prior to the scheduled shipping date, Customer shall deliver to the Company evidence of insurance in appropriate amounts and with responsible companies insuring the goods during transport. In the event Customer fails to deliver such evidence of insurance, the Company may obtain insurance at Customer's cost.

**3. ENGINEERING CRITERIA**

The Products are sophisticated engineering products; accordingly, the Customer undertakes:

(a) That it has provided and will promptly provide all the information reasonably necessary to enable the Company to (i) evaluate the requirements for performing and (ii) perform this Contract, and that all such information is full and accurate;

(b) That all premises, plant, engineering support, spare parts, connected pipe work and machinery and inputs that it is required to provide for the design, engineering, installation, testing and use of the Products are fit for their purpose and of good engineering quality;

(c) Fully to co-operate with the Company in the design, engineering, installation, testing and use of the Products;

(d) To use the Products for the intended purpose only and in accordance with the Product literature;

(e) Not under any circumstances, to use any unapproved spare part, connected machinery, service or repair or use the Products in any manner as may render the Products dangerous and agrees that any breach of these negative criteria will negate all specific and implied conditions and obligations on the part of the Company relating to the quality of the Products.

The Customer further agrees that it will be liable to the Company for any costs, expenses and losses it suffers by reason of any breach of these undertakings.

**4. DRAWINGS, DESIGNS AND CONFIDENTIALITY**

(a) All of the Company's specifications, designs, drawings, indications of physical, chemical and electronic properties and indications of inlet pressure or vacuum, pressure output and power consumptions ("the Designs") are made in good faith and are approximate indications only and are not binding in detail unless the Customer has specified in writing a particular indication upon which he is relying and the Company shall be entitled to vary the same and/or to correct errors and omissions provided the Products remain in substantial conformity with the contractual requirements.

(b) The Designs (including all copyright, design right and other intellectual property in them) shall as between the parties be the property of the Company; and the Customer is not entitled to make any use of the Designs other than for the purpose of this Contract.

(c) Any inventions, modifications, improvements, techniques or know-how affecting the Products made or gained in the course of performing this Contract, shall belong to the Company absolutely.

(d) Neither party shall disclose to third parties or use for its own purposes any confidential information or trade secrets of the other party.

Each party warrants that it has the necessary intellectual property rights to enable it to perform its contractual obligations and will forthwith inform the other on discovery of any infringement of intellectual property rights.

**5. PAYMENT, PRICES, TERM AND VESTING**

(a) All invoices shall be paid in euros or other Freely Convertible Currency within 30 days from the date of invoice (the "Due Date") unless expressly agreed otherwise, without any deduction or withholding on account of any rights of equitable set-off which the Customer may have (save where the same are undisputed or have been finally determined in a legally binding manner). The Company reserves the right to require payment in part or in full or the provision of such security or guarantees from or on behalf of the Customer as the Company deems necessary before the commencement of the performance of this Contract. If the Company does not receive such payment or security, it may cancel an order and shall be entitled to receive cancellation charges pursuant to clause 8 below. The Company shall have the right at any time to review the credit limit requirements relating to the Customer and to increase or reduce the same by notice in writing to the Customer. The Company shall without prejudice to its other rights have the right by notice in writing to the Customer to demand immediate payment of all monies due from the Customer to the Company for any goods delivered at any time. As used in this clause, "Freely Convertible Currency" means a currency that is widely traded in international foreign exchange markets and widely used in international transactions.

(b) Prices quoted are Ex-Works (EXW, Incoterms 2010) Company's plant unpacked and are subject to VAT or other taxes (unless specifically stated to the contrary).

(c) The Company may charge interest on any sums still outstanding on the Due Date at the rate of 4% per annum above the base rate for the time being of the Company's bank.

(d) The Company may, in its sole discretion, accept payment for Products by cash in advance or by money down with scheduled progress payments. The Company may require, in its sole discretion, that payment for export orders be by irrevocable letter of credit, which shall be in a form acceptable to the Company and confirmed by a German Bank of international reputation.

(e) In case of any non-payment, the Company shall be entitled (without prejudice to its other rights) to suspend performance and charge the Customer for all costs and expenses occasioned thereby and/or at any time thereafter to terminate this Contract in accordance with clause 8 below.

(f) Title and risk of loss to the Products shall transfer to the Customer on the earlier of full payment and delivery; provided, however, that in the event delivery is prior to full payment, Company shall retain a security interest in the Products until Company receives payment in full. Pending payment of all monies owing to the Company (whether under this Contract or otherwise), the Customer shall at all times keep the Products comprehensively insured against loss or damage by accident, fire, theft and other risks usually covered by

insurance in the type of business carried on by the Customer in an amount at least equal to the balance of the price for the same from time to time remaining. In addition, the Customer undertakes not to charge by way of security any of the Products that remain the collateral of the Company.

(g) In the event of Termination in accordance with clause 8 below or in the event of non-payment (in full or in part) for the Products by the Due Date, the Customer hereby irrevocably licenses the Company (insofar as it is able) to enter upon any premises to repossess the Products.

(h) Unless otherwise agreed by the Company in writing, the Company's prices are subject to change without advance notice at any time prior to order acknowledgment. The Company reserves the right to adjust the invoice price, after the price is quoted and/or acknowledged, to take account of any material variation in the Company's costs beyond its reasonable control since the date of the quotation or (if no quotation is issued) the order acknowledgment, and the invoice so adjusted shall be payable as if the price set out therein were the original contract price.

(i) Customer shall inspect and either accept or reject goods shipped by the Company within 5 days after receipt thereof. If goods are rejected, Customer shall give notice of such rejection to the Company within 5 days after Customer's receipt of the goods. Customer's failure to give such notice shall constitute an irrevocable acceptance of such goods.

## 6. WARRANTY

(a) In this clause "Warranty Period" shall mean the period beginning on the date of despatch of the Products (or relevant part thereof) and ending 12 months thereafter (unless specified otherwise in writing by the Company).

(b) The Company warrants that the Products will be free from material defects caused by inadequacy or neglect in the Company's workmanship or materials during the Warranty Period (the "Warranty").

(c) Save as provided for in sub-clauses (d) and (e) below, where any valid claim in respect of the Products or any part thereof which can be shown to the Company's reasonable satisfaction (on the balance of probabilities) to be based on a breach of the Warranty, is notified to the Company during the Warranty Period, the Company will (at the Company's sole option) repair or replace, or (at the Company's sole option) credit a sum to be agreed with the Customer in lieu of the repair or replacement of, any Product or part thereof.

(d) The Company shall be under no liability for any breach of the Warranty:-

- i. Unless the Products have been properly installed, used, maintained and serviced;
- ii. Unless the Customer has informed the Company of the defect alleged within the Warranty Period and within 7 days of its discovery;
- iii. In respect of wearing and consumable parts;
- iv. To Products or parts thereof not manufactured by the Company ("Third Party Products"); and/or
- v. If the Customer places Products in long-term storage and fails to perform proper long-term storage preparations per the Company's instructions.

(e) In the event of a defect arising in the Products at any time then the Customer will notify the Company in writing of such defect within 7 days of its discovery and:

- i. If it is within the Warranty Period then the Company will reply stating whether it accepts warranty liability pursuant to sub-clause (c) above and indicating what action it proposes to take (which action may include further investigation by the Company's service engineer) and if it transpires that the defect is not covered by a breach of the Warranty, then the Company reserves the right to make a reasonable charge for such investigation.
- ii. If the Warranty Period has expired, then, without prejudice to clause 7(f), the Company will offer advice (free of charge) and may offer repair or replacement at the Customer's expense.
- iii. Any dispute as to whether a defect is covered by the Warranty shall be immediately referred to an expert to be agreed by the Company and the Customer (or in absence of agreement, to be appointed by the President of the German Institution of Arbitration) whose decision shall be final and binding upon the parties and whose fees shall be shared equally by the parties.

(f) In respect of Third Party Products the Company undertakes to pass on to the Customer any manufacturer's or supplier's warranty given by such manufacturer or supplier to the Company.

(g) There are no third party beneficiaries of the Warranty granted by the Company herein.

## 7. LIMITATION OF LIABILITY, INDEMNIFICATION AND FORCE MAJEURE

(a) To the fullest extent permitted by applicable law, and without prejudice to clause 7(f), the Company shall in no circumstances be

liable (whether in contract, tort or for negligence or breach of statutory duty or otherwise arising out of, or in connection with, this Contract) to the Customer to the extent that such liability: (i) is calculated by reference to profits, income, production or accruals or loss of business, loss of data, loss of profits, loss of goodwill, loss of anticipated savings, loss of revenue; (ii) arises from any inaccuracies or omissions in any instructions, information, drawings, calculations, or specifications or material supplied by the Customer to the Company; (iii) is of a special, incidental, indirect, consequential or exemplary nature; (iv) is recovered by the Customer under the terms of any insurance policy (apart from any excess applicable to the relevant insurance); or (v) has been made good or is otherwise compensated without cost to the Customer.

(b) To the full extent permitted by applicable law, and without prejudice to clause 7(f), except for the limited remedies provided above in clause 6: Warranty, the Company grants NO WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED IN ANY COMMUNICATION BY THE COMPANY TO THE CUSTOMER, OR OTHERWISE, REGARDING THE PRODUCTS. ALL WARRANTIES, CONDITIONS, REPRESENTATIONS AND TERMS EXPRESS OR IMPLIED WHETHER BY APPLICABLE LAWS AND REGULATIONS OR OTHERWISE, TO THE EXTENT PERMITTED BY LAW, EXCLUDED FROM THESE TERMS.

(c) The Company makes no representation regarding compliance with any state, provincial, or local law, rules, regulations, building code or ordinance relating to the installation or operation of the Products ("local laws"). The Customer acknowledges that it is the Customer's responsibility to comply with all applicable laws, rules and regulations relating to the installation and operation of the Products and indemnifies the Company from any claims actions, losses (including without limitation, loss of profit), damages, costs and expenses (including without limitation, legal costs and expenses) arising thereof.

(d) The Company shall be liable for damage to the Customer's physical property caused by the Company's negligence in connection with the production, manufacture or installation of the Products provided that the Company's total aggregate liability for such damage shall in no event exceed €250,000 with respect to any one event or series of connected events.

(e) Without prejudice to clause 7(f) the Company's maximum aggregate liability under or in connection with this Contract, whether arising in breach of contract, tort (including negligence), breach of statutory duty or otherwise, shall in no event exceed the greater of €250,000 and the total amount payable/paid by the Customer under this Contract.

(f) Nothing in these terms shall exclude or limit the Company's liability for (i) fraud, (ii) death or personal injury caused by its negligence, or (iii) any other liability to the extent that the same may not be excluded or limited as a matter of law.

(g) Notwithstanding anything to the contrary in these terms, neither party shall be liable to the other for breach of its obligations under this Contract by reason of circumstances or events beyond the reasonable control of either of them.

(h) The Customer shall indemnify the Company against all actions, suits, claims, demands, costs, charges, damages, losses and expenses suffered or incurred by the Company and/or for which it may be liable to any third party due to, arising from or in connection with, directly or indirectly: (i) the Customer's instructions or lack of instructions; (ii) any failure or delay whatsoever in taking delivery or any other act, neglect or default on the part of the Customer, its servants, agents, or employees; or (iii) the breach of any provision of this Contract by the Customer.

(i) The Customer shall indemnify and keep indemnified the Company against all costs, claims, losses, expenses and damages incurred by the Company or for which it may be liable to any third party due to or arising directly or indirectly out of any infringement or alleged infringement of patents, trademarks, copyright, design, right or other intellectual property right occasioned by the importation, manufacture or sale of the Products if made to the specification or special requirement of the Customer.

## 8. CANCELLATION AND TERMINATION

(a) The Customer may cancel its order, in whole or in part, upon written notice to the Company and upon payment of all actual expenses and costs incurred by the Company and attributable to such order.

(b) The Company shall be entitled forthwith to terminate this Contract in the event of non-payment (in whole or in part) by the Due Date or if at any time before payment in full is made (whether or not payment is yet due) a petition is presented or resolution passed for the winding up or bankruptcy of the Customer or in the event of the appointment of a receiver or administrator of the Customer's business ("Termination").

(c) In the event of Termination, the Customer shall be liable to the Company for all the costs and expenses which it incurred up until

the date thereof and the profit it reasonably expected to make on the Contract had the same been fully performed, less such net sum (if any) as the Company is able to make in disposing of the Products.

## 9. GENERAL

(a) In the event that any dispute arises out of this Contract, either party may call a settlement conference for the resolution of any such dispute. Such settlement conference shall be held at the Company's office, unless otherwise agreed by the parties, within three (3) business days from the date of receipt of a written request therefore by the party to whom such request is directed. The settlement conference shall be attended by representatives of the parties who shall have authority to settle the claim, shall not be attorneys, and shall attempt in good faith to resolve the claim. If such claim has not been resolved within five (5) business days after the settlement conference has been held, the matter shall be submitted to arbitration in accordance with the Arbitration Rules of the German Institution of Arbitration e.V. ("DIS") without recourse to the ordinary courts of law. Unless otherwise agreed, such arbitration shall be held in, Munich, Germany and the award rendered by the arbitrators shall be binding as between the parties and judgment on such award may be entered in any court having jurisdiction thereof. The language of the arbitral proceedings is German, unless otherwise agreed. Three arbitrators familiar with Company's industry shall be appointed: one by the Company, one by the Customer, and a third selected by the two arbitrators selected by the parties. In the event the first two arbitrators cannot agree on the selection of a third, such third arbitrator shall be appointed by the DIS. All decisions and awards shall be made by a majority of the three arbitrators. Notice of a demand for arbitration of any dispute subject to arbitration by one party shall be filed in writing with the other party and with the DIS. Each party shall advise the other of its selected arbitrator within 10 days of the date of notice. A stenographic record shall be made of all arbitration hearings. Each party shall bear its own costs of these procedures; the parties shall equally split the fees of the arbitration and the arbitrator. Notwithstanding the above, either party shall have the right to seek a temporary restraining order or an injunction related to the purposes of this Contract, to compel compliance with confidentiality obligations, or to file suit to compel compliance with this clause 9.

(b) The UN Convention on Contracts for the International Sale of Goods of 11 April 1980 shall not apply to this Contract.

(c) If any provision or part of a provision of these terms is found to be illegal, invalid or unenforceable under any applicable law, such provision or part of a provision shall, insofar as it is severable from the remaining terms, be deemed omitted from these terms and shall in no way affect the legality, validity or enforceability of the remaining terms.

(d) Only variations or modifications to this Contract which are made in writing signed by Customer and Company shall be enforceable.

(e) The Customer may not assign, novate or otherwise transfer its rights or obligations under this Contract without the Company's prior written consent, and any attempt to do so shall be null and void and of no effect.

(f) Any failure by the Company to enforce its rights under this Contract will not be deemed a waiver of such rights.

## SPECIAL PROVISIONS

(a) Neither the Equipment nor the parts sold hereunder are designed or manufactured for use in or with any atomic installation or activity. If the Customer or the ultimate user of the Products or parts intends to use the Products or parts in such an installation or activity, the Company's Terms for Nuclear Sales shall be a part of this Contract. The Company will furnish the Customer with a copy of its Terms for Nuclear Sales upon request.

(b) Purchaser understands and agrees that the Products may be subject to export and other foreign trade controls restricting resales and/or transfers to other countries and parties, including, but not limited to, licensing requirements under applicable laws and regulations of the United States (together, "Trade Control Laws"). Purchaser shall not export, re-export, transfer, or otherwise dispose of the Products directly or indirectly, except as permitted by applicable Trade Control Laws. Purchaser shall not do anything that would cause the Company or its affiliates to be in breach of applicable Trade Control Laws. Furthermore, Purchaser shall protect, indemnify and hold harmless the Company and its affiliates from any fines, damages, costs, losses, liabilities, penalties, and expenses incurred by the Company as a result of Purchaser's failure to comply with this clause.