

1. INTERPRETATION

1.1. In this Terms and Conditions, following words and phrases shall have the following meanings unless the context otherwise requires.

a. **"CONDITIONS"** means the definitions and rules presented in this document for delivery of MEC'S SERVICES AND GOODS,

b. **"MEC"** means MECPARTNER Denizcilik ve Mühendislik Dış Ticaret Limited Şirketi, registered in İstanbul / TÜRKİYE, whose registered office is at Deri Organize Sanayi Sitesi, Süt Sokak No:1, Orhanlı / Tuzla, In case MEC appoints affiliates, sub-contractors or other service providers to perform MEC'S obligations within the contract, the term "MEC" shall cover such affiliates, sub-contractors, supervisors or any kind of representatives which will involve in execution or supervision or evaluation of the Services or Goods.

c. **"CUSTOMER"** means the person, firm, company, corporate or unincorporated body ordering or requesting Services or Goods from MEC,

d. **"QUOTATION"** means the proposal, estimate or free quote from MEC to Customer,

e. **"CONTRACT"** means the Customer's purchase order and MEC'S acceptance of the same

f. **"SERVICES"** means the repair and maintenance services for machinery or equipment or systems consisting of multiple equipment in combination, on Ships or Plants or in other Facilities to be provided by MEC under the Contract together with any other services which MEC provides, or agrees to provide to the Customer as defined in MEC'S order acknowledgement and in written

g. **"GOODS"** means the spare parts used by MEC in providing the Services and sold to the Customer under the Contract.

h. **"WORK"** means the Goods and / or Services as defined in MEC's order acknowledgement and in written

i. **"MEC'S EQUIPMENT"** means any equipment, machinery, tools or facilities, provided by MEC or its ENGINEERS, used directly or indirectly in the supply of the Services which are not Goods sold to the Customer and including any equipment, machinery or tools hired by MEC or its ENGINEERS for providing the Services.

j. **"ENGINEER"** means the employee, sub-contractor, consultant or other agent of MEC who will carry out, supervise or evaluate or inspect the Services or Goods,

k. **"SHIP"** means any type of watercraft including but not limited to ship, vessel, rig or barge whether at sea, in port or at dry-dock where MEC is to perform Work,

l. **"SITE"** means the place where the services are to be delivered by MEC'S Engineers, including but not limited to the areas in connection, workshops or 3rd party facilities arranged by the customer,

m. **"CUSTOMER'S GOODS"** means the spare parts provided by the Customer and used in providing the Services

n. **"CUSTOMER'S EQUIPMENT"** means any equipment, machinery, tools, cabling or facilities provided by the Customer and used directly or indirectly in the supply of Services

o. **"MACHINERY"** means the diesel engines or other equipment in the Site, which are the subject of the Services as stated in the QUOTATION and / or CONTRACT,

p. **"SERVICE RATES"** means the actual prices of Services provided by MEC, either for Engineer's rates based on hours or standard prices for Work;

q. **"REPORT"** means any memoranda, laboratory data, calculations, measurements, estimates, notes, certificates and other material prepared by MEC in the course of providing the Services to the Customer, together with status summaries or any other communication in any form describing the results of any work or services performed,

1.2. Headings in these conditions shall not affect their interpretation.

1.3. A reference to writing or written includes faxes and email.

2. APPLICATION of CONDITIONS

2.1. These Terms and Conditions shall:

a. apply, be incorporated into and form an integral part of the Contract; and
b. prevail over any inconsistent terms or conditions contained, or referred to, in the Customer's purchase order, confirmation of order, acceptance of a Quotation, or specification or other document supplied by the Customer, or implied by law, trade custom, practice or course of dealing,

c. Variations and / or amendments to Conditions shall be effective only if they are in writing, expressly stated to amend Conditions and signed by an authorized signatory of each party. MEC reserves the right to adjust price and / or schedule of work if these variations increase time or cost to MEC of performing the requirements of the Work / Contract.

d. No agent, representative, sub-contractor, representative or Engineer, whomsoever has authority to amend, vary or terminate these Conditions, Contract or any other documents or rules applicable to the Contract or to release any party from its obligations under the contract unless these alterations are made in accordance with **condition 2.4c**

2.2. Customer's purchase order, or acceptance of a Quotation for Work, or receipt of Goods or Services shall be deemed conclusive proof of irrevocable acceptance of these Conditions and of the conformity of the Goods or Services provided; similarly, these terms and conditions shall be deemed irrevocably accepted upon commencement of work by MEC at MEC's facility, Site or at any other location.

2.3. No offer placed by the Customer shall be accepted by MEC other than by a written acknowledgement issued and executed by MEC, when a Contract for the supply and purchase of Work on this Condition will be established. Customer' terms and conditions (if any), whether standard or specific for the Contract, attached to, enclosed with or referred to in any purchase order or any other document shall not govern the Contract.

2.4. If any term, condition, condition or part of these Conditions is found to be against law, invalid, inappropriate, unenforceable, inapplicable whatsoever reason preventing to come into force by any governing authority, court, tribunal or administration then that provision shall be severed from these Conditions and shall be ineffective without modifying, impairing or affecting remaining provisions of these Conditions which shall remain in force and effect. Parties of the Contract shall replace the invalid provision, part by another, equivalent provision with respect to the commercial effect and so far, the replacement is possible.

2.5. Quotations are given by MEC on the basis that no Contract shall come into existence except in accordance with **condition 2.3**. Any Quotation is valid for a period of 30 days from issuing date, if MEC has not previously withdrawn it or otherwise is stated in Quotation.

2.6. All information stated in Quotations such as weight, dimensions, capacity, price, technical data, price lists and service rates are to be considered approximate until confirmed by MEC, in written by an order acknowledgement.

3. MEC's OBLIGATIONS

3.1. MEC shall provide the Work to the Customer in accordance with this Condition which is expressly incorporated into any Quotation MEC has made and submitted to the Customer,

3.2. MEC shall provide the Services, in accordance with reasonable instructions submitted by the Customer. If the Customer appoints a surveyor, supervisor, specialist or a person to oversee the Services, MEC shall follow the instructions from such person within the limits of capability and circumstances under which the Services are performed.

3.3. MEC shall use reasonable endeavors to observe health and safety rules and regulations, and any other reasonable security requirements that apply in the Site only as far as the Customer has sufficiently informed MEC of such rules or regulations in advance and timely manner. MEC shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the contract.

3.4. MEC'S is responsible for MEC'S Equipment while MEC'S Equipment is in transit to Site provided that such transport is arranged by MEC or MEC'S agent.

4. CUSTOMER'S OBLIGATIONS

4.1. Customer shall accept full responsibility and liability for the instructions described in **condition 3.2**

4.2. Customer shall provide MEC, within a reasonable time but not later than commencing the Work, such plans, drawings, instructions, pattern, model and other information and warrants that any information, samples and related documents it (or any of its agents or representatives) supplies to MEC (including its agents, sub-contractors and employees) is, true, accurate representative, complete and is not misleading in any respect. The Customer further acknowledges that MEC will rely on such information, samples or other related documents and materials provided by the Customer (without any duty to confirm or verify the accuracy or completeness thereof) in order to provide the Services and Goods. In case the Customer fails to comply with this condition, MEC shall not be liable to Customer according to the provisions in **condition 10**

4.3. Customer shall be responsible for MEC'S Equipment while MEC'S Equipment is in transit to Site provided that such transport is arranged by the Customer or its agent. Customer shall take any possible / reasonable precautions to protect MEC'S Equipment from damage or loss while MEC'S Equipment is being used or stored in Site.

4.4. The Customer shall:

a. Co-operate with MEC in all matters relating to the Services,
b. Provide MEC, its agents, subcontractors, consultants, employees, Engineers and Equipment, in a timely manner and at no charge, with access to Site and other facilities as required by MEC,

c. Provide suitable accommodation and assist in procuring food for MEC'S Engineers. Provision of accommodation, food, board and lodging for MEC'S Engineers shall be on the Customer's account, unless otherwise is specifically stated in the Contract.

d. Provide all tools, test equipment and facilities unless otherwise specifically stated in the Contract. In case MEC does provide the tools, customer shall give all necessary assistance with the legal formalities when required for import and re-export of the tools and MEC's Equipment free of all customs and taxes.

e. Ensure that the Ship is in a safe and seaworthy condition at all times while the Engineer is onboard the Ship. MEC reserves the right to withdraw the Engineer if the Ship is in the MEC's reasonable opinion unsafe or unseaworthy,

f. Ensure that all Customer's Equipment is in good working order and suitable for the purposes for which it is used and conforms to all EU standards or requirements and provide the Engineer with all relevant documents and certificates on his request,

g. Obtain and maintain all necessary licenses and consents and comply with all relevant legislation in relation to the Services, the use of the Customer's Equipment and the use of MEC's Equipment in Site in all cases before the date on which the Services are to start

h. keep and maintain the MEC's Equipment in good condition and ensure that where the personnel of the Customer use the MEC's Equipment that it is used in accordance with the MECs or the Engineer's instructions. If MEC's Equipment is lost or broken while being used by the Customer's personnel, then MEC shall invoice the Customer for the cost of replacing the MEC's Equipment; and

i. in the circumstances where MEC provides an Engineer to act as a supervisor, ensure that all personnel of the Customer engaged in working on the Machinery under the supervision of the Engineer possess the necessary

qualifications and speak competent English to perform competent work on the Machinery.

4.5. If MEC's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, MEC shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay; the time to perform the Work under the Contract shall be adjusted accordingly in case of such delays.

4.6. The Customer shall be liable to pay to MEC, on demand, all reasonable costs, charges or losses sustained or incurred by MEC (including but without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from:

- a. The Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract; or
- b. Incorrect or incomplete information including but not limited to plans, specifications, drawings, patterns and models supplied by the Customer, subject to MEC confirming such costs, charges and losses to the Customer in writing.

5. HEALTH, ENVIRONMENTAL, SECURITY and SAFETY RESPONSIBILITIES

5.1. Customer shall maintain safe working conditions at Site, including, without limitation, implementing appropriate procedures regarding any kind of waste material or hazardous substances as defined by any legislation or international convention relevant or applicable to the Service provided and confined space entry permits, labels or warning signs and operation procedures and instructions as required by applicable laws and regulations.

5.2. Customer shall timely advise MEC in writing of all health, safety, security and environmental requirements procedures and instructions applicable at Site. MEC has the right, but not the obligation to, from time to time, review and inspect applicable health, safety, security and environmental documentation, procedures and conditions at Site without limiting the Customer's responsibilities.

5.3. In case, the health, safety or security of MEC's Engineers or Site is, or apt to be, imperiled by security risk, terrorist acts or threats, the presence of or threat of exposure to Hazardous Materials or unsafe working condition, MEC and his Engineers have the same responsibility and authority as the Customer to stop the Service. MEC may, in addition to other rights or remedies available to it, evacuate some or all its Engineers from Site, suspend performing all or any part of the Contract. Any such occurrence shall be considered an excusable event without any liability to the Customer. The Customer reasonably assist in any such evacuation.

5.4. Operation of the Customer's equipment is the responsibility of the Customer,

5.5. MEC has no responsibility or liability for the pre-existing condition of the Customer's Equipment or the Site. Customer shall provide the documentation for the presence and condition of any hazardous materials and / or contaminated substances, elements, waste of any kind that are restricted by applicable laws or regulations, existing in or about the Customer's Equipment or the Site.

5.6. Customer shall disclose to MEC industrial hygiene and environmental monitoring data regarding conditions that may affect MEC's Services or Engineer's at Site. Customer shall immediately inform MEC of changes in any such conditions.

5.7. Customer shall, make it's medical facilities and resources at Site available. The Customer will make its medical facilities and resources at Site available to the MEC's Engineers who need medical attention. If medical facilities or resources are not available in Site, the Customer will assist in bringing the MEC's Engineers requiring medical attention to the nearest available medical facility.

5.8. The Customer represents and warrants to MEC and agrees to ensure that the work site, surrounding environment, all equipment provided or otherwise made available to the MEC's Engineers in connection with the Service Work rendered in connection with the Contract and all products and equipment serviced or otherwise worked on by the MEC's Engineers in connection with the Contract, shall at all times be free of Hazardous Materials and/or contaminated substances, elements or waste of any kind that are restricted by applicable laws or regulations and hazardous to the health or safety of the MEC's Engineers. If the Customer is in breach of any such representation, warranty or covenant, the Contractor may immediately cease performance under the Contract and the Customer shall be liable for the full amount of the fees due under the Contract for all services provided through the date of such termination.

5.9. MEC shall notify the Customer if MEC becomes aware of conditions at the work site differing materially from those disclosed by the Customer; or physical conditions at work site differing from those ordinarily encountered and generally recognized as inherent in Service Work of the character provided for in the Contract; or work assignment extends beyond the acceptable limit of twelve (12) hours or the applicable legal limit of work hours, whichever is shorter, in a single work shift. If any such conditions cause an increase in the MEC's cost of, or the time required for, performance of any part of the Service Work under the Contract, an equitable adjustment in price and schedule and the MEC's Engineers rest cycle shall be made.

5.10. If MEC encounters Hazardous Materials in the Customer's equipment or at the work site that require special handling or disposal, MEC is not obligated to continue Service affected by the hazardous conditions. In such an event, the Customer shall eliminate the hazardous conditions and / or materials in accordance with applicable laws and regulations so that the MEC's Service under the Contract may safely proceed, and MEC shall be entitled to an equitable adjustment of the price and schedule to compensate for any increase in the Contractor's cost of, or time required for, performance of any part of the Service. Storage, transport and disposal of all Hazardous Materials introduced, produced or generated in the course of the MEC's Service at Site are within responsibility of the Customer. All costs and expenses related to the management, handling, clean-up, removal and/or disposal of all Hazardous Materials and/or contaminated substances, elements or

waste of any kind as defined by applicable laws and regulations or applicable to the Service supplied shall be covered by the Customer.

5.11. Customer shall provide the Engineers with all necessary protective clothing and equipment as necessary,

6. CONFIDENTIALITY

6.1. Where a party (the Receiving Party) obtains Confidential Information of the other party (the Disclosing Party) in connection with the Work (whether before or after the date of the Contract) it shall, subject to **conditions 6.2 to 6.4** :

a. keep that Confidential Information confidential, by applying the standard of care that it uses for its own Confidential Information

b. use that Confidential Information only for the purposes of performing obligations under the Contract; and

c. not disclose that Confidential Information to any third party without the prior written consent of the Disclosing Party.

6.2. The Receiving Party may disclose the Disclosing Party's Confidential Information on a "need to know" basis:

a. to any legal advisers and statutory auditors that it has engaged for itself;

b. to any regulator having regulatory or supervisory authority over its business;

c. to any director, officer or employee of the Receiving Party provided that, in each case, the Receiving Party has first advised that person of the obligations under **condition 6.1** and ensured that the person is bound by obligations of confidence in respect of the Confidential Information no less onerous than those set out in **condition 6**; and

d. where the Receiving Party is MEC, to any of its subsidiaries, affiliates subcontractors, agents or representatives.

6.3. The provisions of **condition 6.1 and 6.2** shall not apply to any Confidential Information which:

a. was already in the possession of the Receiving Party prior to its receipt from the Disclosing Party without restriction on its use or disclosure;

b. is or becomes public knowledge other than by breach of **condition 6**;

c. is received by the Receiving Party from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or

d. is independently developed by the Receiving Party without access to the relevant Confidential Information.

6.4. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent required by law, any regulatory authority or the rules of any stock exchange on which the Receiving Party is listed, provided that the Receiving Party has given the Disclosing Party prompt written notice of the requirement to disclose and where possible given the Disclosing Party a reasonable opportunity to prevent the disclosure through appropriate legal means.

6.5. Each party shall ensure the compliance by its employees, agents and representatives (which, in the case of MEC, includes procuring the same from any sub-contractors, agents or representatives) with its obligations under **condition 6**.

6.6. No license of any Intellectual Property Rights is given in respect of any Confidential Information solely by the disclosure of such Confidential Information by the Disclosing Party.

6.7. With respect to archival storage, the Customer acknowledges that MEC may retain in its archive for the period required by its quality and assurance processes, or by the testing and certification rules of the relevant accreditation body, all materials necessary to document the Services provided.

7. ASSIGNMENTS AND SUBCONTRACTING

7.1. MEC may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

7.2. The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of MEC.

8. DELIVERY OF SERVICES, GOODS AND ACCEPTANCE

8.1. Services shall be performed at Site and Goods are to be delivered to specified location which is informed by the Customer in writing and/or as specified in the Contract.

8.2. The Customer acknowledges and agrees that any Services provided and/or Reports produced by MEC are done so within the limits of the scope of work agreed within the Contract and pursuant to the Customer's specific instructions or, in the absence of such instructions, in accordance with any relevant trade custom, usage or practice.

8.3. MEC may deliver services in sections and deliver Goods in installments.

8.4. The customer shall not be entitled to terminate the Contract if

a. The Customer fails or refuses to accept delivery of any Goods when they are ready for delivery or fails to provide any instructions or authorizations required to enable the Goods to be delivered on the due date,

b. The customer requests to postpone the delivery,

c. There is shortage in Goods or any Goods are not delivered due to reasons being beyond the reasonable control of MEC,

d. Services are executed partly due to reasons being beyond the reasonable control of MEC,

8.5. Goods shall be inspected / examined upon delivery; MEC shall not be liable for damage, shortage or non-delivery of Goods unless MEC is notified by the Customer in writing within 3 working days after the actual delivery date.

8.6. In case Services or Goods could not be delivered within the time stated in the Contract and delay was caused by negligence or under-performance or intention of

MEC and Customer suffered a proven loss by such delay, the Customer shall be entitled to claim such losses. The amount of liquidated damages shall not be more than 5% of the Contractual price of the delayed part of the Work.

8.7. Customer shall arrange the daily working time together with MEC's Engineer; actual working hours shall be recorded on worksheets and approved by the Customer.

8.8. Acceptance of Works by the Customer shall be deemed when MEC notices the Customer that the Works has been completed, provided that the Work is as required for acceptance in accordance with the contract. Minor deficiencies which does not affect the efficiency of the Work shall not prevent acceptance.

9. REPORTS

9.1. Report(s) shall be only for the Customer's use and benefit

9.2. The Customer acknowledges and agrees that if in providing the Services MEC is obliged to deliver a Report to a third party, MEC shall be deemed irrevocably authorized to deliver such Report to the applicable third party. For the purposes of this condition an obligation shall arise on the instructions of the Customer, or where, in the reasonable opinion of MEC, it is implicit from the circumstances, trade, custom, usage or practice

9.3. The Customer further agrees and acknowledges that the Services are not necessarily designed or intended to address all matters of quality, safety, performance or condition of any product, material, services, systems or processes tested, inspected or certified and the scope of work does not necessarily reflect all standards which may apply to product, material, services, systems or process tested, inspected or certified. The Customer understands that reliance on any Reports issued by MEC is limited to the facts and representations set out in the Reports which represent MEC's review and/or analysis of facts, information, documents, samples and/or other materials in existence at the time of the performance of the Services only.

9.4. Customer is responsible for acting as it sees fit on the basis of such Report. Neither MEC nor any of its officers, employees, agents, subcontractors or representatives shall be liable to Customer nor any third party for any actions taken or not taken on the basis of such Report.

10. MEC'S WARRANTY

10.1. MEC warrants that it will use reasonable care and skill in performing the Services to the standard generally accepted within the industry. However, MEC provides no warranty that any Machinery shall be restored to good working order by any time.

10.2. MEC warrants that Goods delivered are free from material defects or Services performed were carried with reasonable care and skill for a period of 60 days. Warranty period shall start to run at the latest when the Work is ready for acceptance in accordance with [condition 8.8](#). This period shall govern whether the alleged defect is latent or patent and shall not be deemed to be tolled or to arise at any future time as a result of the discovery of a latent defect. Remedies for latent defects not discovered and submitted to MEC within the 60 day period shall be exclusively those available from the manufacturer, if any. All warranties are contingent upon, and no obligation to perform warranty repairs shall arise until, full payment is received by MEC, and the provision of repairs or replacement of parts by MEC shall not be deemed a waiver of this provision

10.3. The specific warranty provided by this section shall be deemed expired and all right of the Customer irrevocably waived unless the claimed defect is submitted to MEC in writing within period stated in [condition 10.2](#)

10.4. Where MEC provides an Engineer to act as a supervisor, the warranty in [condition 10.2](#) shall only apply if the Customer can prove that the Work on the Machinery has been performed negligently or in breach of this Contract due to the Engineer giving negligent or incorrect instructions to the Customer's personnel.

10.5. MEC shall not be liable for incompetency, wrong-doing of Customer's personnel, or any other third party subcontractors arranged by the Customer.

10.6. In case Customer fails to pay MEC due invoices within the period agreed as per the Contract MEC shall be free of its warranty responsibilities until the payment is made. The period from the completion of the Services to full payment to MEC, shall be deducted from the warranty period described in [condition 10.2](#)

10.7. Warranty given in [condition 10.1 and 10.2](#) will not apply if the reason of defect complained of arises from

- a. any drawing, design, specification, intellectual property or information supplied by the customer; or
- b. instructions from the representative appointed by the customer as described in [condition 3.2](#)
- c. normal wear and tear,
- d. wilful damage,
- e. Customer's negligence, abnormal working conditions; or
- f. Misuse or alteration or repair misuse or alteration or repair of the Goods without MEC's approval or arises from any failure to follow MEC's advice (whether oral or in writing or whether relating without limit to the fabrication, operation, use or maintenance of the Goods) or,
- g. Customer's faulty acts.

10.8. Warranty given in [condition 10.1 and 10.2](#) will not apply if

- a. The total due payment of the Work has not been paid by the due date,
- b. Customer fails to give MEC or its agents, representatives a reasonable opportunity to inspect the Work safely,
- c. The Goods supplied by MEC are used in combination with other, non-original goods supplied by the Customer.

10.9. Consequential damages which the Customer may suffer because of a malfunction or failure, including but not limited to, loss of use of Customer's

Equipment or vessel, towing, any related docking and harbor costs, travel, overtime, meal, cargo loss or damage, any incidental expenses or inconvenience are not covered by this Warranty condition.

10.10. In case a defect is revealed, Customer shall:

- a. Inform MEC about the defect immediately; provide detailed information about defect,
 - b. Take necessary precautions to minimize possible losses,
 - c. Provide MEC Engineers or appointed representatives with reasonable opportunity to inspect, repair, rectify or replace defective Goods or Services safely within a reasonable period,
- 10.11.** Without prejudice to other remedies available to MEC, The Customer agrees that the sole remedy for breach of any warranty, express or implied shall be limited, at MEC's sole discretion, to:

- a. Return or crediting of the price attributable to the faulty Goods or Services; or

- b. Referral of the claim to the original manufacturer for manufacturer's warranty review; or

- c. Repair, rectify or replace the defective Goods or Services, if such Goods are returned to MEC (or sub-supplier of MEC, with prior notice to Customer) at Customer's cost.

MEC makes no warranty and specifically disclaims all liability for design of any items supplied.

MEC shall especially not be responsible for loading and/or offloading of cargo and/or any precondition works necessary to repair and/or rectify the defect such as disassembly, removal and reassembly of any component.

Condition 10.11 shall be the Customer's only remedy and in lieu of any rights and remedies which might otherwise be available to the Customer.

10.12. In case Customer decides to repair, rectify or replace the defective Goods or Services by means of Goods or Services rendered by a third party, with MEC's prior approval in written, MEC shall be relieved from its all Warranty obligations and MEC's total liability for any costs occurred in relation with rectification, repair or replacement shall be limited according to [condition 11.3](#).

In case that such defects are remedied without MEC's prior approval in written, MEC shall be relieved from its all Warranty obligations and MEC shall not be liable for any costs occurred in relation with rectification, repair, replacement including the provisions in [condition 11](#).

10.13. MEC makes no other warranties, express or implied. All other warranties, conditions and other terms implied by statute or common law (including but not limited to any implied warranties of merchantability and fitness for purpose) are, to the fullest extent permitted by law, excluded from these conditions. No performance, deliverable, oral or other information or advice provided by MEC (including its agents, sub-contractors, employees or other representatives) will create a warranty or otherwise increase the scope of any warranty provided.

11. LIMITATION AND EXCLUSIONS OF LIABILITY

11.1. This condition sets out the liability of MEC (including any liability for the acts or omissions of its Engineers, employees, agents, consultants, and subcontractors) to the Customer. MEC shall not be liable for, including but without limitation,

- a. loss of profits, business, contracts, anticipated savings, goods, contractor, loss or corruption of data or information, loss resulting from any claim from any third party, any special, indirect or consequential loss or damage of any kind, depletion of goodwill and/or similar losses; or
- b. Loss, damage, cost liability, expense or claim of any kind whatsoever incurred as a result of any defects in design, material and workmanship in the Customer's Goods; or
- c. any special, indirect, consequential or economic loss, costs, damages, charges or expenses;
- d. losses of detention, wharfage, demurrage, tug expense, pilotage, crew wages or salvage.

11.2. MEC shall not be liable to the Customer or any third party for any loss, damage, cost, liability, expenses, fines or penalty of any kind, whatsoever incurred directly or indirectly, with respect to actual or potential discharge, emission, spillage or leakage upon or into seas, water, land or air anywhere in the world of any kind of pollutant including, but not limited to, oil, petroleum products, chemicals or other substances, unless such discharge, emission, spillage or leakage is caused solely and directly by MEC's gross negligence or intentional tort, and in no event shall MEC's total aggregate liability under the Contract not exceed the value stated in [condition 11.3](#).

11.3. Without prejudice to [condition 8.6, 11.1 and 11.2](#) MEC's total liability for each Contract, tort (including, without limitation to negligence or breach of statutory duty) misrepresentation, restitution or otherwise arising in the performance, or contemplated performance of the Contract, any matter arising out of or in connection with the Services provided in accordance with the Contract, any breach of the Contract whatsoever shall be limited to 30% of the value paid for each related Work stated in the Contract.

11.4. MEC shall not be liable for any injury or death resulting from its provision of Services, or Goods, and the Customer agrees to indemnify, defend and hold MEC harmless for any such claims brought against MEC by or on behalf of any person other than a MEC employee.

11.5. MEC shall not be liable with regard to the accuracy and integrity of any electronic communication and its transmission to/from Customer or any intended party. MEC shall not be liable for any loss of any kind for incorrectness, incompleteness or being against any law or regulations or breach of any intellectual or contractual rights, of such communication, whether MEC is the sending or receiving party of it.

12. INDEMNITY

12.1. The Customer shall indemnify and hold harmless MEC, its officers, employees, agents, representatives, contractors and sub-contractors from and against any and all claims, suits, liabilities (including costs of litigation and attorney's fees) arising, directly or indirectly, out of or in connection with:

- a. any claims or suits by any governmental authority or others for any actual or asserted failure of the Customer to comply with any law, ordinance, regulation, rule or order of any governmental or judicial authority;
- b. claims or suits for personal injuries, loss of or damage to property, economic loss, and loss of or damage to Intellectual Property Rights incurred by or occurring to any person or entity and arising in connection with or related to the Services provided hereunder by MEC, its officers, Engineers, employees, agents, representatives, contractors and sub-contractors;
- c. the breach or alleged breach by the Customer of any of its obligations set out in **condition 4**;
- d. any claims made by any third party for loss, damage or expense of whatsoever nature and howsoever arising relating to the performance, purported performance or non-performance of any Services to the extent that the aggregate of any such claims relating to any one Service exceeds the limit of liability set out in **conditions 10 and 11**;
- e. any claims or suits arising as a result of any misuse or unauthorized use of any Reports issued by MEC or any Intellectual Property Rights belonging to MEC (including trade marks) pursuant to the Contract; and
- f. any claims arising out of or relating to any third party's use of or reliance on any Reports or any reports, analyses, conclusions of the Customer (or any third party to whom the Customer has provided the Reports) based in whole or in part on the Reports, if applicable.

12.2. The obligations set out in this **condition 12** shall survive even after termination of the Contract.

13. CHARGES, INVOICING AND PAYMENT

13.1. In consideration of the provision of the Work by MEC, the Customer shall pay the charges.

13.2. Unless otherwise agreed by MEC in writing the Services are provided on time and materials basis. Services delivered by MEC shall be charged in accordance with MEC's standard daily and / or hourly fee rates as set out in the MEC's price list, as amended from time to time

13.3. Working hours outside Standard working hours, working hours within Saturdays, Sundays and national holidays shall be charged as Overtime hours calculated in accordance with MEC's daily fee rates as set out in the MEC's price list,

13.4. MEC shall be entitled to charge

- a. for the time spent by the Engineer in travelling to Site Ship at the MEC's standard daily and /or hourly fee rates for travel time,
- b. a fee for living expenses of the Engineer, calculated in accordance with the MEC's daily fee rates,
- c. Reasonable expenses incurred in providing the Services, which will include but not limited to the cost of hotel, visa or special permissions, subsistence, travelling to and from the Site to Engineer's home or MEC's workshop / office, excess baggage charges, insurance for MEC's Equipment and Goods and any other ancillary expenses reasonably incurred by the Engineer; such expenses shall be invoiced by MEC at cost plus an administrative fee up to 15%, the cost of services reasonably and properly provided by third parties and required by the MEC for the supply of the Services.

13.5. For the services delivered abroad, outside Turkey, in case MEC Engineers is not able to perform the Service due to illness or injury MEC shall be entitled to charge the Customer for the time during which the Engineers must stay in the country. Such periods shall be charged at a reduced / special rate stated in MEC's standard rates.

Cost occurred in connection with such illness or accidents or injury such as but not limited to medical treatment, medicine, hospital care shall be covered by the Customer.

In case that MEC's Engineer is required to return to home, travelling costs including hourly rates for the travelling shall be charged to the Customer.

13.6. All charges quoted to the Customer shall be exclusive of VAT, which MEC shall add to the invoices at the appropriate rate,

13.7. Unless otherwise agreed in the Contract, MEC shall invoice the customer on completion of the Services for its charges for time, expenses and materials (including VAT where applicable) calculated as provided in **condition 13.2** and the price for the Goods.

13.8. The Customer shall pay each invoice submitted to it by MEC, in full and in cleared funds, within the period stated in the Contract to a bank account nominated in writing by MEC. Local fees, taxes or any other expenses charged for the transaction of the payable amount are the responsibility of the customer and no deduction shall be made to the invoiced amount therefor

13.9. Unless otherwise agreed in the Contract, sums payable by the Customer to MEC shall be due and effected by the Customer net cash within 30 days after the date of the invoice.

13.10. Without prejudice to any other right or remedy that it may have, if the Customer fails to pay MEC on the due date, MEC may

- a. suspend the Services until payment has been made in full.
- b. charge interest on such sum from the due date for payment at the annual rate of 20%; Customer shall pay the interest immediately on demand.

13.11. Time for payment shall be of the essence of the Contract.

13.12. All sums payable to MEC under the Contract shall become due immediately on its termination, despite any other provision.

14. TITLE and RISK

14.1. The risk in the Goods shall pass to the Customer on completion of delivery.
14.2. Title to the Goods shall not pass to the Customer until the MEC has received payment in full (in cash or cleared funds) for the Goods and all other sums which are due to MEC for the provision of the Services to the Customer.

14.3. Until title to the Goods has passed to the Customer, the Customer shall:

- a. hold the Goods on a fiduciary basis as the MEC's bailee;
- b. store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the MEC's property;
- c. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- d. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- e. notify MEC immediately if it becomes subject to any of the events listed in **condition 17.2**; and
- f. give MEC such information relating to the Goods as the MEC may require from time to time,

14.4. If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in **condition 17.2**, or MEC reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been irrevocably incorporated into the Machinery, and without limiting any other right or remedy MEC may have, MEC may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter the Site or any premises of the Customer or of any third party where the Goods are stored in order to recover them.

14.5. All materials, equipment and tools, drawings, specifications and data supplied by MEC to the Customer (including the MEC's Equipment) shall, at all times, be and remain the exclusive property of MEC and shall not be disposed of or used other than in accordance with the MEC's written instructions or authorization.

15. TERMINATION

15.1. If the Customer fails to perform any of its Contractual obligations on time or make any payment due MEC shall be entitled to suspend its performance of the Contract, or part of it, without any liability to the Customer until the failure is remedied; and

a. The time for performing the Contractual obligations by MEC shall be extended accordingly,

b. Any cost (including financial costs, storage, demurrage, storage, (costs by sub-suppliers due to suspension) incurred by MEC shall be covered by the Customer.

15.2. Without prejudice to any of its rights, MEC shall be entitled to terminate the Contract if any of the following conditions is present or likely to be:

- a. Suspension under **condition 15.1** for more than 30 days; or
- b. The Customer is in breach of any of its Contractual obligations for 25 days without remedy, after receiving a notice in written from MEC; or,
- c. The Customer is subject to any of the events listed in **condition 17.2**.

15.3. In case of termination, howsoever arising, MEC shall be entitled to suspend performing the Work under Contract, withdraw Engineers and Equipment without any liability to the Customer. Without prejudice to MEC's other rights and remedies under the Contract, Customer shall pay the expenses under the **condition 15.4** within 14 days of such a notice of termination.

15.4. In case of termination of the Contract by the Customer after MEC has started to perform the Services, then MEC may accept the cancellation provided that the Customer undertakes to pay the following charges and expenses:

- a. The due payment of the Contract price of the Work performed,
- b. the time spent by the Engineers in performing the Services (including travelling to Site and back to MEC workshop / office) up to the date of cancellation of the Contract
- c. expenses incurred by MEC as set out in **condition 13** including MEC's administration fee; and
- d. any Goods that MEC has contractually committed to buy prior to the date of cancellation. The Goods will be delivered to the Customer after MEC has received payment of its invoice.
- e. The costs and expenses incurred by MEC as result of the termination, including but not limited to the obligations of MEC to sub-suppliers.

15.5. Termination of the Contract or termination any part of it, expiry or completion shall not affect or prejudice the provisions of this General Terms & Conditions.

16. FORCE MAJEURE

16.1. MEC shall have no liability to the Customer under the Contract if MEC or its sub suppliers, subcontractors, representatives are prevented from, or delayed in performing, its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control such as (a Force Majeure Event), including (without limitation) to:

- a. strikes and labor disputes, other than by any one or more employees of the affected party or of any supplier or agent of the affected party; or
- b. war (whether declared or not), civil war, riots, revolution, acts of terrorism, military action, sabotage, riot, civil commotion, piracy or attempted piracy; or
- c. industrial disputes (whether involving the workforce of MEC, MEC's sub-contractors or any other party), failure of a utility service including, without limitation to transport network, telecommunication, internet, gas or electricity services; or
- d. act of God, natural disasters such as violent storms, earthquakes, tidal waves, floods and/or lighting; or
- e. explosions, fires, accident, breakdown of plant or machinery, malicious damage; or

f. , compliance with any law or governmental order, any direction or recommendation as to travel to certain countries made by the Turkish government, **16.2.** A party (Customer or MEC, including its affiliates, sub-contractors, supervisors or any kind of representatives or the Customer) whose performance is affected by an event described in **condition 16.1** (a Force Majeure Event) shall:

a. promptly notify the other party in writing of the Force Majeure Event and the cause and the likely duration of any consequential delay or non-performance of its obligations;

b. use all reasonable endeavors to avoid or mitigate the effect of the Force Majeure Event and continue to perform or resume performance of its affected obligations as soon as reasonably possible; and

c. continue to provide Services that remain unaffected by the Force Majeure Event.

16.3. If a Force Majeure Event results in MEC being unable to perform the Services for any period in excess of 14 days, then MEC shall be entitled without liability to the Customer, to suspend the Services, perform partly or to terminate the Contract.

17. CUSTOMER'S INSOLVENCY OR INCAPACITY

17.1. If the Customer becomes subject to any of the events listed in **condition 17.2**, or MEC reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to MEC, MEC may cancel or suspend the Services under the Contract or under any other contract between the Customer and MEC, without incurring any liability to the Customer; and all outstanding sums in respect of the Services and the Goods shall become immediately due.

17.2. For the purposes of **condition 17.1** the relevant events are:

a. the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, or (being a partnership) has any partner to whom any of the foregoing apply; or

b. the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters any compromise or arrangement with its creditors; or

c. the Customer is the subject of a bankruptcy petition or order, or goes into liquidation (otherwise than for the purposes of a solvent amalgamation or reconstruction); or a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets; or

d. (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer; or

e. (being a company) a floating charge holder over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver; or

f. a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer; or

g. any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or like any of the events mentioned in **condition 17.2a to condition 17.2f** (inclusive); or

h. the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business; or

i. the financial position of Customer deteriorates to such an extent that in the opinion of MEC the capability of the Customer adequately to fulfil its obligations under the Contract has been placed in jeopardy; or

j. (being an individual) the Customer dies or, because of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

17.3. On termination of the Contract, howsoever arising:

a. the Customer shall immediately pay to MEC all the MEC's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, MEC may submit an invoice, which shall be payable immediately on receipt;

b. the Customer shall within a reasonable time, return all MEC's Equipment. If the Customer fails to do so, then MEC may enter the Site and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping; and

c. the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected,

18. GOVERNING LAW AND ARBITRATION

18.1. The Contract, these Terms and Conditions and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be constructed in accordance with and governed in all aspects by the laws of Turkey, excluding any other law or conventions to fullest extent, unless otherwise is specifically stated in the Contract.

18.2. The parties irrevocably submit to the exclusive jurisdiction of the courts of Turkey. The parties' submission to this jurisdiction does not limit the rights of MEC to commence any proceedings arising out of the Contract in any other jurisdiction it may consider appropriate.

18.3. Arbitration shall take place in Istanbul, Turkey and in Turkish language.

19. GENERAL PROVOVISIONS

19.1. Notices

Any notice given to a party under or about the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this condition, and shall be sent by pre-paid first-class post, recorded delivery, commercial courier or fax.

19.2. Severability

If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

If the invalidity, illegality or unenforceability is so fundamental that it prevents the accomplishment of the purpose of the Contract, MEC and the Customer shall immediately commence good faith negotiations to agree an alternative arrangement.

19.3. Waiver

A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

No waiver of any right or remedy under the Contract shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing as described in **condition 19.1**.

19.4. Third party rights

A person, company or organization who is not a party to the Contract shall not have any rights under or in connection with it.

19.5. Communication

In case that emails are used in order to establish communication between parties for any reason, a receipt from the receiver shall be requested by the sender; this receipt may be an automated reply as well as a specific reply to the sender.

19.6. No partnership or agency

Nothing in the Contract and no action taken by the parties under the Contract shall constitute a partnership, association, joint venture or other co-operative entity between the parties or constitute any party the partner, agent or legal representative of the other.