

GENERAL TERMS & CONDITIONS

Smart Engineering & Design Solutions (India) Private Ltd. ("SEDS") is a company specialized in the field of marine design and engineering.

1 Definitions

1.1

In these General Terms and Conditions, the following terms are defined as set forth below:

SEDS: Smart Engineering & Design Solutions (India) Private Ltd., whose registered office is at 8C, Noel Focus, Seaport- Airport Road, Kakkanad, Kochi - 682037, Kerala, India;

Client: the opposite party to SEDS in a contract of sale as referred to in Clause 2.1.

2 Applicability of the General Terms and Conditions

2.1

These General Terms and Conditions are applicable to all offers, quotations and agreements (and/or changes or additions thereto) by virtue of which SEDS undertakes marine design and/or engineering work, or undertakes other work including the delivery of work, services and/or goods to the Client. Conditions of purchase, tender or other general terms and conditions of the Client are not applicable, if and to the extent they are not included in the order confirmation in accordance with Clause 3.2.

2.2

If any provision of these General Terms and Conditions or the agreement proves to be void for whatever reason, this does not affect the validity of the other provisions.

3 Closing of agreements

3.1

All offers, proposals and quotations are without commitment unless stated otherwise. A binding offer is valid for the period as stated therein.

3.2

SEDS is only bound to an order after the order and/or later changes or additions to it have been confirmed explicitly in writing by SEDS.

4 Execution of agreements / cooperation of the Client

4.1

SEDS may require the Client to make a contact person available during the execution of the agreement, with whom SEDS can maintain all contacts in relation to the agreement on behalf of the Client.

4.2

The implementation and/or delivery stages as stated by SEDS are indications only and may not be deemed an ultimate date or deadline unless explicitly stated otherwise. As soon as it is expected that an implementation and/or delivery period will be exceeded, SEDS will inform the Client accordingly. In that case, SEDS is entitled to fulfill its obligations on a date to be agreed upon with the Client. An implementation and/or delivery period commences on the date that the first payment has been received by SEDS in accordance with Clause 9.7. If a fixed deadline has been agreed and is exceeded, without SEDS being entitled to an extension of the deadline as provided for in this agreement and the delay is attributable to the sole fault of SEDS, SEDS shall be liable to pay to the Client compensation equivalent to a daily rate of 0.01% of the agreement price during the period of delay subject to a maximum payment for total delay of 5% of the agreement price under this agreement. The aforementioned compensation is only payable by SEDS if the Client submits

audited documentation showing that the Client has suffered losses or damages due to the delay of delivery of the work to be undertaken by SEDS. Any complaints in respect of delays must be made in writing immediately but no later than 5 working days after the passing of the deadline. If the Client has not put forward a complaint in writing to SEDS within the above-mentioned period of 5 working days from the passing of the deadline, the agreed deadline shall be perceived as an approximate time of delivery and the Client shall be deemed to have accepted the passing of the deadline. In such instances, any new deadline has to be expressly agreed between the parties in order to become binding. The Client is not entitled to any compensation or indemnification, if the Client has not made any complaint to SEDS within the above-mentioned period of 5 working days.

4.3

SEDS shall be entitled to an extension of a deadline of at least the same duration as the event (including consequential events) extending the deadline or such longer period as is necessary for a renewed start-up according to an appropriate (revised) time schedule:

- (i) in the event of any delay with information and services on the part of the Client;
- (ii) in the event of circumstances relating to the Client;
- (iii) in the event of any changes, alterations, additions, modifications, or revisions to the work;
- (iv) if any public authority, governmental organizations, classifications societies or model test tanks fails to grant approvals, make decisions or provide answers, or to supply materials or services within the time limits assumed;
- (v) in case of public orders, bans or similar;
- (vi) in case of events and circumstances for which SEDS cannot be blamed and which are outside the control of SEDS; and

- (vii) in case of events which SEDS could not have anticipated or be expected to anticipate and if such events delay or prevent the fulfillment of the contract or make it unreasonably onerous on the part of SEDS.

In case of extensions of a deadline in excess of 6 months in the aggregate, both parties are entitled to consider the work as having been stopped subject to Clause 7 below. SEDS shall be entitled to consideration pursuant to Clause 7.2, if the extension of a deadline in excess of 6 months is due to circumstances of the Client. If this is not the case, SEDS shall be entitled to a reasonable consideration of the work performed by SEDS. The burden of proof that the consideration demanded by SEDS is not reasonable shall rest with the Client

4.4

The time of delivery shall be calculated from 1) the time when the order was confirmed by SEDS in writing, 2) when any agreed down payment has been received by SEDS, or 3) when the Client has delivered to SEDS, in its entirety, the correct and relevant information and services that are necessary for SEDS to commence the work, whichever date is later.

4.5

If it has been agreed that the work is to be undertaken and/or delivered in stages, SEDS may defer starting work for a subsequent stage until the Client has approved the results of the preceding stage.

4.6

The Client shall at the agreed time, or in reasonable time (if no timeline has been agreed) without cost to SEDS, provide SEDS with agreed and/or necessary information, input, data and details, order forms, test objects, equipment, etc. SEDS is not obliged to start and/or continue with the work for as long as the Client has not provided SEDS with all the aforementioned information that SEDS requires for the execution of the work.

4.7

Should the Client fail to deliver on time the information or goods of whatever nature which is necessary for the execution of the agreement, and if the work is delayed as a result thereof or if the time lost can be made up entirely or in part in overtime or by hiring extra personnel or equipment, the extra costs will be charged. These extra costs and the new delivery dates will be notified in writing upon receipt of the late information.

4.8

Any alterations/modifications of, revisions to or additions to SEDS' documentation and/or other services (or parts thereof) demanded by the Client in excess of what have been expressly included in the agreed scope of work & delivery shall be billed as extra work including instances where alterations, modifications, revisions or additions are due to incorrect information or defective equipment supplied by the Client.

4.9

The Client shall grant his approval and/or make his comments on all outlines, drawings, reports, recommendations, tender documents, etc. submitted to the Client for approval or comments by the agreed timeline or, where there is no agreed timeline, without interruption to SEDS' work and delivery schedule.

4.10

If the Client does not or cannot adequately comply with any obligation or on time towards SEDS, and also if the Client has applied for a moratorium on payments (regardless of whether or not this is granted and whether or not followed by involuntary liquidation) or loses the free control over its assets in any other way, SEDS will be entitled to suspend the execution of the agreement or to dissolve it completely or in part without judicial intervention being required, without being obliged itself to pay any compensation and without prejudice to SEDS' other rights in such a case.

4.11

The Client shall arrange for clear and unrestricted access to the site if this is outside the premises of SEDS. The Client shall make sure that the work is not carried out in an unhealthy, dangerous or hazardous environment and shall arrange for the fulfillment of any working site requirements pursuant to applicable laws and regulations. The Client shall provide free of cost to SEDS a working area, communication devices, and other necessary setup required for SEDS to carry out the work outside of its premises if so required by the Client or necessitated by the nature of work.

5 Results & Deliverables

5.1

Provided that and once the Client has met in full all its obligations under the terms of the agreement, the Client receives the non-exclusive right to use the documentation/work developed under this agreement by or through SEDS, within the scope of its normal business activities, and always under strict secrecy towards third parties, including judicial authorities, except where SEDS has given its prior written permission for a specific case, and with due observance of what is laid down in this agreement.

5.2

Reports, drawings, calculations and all other information produced or provided by the Client under the agreement and insofar as these cannot be considered results of the agreement, remain property of the Client, subject to SEDS' right to retain copies of the written information so produced or provided, in substantiation of the results of the agreement.

5.3

The Client may only publish the results of an agreement and/or reports, drawings and calculations produced by SEDS, all in the broadest sense of the word, after obtaining prior written permission from SEDS.

6 Postponement of Work

6.1

The Client may in consultation with SEDS postpone the execution of the work. If the Client chooses to postpone the work, SEDS shall be paid for the work carried out up to the time of the postponement, with the addition of the costs incurred by SEDS in connection and incidental to the postponement of the work, such as the cost of redundant capacity (labour, premises, equipment, chattels, etc.), third party costs as well as the costs of waiting time and idle time which cannot be reasonably avoided by SEDS. The burden of proof that costs could have been avoided and/or that invoiced expenses are too high rests with the Client. This provision does not confer upon the Client any right to postpone parts of the work or to alter the progress without entering into a new agreement with SEDS to that effect.

6.2

SEDS may require that additional tasks associated with the recommencement of the work be paid for as extra work. If the postponement (added to any previous postponements) has lasted more than 3 months, SEDS shall be bound to continue the work only if an agreement can be reached on a new time schedule and fee arrangement reflecting the price development caused by the time delay. If the execution of work is postponed for more than 6 months, SEDS shall be entitled to consider the assignment stopped as per Clause 7 below.

7 Stoppage of Work

7.1

Subject to the provisions of Clause 7, the Client may in consultation with SEDS stop the work ordered with SEDS.

7.2

If the work is stopped, the Client must pay damages to SEDS equal to SEDS' lost profit as a result of the stopping of the work and payment for any work carried out and recovery of all expenses on the part of SEDS. The burden of proof that the

damages demanded by SEDS are not correct shall rest with the Client.

7.3

If the work is stopped before the preparation of the agreed documentation has commenced (but following the preparation of preliminary analyses and calculations), SEDS may grant to the Client the right, subject to limitations contained in Clauses 7.5 and 7.6, to make use of such preliminary analyses and calculations prepared by SEDS and such other material containing assumptions for the execution of the work with a view to completing the matter provided that the Client pays for any such materials, which SEDS has made in connection with such work.

7.4

If the work is stopped after the preparation of the documentation has commenced, SEDS may grant to the Client the right, subject to limitations contained in Clauses 7.5 and 7.6, to make use of the material prepared by SEDS, with a view to completing the matter. However, the material will only be released to the Client by SEDS against compensation as set out in Clause 7.2 above, including payment for any work carried out by SEDS and payment of any expenses incurred.

7.5

If the Client wishes to use the material as stated above, SEDS' name may not be used in connection with the Client's use of such material, except as otherwise agreed. SEDS shall not be responsible in any way for the continued use of the material, regardless of any errors or defects in the material prepared prior to the stopping of the work.

7.6

Notwithstanding the above, the Client may never make commercial use of, sell or transfer the material in any way, regardless of the original intentions of the Client with respect to the use of the materials.

8 Intellectual and industrial property rights

8.1

Unless explicitly agreed upon otherwise in writing, any work, services and/or goods (including but not limited to designs, drawings, calculations, data, reports, technical documentation, research, etc.) produced by SEDS remain the property of SEDS. The Client is aware of the fact that the above-mentioned work, services and/or goods (including but not limited to designs, drawings, calculations, data, reports, technical documentation, research, etc.) produced by SEDS contain confidential information and business secrets of SEDS, and is obliged to keep these and all other associated data and information secret, and to take all necessary precautionary measures in this respect within its own organization.

8.2

Without prejudice to the provisions of Clause 5, all intellectual and/or industrial property rights, including any rights to patents as well as the copyright on works produced by SEDS, remain vested in SEDS.

8.3

The Client is not permitted to remove or change, either completely or partially, any references to copyrights, trademarks, trade names or other rights of intellectual or industrial property from design, documentation, reports or drawings provided by SEDS, including references to confidentiality and secrecy.

8.4

Where the work includes the partial or total design of a new ship or the conversion of a ship or another unique construction, the Client's right to make use of the documentary material prepared by SEDS shall be confined to one unit. If the Client wishes to use the material for more than one unit of the same or substantially similar design, the Client shall pay an extra fee to SEDS for that facility, except as otherwise specifically agreed in the agreement.

8.5

In the event of an authorized public reproduction of a design, proposal, report or any other material developed by SEDS, the name of SEDS must in all cases (and regardless of agreement regarding fees or royalties) be mentioned in any such public reproduction in accordance with customary practices.

9 Invoicing and payment

9.1

Invoicing will take place at the rates and prices as agreed upon in the agreement.

9.2

All extra work outside of the scope of supply described under this agreement is billed on the basis of time consumed (by hours) multiplied by SEDS' hourly rate for fees applicable at the time of execution of the work, including any overtime supplement. Direct cost of any expenses and handling charges incurred will be added.

9.3

Expenses in connection with the execution of the work are not included in the fee and will be invoiced directly to the Client.

9.4

The costs of transportation, travelling, accommodation, per diem allowance, any special consultants engaged at the request of the Client, couriers, printing, reproduction and duplication (on whatsoever medium), models, photographs, charges made for any certificates and other official documents, etc. are always considered as expenses to be paid in addition to the fee. If the expenses are not paid directly by the Client then a handling charge of 10% will apply in addition to the invoiced amount for the expenses.

9.5

Except as otherwise agreed, the means of transportation selected shall be the quickest on economy class (for those ranking below

general managers) or business class (for those ranking as general managers or above) and accommodation according to at least 4 star Indian standards.

9.6

The amounts as referred to in the offer, quotation or agreement are net values excluding of any applicable value added tax, service tax, import duty, business tax and/or any other taxes, duties, or charges or government fees in the India or elsewhere. Where SEDS is required or enabled by law to pay or collect such taxes, fees or charges, these will be added to the price so that SEDS will receive the full net amounts. Where the Client is required or enabled by law to withhold any such taxes, fees or charges, these will be added to the price so that SEDS will receive the full net amounts.

9.7

Unless stated otherwise in the agreement, quotation or the offer, the total sum owed by the Client will be invoiced to the Client in the following instalments and at the following times:

-40% upon acceptance of the order confirmation by SEDS or signing the agreement whichever date is earlier;

-50% upon confirmation by SEDS of completion of the work, services and/or goods to be delivered under the agreement; and

-10% upon delivery of the agreed work, services and/or goods.

Additional work agreed upon during the agreement will be paid for in the same instalments unless agreed otherwise between the parties.

9.8

Payment will be made in Indian Rupees (INR) and within 14 days of the invoice date. Objections concerning an invoice must be made in writing and must be received by SEDS within 14 days of the invoice date, however this does not suspend the Client's

obligation to pay.

9.9

If a due date for payment is exceeded, the Client will be legally in default and, without any reminder or notice of default being required, the Client will be charged monthly interest corresponding to 2% plus collection costs, being set for this purpose at no less than 15% of the sum due, with a minimum of INR 1,00,000.

9.10

SEDS is entitled at all times, also during the execution of the agreement, to demand payment in advance or further security. Failure to provide such entitles SEDS to suspend the execution of the current agreement and/or to dissolve it either in its entirety or in part without any notice of default being required.

9.11

If payment is delayed SEDS shall have the right to suspend work until payment is received and shall have a right to an extension of the deadline pursuant to Clause 4.3. This situation shall be dealt with according to the rules on postponement of the work until SEDS may choose to cancel the agreement pursuant to Clause 14.3. The Client is not entitled to any compensation or indemnification in case of SEDS' suspension of work, nor is the Client entitled to terminate or cancel the agreement pursuant to Clause 14.

9.12

All work, documentation and/or goods delivered to the Client remain the property of SEDS, regardless as to whether they have already been put into use or processed by the Client, until all sums that the Client owes SEDS under the terms of the agreement have been paid.

9.13

The Client shall not be entitled to make set-offs or right of retention against the fee invoiced by SEDS or other invoiced

amounts, nor shall the Client have any retention rights in any assets, rights, documentation or similar belonging to SEDS or delivered by SEDS to the Client as part of the work

9.14

Any delivery of documentation to be made by SEDS is deemed to have occurred upon SEDS' dispatch of the documentary material. For the purpose hereof "dispatch" shall mean the time when SEDS handed over the material to postal authorities for dispatch, when it was picked up by a forwarding agent or courier; when it was delivered directly to the Client by SEDS employee or SEDS appointed third party; when it was transmitted via electronic media (such as by Email or otherwise via Internet); or when it has been uploaded to a FTP server and notification sent to the Client that it is available for download using credentials provided by SEDS. The risk passes to the Client upon dispatch, hand-over, pick-up or electronic dispatch and SEDS assumes no responsibility for loss of, damage to, corruption or destruction of the documentary material after dispatch, hand-over, pick-up or electronic dispatch, or, for the avoidance of doubt, any loss (consequential, indirect or otherwise) on the part of the Client, as a consequence thereof. SEDS shall have the discretion to select the method of dispatch.

10 Force majeure and changes of circumstances

10.1

If SEDS is unable to execute an agreement temporarily or permanently as a result of force majeure, or if after concluding the agreement circumstances arise that could not have been reasonably foreseen at the time of concluding the agreement and which are of such a nature that by standards of reasonableness and fairness the Client cannot demand of SEDS that the agreement is maintained unchanged, SEDS is entitled, without legal intervention and without being obliged itself to pay any compensation for loss or damage, to dissolve the agreement either in its entirety or in part.

10.2

Force majeure is also understood to mean the total or partial failure of a third party from whom goods or services are obtained, due to circumstances of force majeure.

10.3

Force majeure within the meaning of this clause is also deemed to exist when this occurs at a time when SEDS has already exceeded the agreed date of completion for reasons attributable to SEDS.

11 Limitations of Liability

11.1

SEDS will undertake the work with due care and to the best of its ability. SEDS gives no guarantee whatsoever in respect of the practicability of the work, documentation, services and/or goods produced by SEDS and the Client's effective use of them.

11.2

In the event of shortcomings being ascertained in the work, services and/or goods that are due to non-performance, errors, defects, non-conformities, incompleteness or lack of due care which can be attributed solely to SEDS and which are rectifiable/correctable according to reasonable standards, SEDS will rectify or correct these shortcomings with due care and to the best of its ability up to a maximum sum of 5% of the agreement price or the amount actually received from the Client, whichever is less. These sums apply for the total of all the claims together including claims for delay under the same agreement.

11.3

The Client shall be deemed to have forfeited his right to hold SEDS liable, if the Client fails to complain in writing to SEDS as soon as possible but no later than 7 days after the Client becomes or should have become aware of any non-performance, defects, errors, non-conformities or incompleteness in the work, services and/or goods carried out or delivered by SEDS. The complaint shall include a specification of the supposed or alleged non-performance, defects, errors,

non-conformities or incompleteness.

11.4

If, after, SEDS' investigation of the complaint, SEDS and the Client can ascertain that it is not matter of liability incurring non-performance, defects, errors, non-conformities or incompleteness in the work, services and/or goods carried out or delivered by SEDS, SEDS shall have the right to charge the Client for the time consumed in assisting with the processing of the complaint. The same shall apply if an impartial instance at any later stage may come to the conclusion that the work, services and/or goods carried out or delivered by SEDS did not suffer from liability incurring non-performance, defects, errors, non-conformities or incompleteness.

11.5

SEDS is not liable at any time for damages as a consequence of the use of the results of its work, services, goods and/or deliverables, or the exceeding of deadlines, loss of production, loss of use, loss of contracts, nor for consequential or indirect loss or damage including lost profits or savings.

11.6

SEDS accepts no liability for loss or damage that is the consequence of defects to items supplied to SEDS and which have been delivered by SEDS to the Client, unless and in so far as SEDS can claim such loss or damage from its supplier.

11.7

The Client indemnifies SEDS, as well as those whom SEDS engages during the execution of the agreement, against all claims of third parties relating to the use or the application of work, documentation, results, data, knowledge, information, designs, or delivered item originating from SEDS.

11.8

In any event, SEDS shall not be liable

towards the Client for any loss as a result of the work, services and/or goods carried out or delivered by SEDS if the Client does not give SEDS appropriate notice in writing thereof at the latest within a period of one year from the date on which the documentation in question was delivered or the work in question was completed whichever date is earlier. This stipulation shall apply even if such loss has not been discovered until after the end of this one-year period.

12 General exclusions of liability

12.1

If the Client and/or its personnel are on the premises of or in, on or near SEDS' buildings or systems, they must follow SEDS' instructions. The Client will obligate its personnel to comply with these instructions.

12.2

SEDS is not liable in any manner whatsoever for personal injury or damage to property that the Client, its personnel and/or their belongings may suffer while they are on the premises or in, on or near SEDS' buildings or systems. The Client indemnifies SEDS against claims from its personnel in this respect.

12.3

The Client is liable for personal injury and/or damage to property that SEDS and/or persons engaged by SEDS for the execution of the agreement suffer on premises, at sea, on board ships or on platforms as part of the work commissioned during the execution of the agreement, unless this can be blamed on gross negligence or the lack of due care and attention on the part of the person(s) concerned. Provisions to the contrary that are agreed upon with persons engaged by SEDS for the execution of the agreement will yield to this provision.

13 Secondment

13.1

In case of work carried out by SEDS employees during secondment to the Client where the SEDS employee is not under SEDS' instruction, control and/or project management, SEDS or the employee cannot be held liable for the performance of the work.

14 Non-Performance

14.1

If SEDS is in material default of its obligations under the agreement with the Client, and the matter is not remedied within a reasonable time after receipt of a demand in writing to that effect, the Client shall have the right to terminate the agreement by providing a written notice to that effect. If any compensation is due to the Client it shall be limited to the maximum amount of liability as described in Clause 11.2.

14.2

Where the agreement is terminated in accordance with Clause 14.1 above, SEDS shall be entitled to a fee for such part of the work carried out prior to the termination as can be used by the Client in connection with execution of the overall work, including payment of any expenses relating to such part of the work.

14.3

If the Client is in default of its obligations under the agreement or if the Client otherwise conducts its business in a manner which would lead to SEDS not reasonably to be expected to carry on with the work, SEDS shall have the right to terminate the contract and claim compensation for losses incurred by SEDS.

15 Transfer of the agreement

The rights and obligations of the Client under the terms of the agreement are only transferable after prior written permission has been obtained from SEDS. SEDS may set conditions to such permission, but will not withhold its permission on unreasonable grounds.

16 Disputes and applicable law

16.1

The agreement between SEDS and the Client shall be governed by and construed in accordance with Indian Law and any dispute or difference whatsoever arising between the parties out of or relating to the construction, meaning, scope, operation or effect of this Contract or the validity or the breach thereof shall be settled by arbitration in Kochi, Kerala, India in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and the award made in pursuance thereof shall be binding on the parties.

The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within 21 calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and give notice that it has done so within the 21 days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the 21 days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if he had been appointed by agreement.

Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.