

## INTEROCEAN SYSTEMS, LLC STANDARD SALE OR RENTAL TERMS AND CONDITIONS

Any provision or condition of Buyer's order which is in any way inconsistent with or in addition to these terms and conditions (except additional provisions specifying quantity and shipping or billing instructions) shall not be binding on InterOcean Systems, LLC. (hereinafter InterOcean Systems, LLC. shall be referred to as "Supplier"). Acceptance by Buyer of the goods delivered hereunder shall constitute acceptance of these Standard Terms and Conditions. If Buyer objects to any terms herein, such objection must be made in writing and received by Supplier prior to shipment. Retention by Buyer of any goods delivered by Supplier hereunder shall be conclusively deemed acceptance of these terms and conditions. Supplier's failure to object to provisions contained in any communication from Buyer shall not be a waiver of these terms and conditions.

**1. TAXES** - Prices do not include Federal, state or local taxes, now or hereafter enacted, applicable to the goods sold or rented for this transaction, which tax or taxes will be added by Supplier to the sales or rental prices (as applicable) where Supplier has the legal obligation to collect same, and will be paid by Buyer unless Buyer provides Supplier with a proper tax exemption certificate.

**2. TERMS AND METHOD OF PAYMENT** - Where Supplier has extended credit to Buyer terms of payment shall be net thirty (30) days from date of invoice. The amount of credit or terms of payment may be changed or credit withdrawn by Supplier at any time. On any order on which credit is not extended by Supplier, shipment or delivery shall be made at Supplier's election, cash with order (in whole or part), C.O.D., or Sight Draft attached to Bill of Lading or other shipping documents, with all costs of collection for the account of Buyer.

If the goods are delivered in installments, Buyer shall pay for each installment in accordance with the terms hereof. Payment shall be made for the goods without regard to whether Buyer has made or may make any inspection of the goods. If shipments are delayed by Buyer, payments are due from date when Supplier is prepared to make shipments. If manufacture is delayed by Buyer, payment shall be the percent of completion at scheduled shipping date multiplied by the contract price. Goods held for Buyer are at Buyer's sole risk and expense.

**3. TITLE, DELIVERY AND SHIPPING** - The goods shall be delivered to Buyer Ex-Works from Supplier's San Diego, CA facility unless Supplier agrees to be responsible for shipping. Any and all taxes, duties, fees, custom's charges or other costs or expenses for shipping, (including exporting or importing), equipment sold or rented, shall be for the account of Buyer. The liability, risk of loss or damage and title (for sale items) shall pass to Buyer upon Supplier's delivery of the goods to a carrier for shipment to Buyer, provided that such loss or damage shall not relieve Buyer from any obligations hereunder. Shipping dates provided by Supplier are approximate only. Supplier shall not be liable for any Buyer loss or Buyer or third party expenses (consequential or otherwise) incurred by Buyer if Supplier fails to meet the specified delivery schedule.

**4. CONTINGENCIES; EQUIPMENT; INSPECTION** - Supplier shall not be liable for any delay in delivery or for non-delivery for any sale or rental item caused by the occurrence of any contingency beyond its control or the control of any of its subcontractors or suppliers including by way of illustration but not limitation, war (whether an actual declaration thereof is made or not), sabotage, insurrection, riot or other act or civil disobedience, epidemic, quarantine restrictions, acts of a public enemy, transportation embargoes, or failure or delays in transportation, acts of any Federal, state or local government or any agency or sub-division thereof, judicial action, labor disputes, labor shortages, accidents, fire, storm, earthquake, explosion, flood, drought or other act of God, short or reduced supply of fuel or raw material or machinery, or excess cost thereof, or technical failures where Supplier has exercised ordinary care in the prevention thereof. If any contingency occurs, Supplier may allocate production and deliveries among Supplier's customers. Materials, tools, dies, and other equipment furnished to Supplier by Buyer shall be at Buyer's risk and expense. Supplier may modify the specifications of goods designed by Supplier providing that the modifications will not materially affect the performance of the goods. Buyer shall have a reasonable time not to exceed fifteen (15) days to inspect the goods upon delivery.

**5. WARRANTY** - Except as otherwise provided herein, all warranties, express or implied regarding the sales, service, rentals of Supplier, including without limitation, the implied warranty of merchantability and the implied warranty of fitness for a particular purpose, are expressly waived by Buyer. The remedies of Buyer for any breach of warranty shall be limited to those specifically provided herein.

Unless new goods are otherwise specified by Buyer and agreed to by Supplier, the good sold or rented by Supplier may be used and will be in good working order. Supplier, except as otherwise hereinafter provided, only warrants goods of its own manufacture and components (other than expendable items including without limitation rubber parts) assembled by Supplier against faulty workmanship or the use of defective materials. Buyer's remedies and Supplier's liability with respect to this warranty are set forth in Paragraph 8. Supplier warrants that at the time of delivery, Supplier has title to the goods free and clear of any and all liens and encumbrances. This warranty is the only warranty made by Supplier and can be amended only by a written instrument signed by a duly authorized employee of Supplier. Supplier's warranty as hereinabove set forth shall not be enlarged, waived, diminished or affected by, and no obligation or liability shall arise or grow out of, Supplier's rendering of technical advice or service in connection with Buyer's order or the goods furnished hereunder.

The proper installation and operation of the equipment is the sole responsibility of the Buyer and Supplier assumes no responsibility with regard to the applicability of the equipment to the specific requirements of the Buyer or for the significance of any results obtained.

**6. PATENT INDEMNITY** - Supplier shall not be liable for any collateral, incidental, or consequential damages arising out of patent infringement for any sale or rental items or component parts by Supplier. If infringement is alleged prior to completion of delivery of the goods, Supplier may decline to make further shipments without being in breach of this contract. The foregoing states the sole and exclusive liability of Supplier for patent infringement and is in lieu of all warranties, expressed or implied, in regard thereto.

**7. NON-WAIVER OF DEFAULT** - Each shipment made under any order shall be treated as a separate transaction but in the event of any default by Buyer, Supplier may decline to make further shipments, without in any way affecting its rights under such order. If despite any default by Buyer, Supplier elects to continue to make shipments, Supplier's action shall not constitute a waiver of any default by Buyer or in any way affect Supplier's legal remedies for any such default.

### **8. WARRANTY REMEDIES AND DAMAGES**

**A.** If the goods sold, rented or otherwise furnished by Supplier fail to conform with Supplier's representations, Supplier's sole and exclusive liability and Buyer's sole end exclusive remedy, subject to subparagraph B hereof, shall be for Supplier's, at Supplier's sole option to (i) repair or replace any such goods as hereinafter provided, or (ii) credit Buyer's account for any such goods upon their return to Supplier by Buyer within one (1) year after shipment, transportation charges to Supplier's facility prepaid by Buyer. Any part of the goods manufactured by Supplier and components assembled by Supplier (consumables excluded) which prove to be defective in material or workmanship within one (1) year after shipment may be replaced on an exchange basis with a new or functionally operative part free of charge. Service labor required to replace such defective parts will be free of charge for one (1) year following shipment provided the labor is performed during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday (excluding holidays of Supplier), at a point located not more than 25 miles from the nearest service office of Supplier. Buyer will pay Supplier's travel time, transportation and subsistence expenses where such service is performed during such one (1) year period outside of the area above stated. After such one (1) year period, any labor, materials, parts, equipment, travel time, transportation and subsistence expense shall be borne by Buyer. In the performance of any warranty Work for Buyer, in no event shall Supplier have liability or responsibility for any Buyer or other third party costs, expenses or damages, including but

not limited to, incidental costs, downtime costs, vessel costs or expenses, costs of other services or costs for the retrieval, reinstallation, access to or transport of failed goods, equipment or replacement parts. The Supplier will pass through to the Buyer any warranties from the original manufacturer that are able to be transferred.

**B.** The remedies are available only if Buyer properly notifies Supplier in writing upon discovery of any defect, and Supplier's examination reveals that such alleged defects actually exist and were not caused by misuse, neglect, normal wear and tear, improper installation, accident, fire or other hazard, improper testing or Buyer's attempt to repair or any other cause beyond the range of normal usage.

**9. INDEMNITY** - Supplier agrees to protect, defend, indemnify, release and hold Buyer and its insurers harmless from and against all damages, liabilities, losses, costs, expenses (including attorneys' fees), claims, demands and causes of action of every kind and character, without regard to the cause or causes thereof or the negligence or fault (active or passive) (hereinafter collectively "Claims") of any party or parties, including the sole, joint, concurrent or gross negligence or fault of Buyer, brought by or through or arising in favor of Supplier, Supplier's employees, Supplier's subcontractors or their employees or Supplier's invitees on account of personal injury or death.

Notwithstanding anything to the contrary in this Agreement, Buyer shall reimburse Supplier for damages to or loss of Supplier's rental equipment and while in Buyer's care, custody and control. Supplier's rental equipment shall be deemed to be in Buyer's care, custody and control commencing when Buyer is obligated to pay for the rental of the equipment and the equipment shall continue to be in Buyer's care, custody and control until the time the Buyer is no longer obligated to pay rent on the equipment. Supplier shall determine the cost to repair any damaged equipment and in no event will the cost to repair damaged equipment exceed the replacement costs. In the event that, for any reason or the negligence fault of any party, person or entity, any of Supplier's rental equipment is damaged beyond repair, lost, not returned to Supplier or is otherwise unrecoverable from a location, then Buyer shall be responsible to Supplier for the full replacement cost of the rental equipment without taking into account any depreciated value of the equipment.

Buyer agrees to protect, defend, indemnify, release and hold Supplier and its insurers harmless from and against all claims of any party or parties including the sole, joint, concurrent or gross negligence or fault or breach of contract or breach of warranty of Supplier, brought by or through or arising from the use, location, installation, removal or return of the equipment and Buyer also agrees to protect, defend, indemnify, release and hold Supplier and its insurers harmless from and against all Claims brought by or in favor of Buyer, Buyer's employees, Buyer's other contractors or subcontractors of any tier or their employees or Buyer's invitees on account of personal injury, death or damage to property.

**10. LIMITATION OF DAMAGES** - Notwithstanding anything to the contrary contained elsewhere herein, neither Buyer nor Supplier shall be liable to the other for any consequential, incidental, indirect, direct, punitive or exemplary damages of any kind or character, including, but not limited to, loss of use, loss of profit, loss of revenue, loss of product or production, losses resulting from failure to meet other contractual commitments or deadlines, reservoir damage, loss of hole damage due to blowout or cratering, vessel and drilling rig day, charter or lease rates or expenses or any other third party contractor costs or expenses, whenever arising under these terms and conditions or as a result of, relating to or in connection with any services or the sale or rental of any goods hereunder, and no claim shall be made by either Buyer or Supplier regardless of whether caused or brought about by either party's negligence (including ordinary, gross, active, passive, sole, joint and concurrent negligence and willful misconduct) or any other theory of legal liability including, breach of contract, breach of warranty, strict liability or the unseaworthiness of any vessel or the unairworthiness of any aircraft. Supplier shall not be liable to Buyer for any damages, claims, remediation or clean-up costs of any environmental, pollution or other spill related incident whether due to the sole, joint, concurrent or gross negligence or fault or breach of contract, breach of warranty of Supplier or the failure of any Supplier or third party equipment, supplies or services.

**11. TERMINATION** - If the goods to be furnished under this order are to be used in the performance of a government contract or sub-contract and the government terminates the contract in whole or in part, this order may be cancelled in the same proportion and the liability of the Buyer for termination allowances shall be determined by the then applicable regulations of the government regarding termination of contracts, provided however that any reference to a "Disputes Clause" shall be deleted. Supplier may cancel this order if in Supplier's judgment Buyer's financial condition does not justify the terms of payment specified, in which case, Supplier may cancel any unfilled orders unless Buyer shall, upon written notice, immediately pay for all goods delivered or shall pay in advance for all goods ordered but not delivered or both at Supplier's option.

Buyer may terminate this contract in whole or in part from time to time, upon written notice to Supplier. In such event Buyer shall be liable for termination charges which shall include a price adjustment based on the quantity of goods actually delivered and all costs, direct and indirect, incurred and committed for this contract together with a reasonable allowance for prorated expenses and profits.

**12. INSURANCE** - Buyer shall cause Supplier to be named as an additional insured in each of its policies of insurance, except Workers' Compensation. Buyer and each of its insurers shall also waive any and all rights of subrogation against Supplier or its insurers. The extension of additional insured coverage and the waiver of subrogation shall apply only for and to the extent of the release, defense and indemnity obligations expressly assumed by Buyer in these terms and such extension of coverage shall not apply with respect to any obligations for which the Supplier has expressly agreed to release, defend and/or indemnify the Buyer or to any obligations not addressed herein.

**13. APPLICABLE LAW** - These terms and conditions and all matters relating to the meaning, validity, or enforceability thereof and the performance of work or sale or rental of any goods hereunder shall be governed by the laws of the State of California without regard to any conflicts of law principles of said jurisdiction that might require the application of the laws of another jurisdiction. The Buyer and Supplier hereto agree to the exclusive venue of state and federal courts situated in San Diego, California with respect to any dispute resolution, including litigation, arising out of these terms and conditions.

**14. ASSIGNS** - Any contract made hereunder shall be binding up and inure to the benefit of the successors and assigns of the entire business and good will of either Supplier or Buyer, or of that part of the business of either used in the performance of such contract, but shall not be otherwise assignable.

**15. MODIFICATION OF STANDARD TERMS & CONDITIONS** - This contract constitutes the entire agreement between the parties relating to the sale or rental of the goods described on the face hereof. No addition to or modification of any of the provisions upon the face or reverse of this form shall be binding upon Supplier unless made in writing and signed by duly authorized employee of Supplier