

## TERMS AND CONDITIONS OF SALE

### In these Terms and Conditions of Sale

“Drew Marine” shall mean the relevant company, subsidiary, subsidiary undertaking, registered branch or affiliate of the Drew Marine or Drew Marine Safety business as specified in the relevant quotation, invoice or purchase order documentation in respect of the relevant order for Goods or Services;

“Customer” shall mean the addressee named as the party purchasing goods or services from Drew Marine;

“Goods” shall mean those goods purchased from Drew Marine;

“Services” shall mean those services purchased from Drew Marine.

**1. ACCEPTANCE OF TERMS AND CONDITIONS:** Customer’s placing of an order with Drew Marine for the delivery of Goods or Services to Customer shall constitute Customer’s acceptance of Drew Marine’s Terms and Conditions of Sale. No modifications, amendments or waiver of these Terms and Conditions of Sale shall be binding upon Drew Marine unless Drew Marine expressly agrees to such modifications, amendments or waivers in writing signed by a duly authorized representative of Drew Marine. Under no circumstances will the terms and conditions embodied in an acknowledgment, purchase order or other document provided by Customer affect or apply to this sale of Goods and/or Services.

**2. PRICES:** The price for all Goods and Services shall be the Drew Marine prices as in effect on the date of delivery. The Incoterms 2000 or its subsequent modifications published by the International Chamber of Commerce (ICC), and any specific product delivery conditions stated on the order confirmation by Drew Marine, shall apply to all deliveries made hereunder. In case of any conflict between Incoterms 2000 and these Terms and Conditions of Sale the latter shall prevail. Customer shall pay any additional expenses or costs such as barging, wharfage, port dues, duties, taxes, fees, travel and subsistence costs where relevant and any other costs including without limitation, those imposed by governmental authorities. Customer shall be liable to the carrier for all demurrage charges made by the carrier for cars, trucks or barges held by Customer beyond the free unloading time.

**3. PAYMENT:** (a) Unless otherwise provided, all sales shall be on a cash in advance or irrevocable letter of credit basis. All letters of credit procured by Customer in favor of Drew Marine shall be in a form and substance acceptable to Drew Marine and issued only by a bank acceptable to Drew Marine. (b) If payment of cash in advance is not required, Customer shall make payment in full in immediately available U.S. dollars in any manner as Drew Marine may designate, on or before the due date, without discount, set-off, or deduction. Notwithstanding any disputes regarding quality, quantity or other matter, Customer must initially pay the full amount due, and any disputes shall be resolved between Customer and Drew Marine after such payment has been made. (c) Unless otherwise agreed between Customer and Drew Marine prior to delivery, payment shall be past due if not received by Drew Marine within thirty (30) days after the date of invoice, with invoices generally issued at the date of delivery. Drew Marine reserves the right to charge a financing fee at a rate of 2 percent per month for balances outstanding in excess of thirty (30) days. (d) Without prejudice to any other rights Drew Marine may have pursuant to any laws or hereunder, Customer agrees to pay, in addition to other charges contained herein, reasonable legal fees for the collection of any non-payment or underpayment as well as any other charges incurred by Drew Marine in such collection including, but not limited to, the court costs, collection and debt recovery agent fees and the cost of bonds and fees associated with enforcing a maritime lien or other available right.

**4. TAXES AND ASSESSMENTS:** Customer will pay Drew Marine the amount of all excise, gross receipts, import, and all other taxes, however designated, other than taxes on income, paid or incurred by Drew Marine directly or indirectly with respect to the Goods or Services insofar as the same are not expressly included in the price quoted. Further, Customer shall defend, hold harmless and indemnify Drew Marine for any damages or costs Drew Marine might incur due to Customer’s failure to comply with this requirement.

**5. CREDIT AND SECURITY:** (a) Goods and Services are sold and effected on the credit of the receiving vessel, as well as on the promise of Customer to pay therefor, and it is agreed and Customer warrants that Drew Marine will have and may assert a maritime lien against the receiving vessel for the amount due for the Goods delivered or the Services provided. (b) In the event of a breach of the warranty set forth in subparagraph (a) above before delivery of Goods or the provision of Services, Drew Marine shall be entitled to terminate the Goods or Services transaction. Further, Drew Marine reserves the right to charge as compensation, by way of a genuine pre-estimate of loss and not a penalty, a cancellation fee in the amount set forth in paragraph 6. (c) If the purchase of the Goods or Services is contracted for by an agent, then such agent, as well as the principal, shall be bound by and be fully liable for the obligations of Customer in the transaction, whether such principal be disclosed or undisclosed.

**6. CANCELLATION FEE:** If subsequent to ordering the Goods or Services, Customer cancels the order for any reason whatsoever or breaches the warranty in paragraph 5, Drew Marine, without prejudice to any other rights it may have, shall be entitled to charge as compensation, being a genuine pre-estimate of loss and not a penalty, a cancellation fee equal to the greater of ten (10) percent of the total order amount or US\$100.00.

**7. RISK OF LOSS; TITLE:** Except as set forth in paragraph 16 below, the risk of loss to Goods shall transfer in accordance with the Incoterms 2000 shipping term identified on the Drew Marine order confirmation with regard to the Goods, and delivery and title to Goods

shall pass to Customer when Drew Marine has completed manufacture and packaging of the Goods, identified the Goods as being the property of Customer and physically separated the Goods from all other goods and products of Drew Marine. If such manufactured and packaged Goods are not identified by Drew Marine as being the property of the Customer and not physically separated from other goods and products of Drew Marine, then title to the Goods shall transfer to Customer on delivery in accordance with the applicable Incoterms 2000 shipping term. Customer shall maintain at Customer’s expense adequate insurance against all risks for the Goods at all times including but not limited to any period of time prior to the delivery of the Goods.

### 8. WARRANTY AND LIMITATIONS:

**8.1** With respect to Goods only, Drew Marine warrants that the Goods delivered hereunder will at the time of delivery meet Drew Marine’s specifications for the Goods and will be delivered with full title.

**8.2** With respect to Services only, Drew Marine warrants that the Services will be provided with due skill and care

**8.3** These are Drew Marine’s sole warranties with respect to the Goods and Services, AND ANY REFERENCE TO DEFECTIVE GOODS OR SERVICES IS LIMITED TO MEANING NONCOMPLIANCE WITH THESE LIMITED WARRANTIES. ALL OTHER WARRANTIES AND CONDITIONS EITHER EXPRESSED OR IMPLIED, WHETHER ARISING UNDER LAW OR EQUITY OR CUSTOM OR TRADE, INCLUDING THE WARRANTIES OF QUALITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE, TO THE FULLEST EXTENT PERMITTED BY LAW, EXPRESSLY EXCLUDED AND DISCLAIMED. THE MAXIMUM LIABILITY OF DREW MARINE IN RESPECT OF A CLAIM RELATING TO ANY PARTICULAR GOODS OR SERVICES SUPPLIED BY DREW MARINE IS LIMITED TO THE PRICE PAID BY THE CUSTOMER FOR SUCH PARTICULAR GOODS OR SERVICES. DREW MARINE SHALL NOT BE LIABLE TO CUSTOMER IN CONTRACT OR TORT (INCLUDING NEGLIGENCE), OR FOR BREACH OF STATUTORY DUTY, OR OTHERWISE, FOR (A) ANY INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND WHATSOEVER HOWEVER CAUSED; (B) ANY LOSS OF BUSINESS, REVENUE, PROFIT OR SAVING (IN EACH CASE WHETHER DIRECT OR INDIRECT).

**9. CERTAIN PROVISIONS PERTAINING TO SERVICES:** (a) Drew Marine will provide Services in accordance with: (i) Customer’s directives; (ii) any relevant trade custom, usage or practice; (iii) class society or flag state requirements; and, (iv) such methods as Drew Marine shall consider appropriate on technical, operational and/or financial grounds. (b) In connection with its provision of Services, Drew Marine may, as appropriate, issue certificates of inspection which reflect statements of opinion made with due care within the limitation of Customer’s directives. (c) Customer will: (i) ensure that its instructions and any other relevant information are given in due time to enable the required Services to be performed effectively; (ii) procure all necessary access for Drew Marine’s representatives to enable the required Services to be performed effectively; (iii) ensure that all necessary measures are taken for safety and security of working conditions during the performance of Services; and (iv) inform Drew Marine in advance of any known hazards or dangers, actual or potential, associated with any order including, for example, presence or risk of radiation, toxic or noxious or explosive elements or materials, environmental pollution or poisons.

**10. CONTINGENCIES:** Drew Marine shall not be in breach of its obligations in the event that performance is prevented, delayed, or made substantially more expensive as a result of any cause beyond its reasonable control, whether or not foreseeable. Nothing in this provision shall be deemed to excuse Customer from its obligation to make payments for Goods or Services received.

### 11. CLAIMS:

**11.1** Upon delivery, Customer will inspect the Goods for quality and quantity. The acceptance of the Goods by Customer shall be unqualified unless at the time of delivery Customer gives written notice to Drew Marine on the face of the delivery documents detailing the nature of the claim or gives written notice to Drew Marine within five (5) business days of delivery.

**11.2** Upon completion of any works carried out by Drew Marine as part of the Services, the Customer shall inspect the works. The acceptance of the works will be unqualified unless the Customer gives to Drew Marine written notice detailing any alleged claims within five (5) business days of completion of the works.

**11.3** Any cause of action must be brought under paragraph 14 within one (1) year from the effective date of delivery of the Goods or completion of any works carried out by Drew Marine as part of the Services or, to the extent allowed by law, the claim shall be deemed waived and absolutely barred. Except for returnable cylinders, unless defective, no merchandise will be accepted for return and credit, unless approved by an authorized Drew Marine representative at Drew Marine’s sole discretion. Damaged merchandise, partial containers, obsolete merchandise, non-standard products/equipment and products held by Customer for over one year are not returnable.

**11.4** Nothing in these Terms and Conditions of Sale shall exclude or limit the liability of Drew Marine for personal injury or death arising from negligence or for fraud or fraudulent misrepresentation in respect of the Goods if such exclusions or limitations of liability should be prohibited by the laws of an applicable jurisdiction, and nothing in these terms and conditions of sale shall exclude or limit the liability of Drew Marine where such exclusion or limitation would be prohibited by applicable law.

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**11.5** Drew Marine and the Customer hereby acknowledge and agree that the allocation of risk reflected in these Terms and Conditions of Sale is reasonable and is reflected in the prices for Goods and Services to be paid by the Customer.

As a genuine pre-estimation of costs and as compensation to Drew Marine for costs, a restocking fee will be charged in accordance with Drew Marine's standard price list for all returns, other than returns of defective Goods. In order to assure product quality, the contents of gas and refrigerant cylinders are not returnable for credit, and in the event of any defects, Customer shall immediately notify Drew Marine for instructions.

**12. INDEMNITY:** Customer shall defend, indemnify and hold Drew Marine harmless with respect to any and all third party liability, loss, claims, expenses or damage Drew Marine may suffer or incur by reason of, or in any way connected with the purchase, receipt, use, storage, handling or transportation of the Goods or Services by Customer. Neither the sale nor any claim against Drew Marine arising directly or indirectly out of or in connection with the Goods or Services shall be assignable by Customer or by operation of law without the prior written consent of Drew Marine.

**13. WAIVER OF IMMUNITY:** In the event the Customer is a State or Government owned or controlled entity, which status would otherwise entitle Customer to assert or allege the defense of sovereign immunity in any claim against it, said Customer expressly waives and agrees not to assert such a defense in any action or proceeding which may be commenced or asserted against Customer or its assets in connection with a Goods or Services transaction.

**14. ARBITRATION AND GOVERNING LAW:** All disputes arising from these Terms and Conditions of Sale shall be finally settled in accordance with the ICC-CMI International Maritime Arbitration Rules by one or more arbitrators appointed in accordance with the said Rules. Any such arbitration shall be conducted in Rotterdam, The Netherlands. These Terms and Conditions of Sale shall be governed by the laws of the State of New York. All such proceedings shall be conducted in the English language. Applicability of the United Nations Convention on the International Sale of Goods (CISG, 1980) is explicitly excluded.

**15. CONFIDENTIALITY:** Customer shall treat as confidential property and not disclose to others, including governmental agencies or other authorities, during or subsequent to the term of these Terms and Conditions of Sale, any information concerning Drew Marine's business or operations including without limitation any technical information, experience or data regarding services, plans, programs, plants, processes, products, costs, equipment operations or customers which may come within the knowledge of Customer, its officers or its employees in the performance of these Terms and Conditions of Sale, without in each instance securing the prior written consent of Drew Marine.

**16. CYLINDERS:** All cylinders are sold to Customer F.A.S. vessel at normal ports of storage and risk of loss and damage passes to Customer in accordance with Incoterms 2000 definition of said term. Title to cylinders passes to Customer on delivery.

**17. RETURN OF EMPTY CYLINDERS:** (a) Drew Marine will accept cylinders for exchange or for return which are marked Drew Marine or which meet the following specifications:

Oxygen	Either (i) BS5045 and US DOT 3AA or (ii) UN/ISO 9809
Nitrogen	Either (i) BS5045 and US DOT 3AA or (ii) UN/ISO 9809
Argon	Either (i) BS5045 and US DOT 3AA or (ii) UN/ISO 9809
Acetylene	BS5045 and BS6061 or UN/ISO 3807/9809
Refrigerant	US DOT 4BA/BW 300/350/400

Drew Marine accepts no responsibility for non-standard type cylinders being landed without prior consent in writing. (b) Drew Marine will provide normal cylinder maintenance including hydrostatic inspection and recertification, as well as replacement of worn top valves at no cost to Customer. The repair of any damage which is required in order to return cylinders, valves and caps to safe and usable condition, however, will be charged to the account of Customer. (c) Cylinders may be returned at any Drew Marine welding and refrigerant primary port of storage as listed in the current Drew Marine Service Directory. Some ports are restricted to "Even Exchange".

**18. CHARGES AND CREDIT FOR CYLINDERS:** (a) If the number of empty cylinders returned is the same as the number of full cylinders supplied, Customer will be invoiced only for the content of the cylinders. (b) If the number of empty cylinders returned is less

than the number of full cylinders supplied, Customer will be charged the Drew Marine list price for the excess full cylinders supplied. (c) If the number of empty cylinders for products other than refrigerants returned is greater than the number of full cylinders of such products supplied and the number of such cylinders returned does not exceed the number of such cylinders purchased from Drew Marine within the past twelve (12) month period, Drew Marine will credit Customer's account a redemption value for the excess cylinders equal to the original purchase price for the cylinders less 0.1 percent per day the cylinders have been in Customer's possession. (d) If the number of cylinders returned for products other than refrigerants is greater than the number of full cylinders supplied for such products and the number of such cylinders returned exceeds the number of such cylinders purchased from Drew Marine within the past twelve (12) month period, Drew Marine will accept the cylinders and credit Customer's account with a redemption value for the excess cylinders that were originally purchased from Drew Marine prior to the preceding twelve (12) months. The redemption value will be calculated at the original purchase price of the cylinders less an amount prorated to the time period the cylinders have been in Customer's possession as listed in the table below.

Length of Possession	Reduction from Original Purchase Price
1-2 Years	50%
2-3 Years	65%
3-4 Years	70%
4-5 Years	75%
5-6 Years	80%
6-7 Years	85%
7-8 Years	90%
8 Years and over	95%

(e) Drew Marine will credit Customer's account for the return of excess cylinders for products other than refrigerants which were not originally purchased from Drew Marine for an amount equal to fair market value. (f) Drew Marine will credit Customer's account for the return of acceptable excess refrigerant cylinders which were originally purchased from Drew Marine at the original purchase price of the cylinders. If excess refrigerant cylinders returned were not originally purchased from Drew Marine, credit will be issued for an amount based on fair market value.

**19. ENTIRE AGREEMENT:** This document constitutes the entire agreement between Drew Marine and Customer and is intended to be the final expression of their agreement in connection with the Goods and Services, notwithstanding any representation, course of dealing, conduct, usage of the trade or statement to the contrary heretofore made, but without limitation on the liability of either party for fraudulent misrepresentation. If any provision of these Terms and Conditions of Sale should be found unenforceable, such provision shall be severed from the remaining provisions, and such remaining provisions shall remain in full force and effect.

**20. THIRD PARTY RIGHTS:**

**20.1** Any company, branch or business entity affiliated with the Drew Marine and Drew Marine Safety business shall have the benefit of all limitations on liability set forth herein and shall be entitled to enforce the obligations of the Customer set forth herein.

**20.2** The Customer hereby agrees and acknowledges that the only member of the Drew Marine or Drew Marine Safety business that will be liable for the supply of Goods or Services under these Terms and Conditions is the company, subsidiary, subsidiary undertaking, registered branch or affiliate of the Drew Marine or Drew Marine Safety business specified in the relevant quotation, invoice or purchase order documentation in respect of the relevant order for Goods or Services.

**21. DATA USE:** Customer consents to its contact details (including the personal contact details of any of its employees, staff or officers) being kept in Drew Marine's databases and used by Drew Marine and its affiliated entities for purposes of Drew Marine performing its obligations hereunder and keeping Customer informed of additional Drew Marine products and services.