

**BMT SMART LTD**  
**GENERAL TERMS AND CONDITIONS**

**1. DEFINITIONS AND INTERPRETATIONS**

1.1. The definitions and rules of interpretation in this clause apply to these Conditions.

**'BMT'** means BMT SMART Limited, whose registered office is at Goodrich House, 1 Waldegrave Road, Teddington, Middlesex TW11 8LZ.

**'Confidential Information'** means details of the Work, a Contract, the contents of any Proposal, know-how, technical information, inventions, databases, archives, technical processes, drawings, specifications, documents, user manuals, the Parties' supplier and Client details and any information that is not in the public domain.

**'Products'** means SMART<sup>SERVICES</sup> which is a range of comprehensive vessel performance monitoring and decision support tools available on-board and via web-based access.

**'Contract'** means any contract incorporating these Conditions in relation to the Work and/or provision of Goods.

**'Contract date'** means the date on which the Contract is concluded pursuant to clause 2.5.

**'Control'** means control as defined by section 840 of the Income and Corporation Taxes Act 1988.

**'Client'** refers to the natural person or corporate body referred to as such in BMT's Order Acceptance and/or any other party to or for whom BMT agrees to undertake the Work and/or provide Goods.

**'Goods'** means the Products and items, including but not limited to any Hardware, Software I, referred to in BMT's Order Acceptance and which are supplied to the Client.

**'Hardware'** – means BMT's hardware specified in BMT's Proposal or updated by BMT's Order Acceptance

**'Intellectual Property'** means any patent, copyright, registered design, unregistered design right, trade mark or other industrial or intellectual property owned or used by a Party together with any current applications for any registerable items of the foregoing.

**'Licence'** means the non-exclusive licence to use the Software as set forth in. Clause 15 of these Conditions

**'Materials'** means any documents, reports, Proposals, computer software, user manuals, information, presentations and (without limit) any other materials created or provided by BMT pursuant to a Contract.

**'Order Acceptance'** means BMT's form, email or other communication to the Client (whether written, electronic or oral) to confirm that BMT will undertake the Work and/or provide Goods.

**'Party'** individually means BMT and/or the Client; and **"Parties"** shall be construed accordingly.

**'Person'** means any legal person including both companies and unincorporated associations.

**'Price'** means the Price or Prices payable for the Work and/or Goods as set out in the Order Acceptance.

**'Proposal'** refers to any written Proposal prepared or provided by BMT for a current or prospective Client in relation to any proposed services and/or supply of goods.

**'Purchase Order'** means any order form or communication sent by the Client to BMT requesting BMT to undertake Work and/or supply Goods.

**'Rejected Goods'** means Goods rejected by the Client in accordance with Clause 9 of these Conditions.

**'Service Work'** means repairs, maintenance, inspection and support services provided by BMT either inside or outside of the Warranty period.

**'Site'** means the Client's site where the Work is being undertaken to which BMT requires access.

**'Software'** means any software computer program including Internet based software services supplied to the Client by BMT (and any upgrades thereto).

**'System'** or **'Product'** refers to the combination of hardware, software, hosting and internet services supplied by BMT, the specification for which may be outlined within the Proposal including for the avoidance of doubt any software or information technology system into which Software has been incorporated or integrated. Without prejudice to the generality of the foregoing, a System shall also include any equipment used in its operation.

**'these Conditions'** means these General Terms and Conditions.

**'Warranty'** means the Warranty contained in Clause 10, which is given in lieu of all terms, conditions and warranties, express or implied by law and/or statute.

**'Work'** means the Consultancy project and/or other services (including but not limited to repair, support and/or maintenance services) referred to in BMT's Order Acceptance.

**'Work Scope'** means the scope of the services referred to in BMT's Order Acceptance.

1.2. Any reference in these Conditions to any provisions of a statute shall be construed as referring to the provision as amended, re-enacted or extended from time to time.

1.3. The headings in these Conditions are for convenience only and shall not affect the interpretation.

**2. APPLICATION OF THESE CONDITIONS**

2.1. Any contractual terms proposed by the Client to govern contractual relations between BMT and the Client (whether appearing in a Purchase Order or otherwise) are expressly excluded and the Client is deemed to have accepted these Conditions in submitting a Purchase Order to BMT.

2.2. Subject to Clause 2.3 below, these Conditions, together with BMT's Order Acceptance and any Proposal referred to in BMT's Order Acceptance, and any documents incorporated into the entire agreement by virtue of such Proposal comprise the entire agreement between the Parties with respect to the undertaking of the Work or the supply of Goods and any representations or statements whether made orally or written elsewhere are hereby excluded. In the case of a conflict between BMT's Proposal and these Conditions then except for the whole of Clause 17 (Limitation of Liability) hereof which shall not be overridden, BMT's Proposal shall prevail.

2.3. Where Software is supplied by BMT however then this shall also be subject to the terms and conditions of the End User Licence and Internet Services Agreement

2.4. Catalogues, technical circulars, price lists, samples or literature shown or provided by BMT are for the Client's general guidance only and the particulars contained therein shall not constitute representations by BMT and BMT shall not be bound thereby.

2.5. A Contract will be deemed to commence on the date on which BMT provides the Client with an Order Acceptance;

2.6. No cancellation by the Client of a Contract is permitted unless expressly agreed in writing by BMT.

### **3. BMT'S STANDARD OF CARE**

3.1. BMT will, subject to these Conditions, carry out the Work for the Client with all reasonable skill, care and diligence to be expected from a professional consulting firm in performance of similar services under similar conditions and in accordance with the Client's site rules, in so far as these have been made known in writing to BMT prior to the date of agreement. BMT shall have no other contractual responsibility.

3.2. If requested by BMT, the Client will provide that its employees will assist BMT during any Work.

### **4. PROVISION OF ACCESS AND INFORMATION**

4.1. The Client shall provide access to the Site at such times as may reasonably be required by BMT for its personnel and its sub-contractors. The Client shall make full disclosure of all information it possesses or might reasonably be expected to possess in relation to the subject matter of the Work and shall notify BMT of any known or suspected hazards existing at the Site including, but not limited to, hazardous waste or substances and underground utilities. BMT shall be entitled to rely on the accuracy of drawings, data, information and statements given or made by the Client's employees and agents and by any third parties. BMT shall have no liability for any reports or advice which it may give to the extent that these are based on any such drawings, data, information or statements which prove to be inaccurate.

### **5. ORDER PROCESS, CHARGING AND INVOICING FOR WORK, DISBURSEMENTS, VAT & VARIATIONS**

5.1. Unless otherwise stated, the price or charge rates quoted will remain valid for 60 days. The Price quoted, unless otherwise agreed in writing, is subject to the commencement of the Work being carried out in accordance with the schedule of work timescales set out in BMT's Proposal or as otherwise specified on any front cover page hereof.

5.2. BMT's offer is made on the assumption that the Work is reasonably capable of being carried out. If upon inspection, this is found not to be the case, BMT will advise the Client as soon as reasonably practicable and thereupon shall be freed from carrying out its obligations hereunder. No liability shall attach to BMT for any loss occasioned by the Work not being carried out in such circumstances.

5.3. Time shall not be of the essence in relation to completion. All time scales quoted are the best available estimates based on the information available at the date of the offer and are subject to revision during the course of the Work.

5.4. The scope of the Work shall not be changed without the written agreement of both Parties.

5.5. Work will be charged on a fixed rate, hourly or daily rate and/or royalty basis as agreed. In the event that there are significant changes to the Work agreed, BMT reserves the right to re-negotiate its fees. When hourly rates are quoted, they refer to time spent working or travelling (to and from working Site) unless otherwise agreed. For staff working away from BMT's premises, there is a minimum charge of 7.5 hours per day. BMT's working days are 7.5 hours per day. Any Work required over this amount will be charged at the applicable hourly rate.

5.6. Where delays by the Client cause the Work to be extended beyond the time specified or the time originally anticipated, then the cost of the Work charged to the Client may be increased.

5.7. The Client agrees to reimburse BMT for consulting fees and expenses related to the Work including, but not limited to, fees and expenses relating to sub-contractors, document preparation, document shipping, customs documentation, packing and reproduction, any special materials required to perform the necessary consultation services, as well as accommodation, travel and out of pocket expenses (including meals away from the normal place of business of BMT's personnel), international visa costs, desert passes, other types of pass/licence or fees required to obtain access to specified locations or to data and any related expenses necessary for the performance of agreed Work, incurred with the prior written consent of the Client. BMT agrees to provide the Client with reasonable evidence that the amount involved was expended and related to the consultation services required by the Client.

5.8. Unless otherwise stated in BMT's written Proposal, a ten percent charge may be made on all disbursements made by BMT associated with the Work in order to cover administrative costs.

5.9. Unless otherwise stated in the Order Acceptance (expressly or by reference to a Proposal), any Prices are exclusive of Value Added Tax, any other applicable taxes, packaging, carriage, fees associated with any export formalities and cargo insurance. Clients outside the UK shall remit all payments free of any taxes, levies or claims or duties arising outside the UK, and shall pay in full any of the like which may be due according to the laws of its country or state.

5.10. If, after an Order Acceptance has been issued, the Client wishes to vary the scope of any Work and/or the composition of any Goods and BMT accepts such variation, the Price will be adjusted in accordance with BMT's standard rates applicable at the date of the variation. If however, this increases the risk for BMT, then the price adjustment will be exceptional.

5.11. Once the Company and the Client have agreed what services are to be performed, any subsequent variations

must be promptly agreed in accordance with a procedure agreed between the Parties. This shall be the means of a contract variation form specifying technical and commercial details, any variation of the delivery date and/or the deliverables as well as any additional costs involved. In the event of any delay in the Client signing the contract variation form, the Company shall be entitled to stop Work until the contract variation has been signed and returned to the Company. Email confirmation will be accepted in lieu of a signed contract variation form.

## **6. TERMS OF PAYMENT**

6.1. The Client shall settle every BMT invoice within 30 days of the invoice date (unless otherwise agreed) without any suspension, set-off (statutory or otherwise), deduction or discount. Where any expense to be reimbursed by the Client is paid by BMT in a currency other than Sterling, it shall be reimbursed in Sterling to the value calculated at the official purchase rate of exchange prevailing at the date when the expense was incurred, together with any additional charge payable under this clause.

6.2. If any part of an invoice is genuinely in dispute, the Client shall pay the undisputed part thereof promptly within 30 days of the invoice date and shall notify BMT immediately upon receipt of invoice as to any part of the invoice which is in dispute giving full reasons as to why a portion of the invoice is disputed. The Parties shall endeavour to resolve the disputed portion without delay.

6.3. If the Client fails to make any payment on a due date in accordance with Clause 6.1, then, without limiting any other right or remedy available to BMT, BMT shall be entitled to charge statutory interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended) on all overdue invoices, such interest being deemed to accrue on a day to day basis from the due date for payment under clause 6.1. BMT reserves the right to stop Work or withhold any deliverables on the contract which relates to the overdue invoice.

## **7. DELIVERY OF GOODS**

7.1. This Clause 7 only applies to Contracts in which BMT has agreed to deliver Goods to the Customer.

7.2. Unless a different address has been agreed in the Order Acceptance, the Goods will be delivered to the Customer's usual business address.

7.3. Where BMT has provided the Customer with a proposed delivery schedule, the timetable therein will be an estimate only and such timetable shall be deemed to commence on the Contract Date or, if later, the date on which BMT obtains any applicable export licence.

7.4. The Customer shall inspect the Goods carefully on delivery and immediately notify BMT of any alleged defects. If the Customer reasonably demonstrates that it was not possible to discover the alleged defects on delivery, the defects must be notified in writing within 7 days after the date on which the defect was discovered or could have reasonably been discovered.

7.5. Following delivery, BMT may at any time and on reasonable notice to the Customer undertake an inspection (at no expense to the Customer) of the Goods.

7.6. If the Customer fails within a reasonable time to take delivery of the Goods on their arrival at the delivery address, BMT may:

- (a) store the Goods and charge the Customer for the reasonable costs (including insurance) of storage and such storage shall constitute delivery of the Goods to the Customer; and/or
- (b) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) apply any proceeds of sale in reduction of the sums due to BMT from the Customer in respect of the Goods or otherwise.

## **8. RISK & TITLE TO GOODS**

8.1. This Clause 8 only applies to Contracts in which BMT has agreed to supply Goods to the Customer.

8.2. Unless otherwise agreed in the Order Acceptance (whether expressly or by reference to a Proposal), all Contracts for the sale of Goods will be on FCA terms as defined in Incoterms 2010 and risk in Goods shall pass to the Customer when the Goods are delivered to the Customer or his agent.

8.3. Where the Customer has arranged for transportation of the Goods via a carrier, such carrier shall be deemed to be acting for and on behalf of the Customer and delivery of the Goods to such carrier shall be deemed to be delivery to the Customer.

8.4. Title in Goods shall not pass to the Customer until the Customer has settled the BMT invoice in respect of the Goods and also any other overdue BMT invoices.

8.5. Until title to the Goods passes:

- (a) the Customer will hold the Goods as fiduciary agent and bailee for BMT;
- (b) the Goods shall be kept separate and distinct from all other property of the Customer and of third parties and in good and substantial repair and condition and be stored in such a way as to be clearly identifiable as belonging to BMT;
- (c) BMT may at any time revoke the power of sale and use of the Goods by notice to the Customer if the Customer is in default for longer than [14] days in the payment of any sum whatsoever due to BMT;
- (d) the Customer's power of sale and use shall automatically cease if the Customer becomes subject to any of the circumstances listed in Clause 22;
- (e) upon determination of the Customer's power of sale and use, the Customer shall place any of the Goods in its possession or under its control, at the disposal of BMT and BMT shall be entitled to enter the premises of the Customer for the purpose of removing the Goods.

## **9. ACCEPTANCE OF GOODS**

9.1. This Clause 9 only applies to Contracts in which BMT has agreed to supply Goods to the Client.

- 9.2. The Client may, by written notice to BMT served within 30 days of delivery, reject any Goods which do not substantially conform with any specification contained in a Proposal. Rejected Goods must be returned to BMT at the Client's risk and expense.
- 9.3. The Client shall be deemed to have accepted the Goods as in conformity with any specification contained in a Proposal if the Client has not served a notice of rejection on BMT within 30 days of delivery of the Goods concerned.
- 9.4. BMT will replace any Rejected Goods with Goods that comply with the specification and reimburse the Client for the costs incurred pursuant to Clause 9 returning the Rejected Goods to BMT. For the avoidance of doubt, any Goods that are incorrectly rejected will not be replaced in accordance with this Clause 9.4.

## 10. WARRANTY FOR GOODS

10.1. This Clause 10 only applies to Contracts in which BMT has agreed to supply Goods to the Client and unless otherwise agreed in the Order Acceptance (whether expressly or by reference to a Proposal), the following Warranty terms shall apply.

10.2. Subject to Clause 10.3 and subject to any Warranty term of any End User Licence and Internet Services Agreement (which shall in the event of conflict override this Warranty For Goods clause), BMT warrants for a period of twelve (12) months from the delivery date that the Goods:

- (a) will be free from defects in material and workmanship under normal use and service; and
- (b) do not infringe any patent, copyright, design right or trade mark or other intellectual property rights of any other person.

10.3. The Warranty shall be void and unenforceable against BMT:

- (a) where the Client allows any person other than BMT or its authorised agent to install, commission, repair, adjust, alter, modify, or otherwise tamper with the Goods without the prior written consent of BMT;
- (b) where the defect arises through any act or omission of the Client, its servants or agents or any third party contrary to the operating and maintenance instructions provided by BMT;
- (c) where further defects arise where the Client knew or ought to have known that defects existed in the Goods and, as a result of continued use of the Goods such use caused or contributed in causing such further defects or exacerbating existing defects;
- (d) where the defect arises through abuse, lightning or other electrical discharge; or
- (e) where the defect is caused by a design fault where the design for the Goods was prepared by the Client or any third party.
- (f) in respect of any Product, if it has been subjected to conditions beyond the limits of its specifications, or if it has been physically damaged or which is attached to

apparatus other than apparatus supplied by BMT for attachment or specifically approved for attachment by BMT in writing.

10.4. Where any valid claim is brought under the Warranty, BMT may, in its sole discretion, undertake an inspection of the Goods and/or either:

- (a) subject to Clause 10.5, repair the Goods (or any defective part);
- (b) subject to Clause 10.5, replace the Goods (or any defective part); or
- (c) refund the Client with the Price of the Goods

10.5. Where BMT elects to repair or replace the Goods pursuant to Clause 10.4, BMT reserves the right to charge the Client for any travel costs, travel time, waiting time and subsistence costs arising out of the repairs or replacement and any inspection preceding such repairs or replacement. Replacement or repair of defective parts pursuant to this warranty shall be made at any city, town or port at which BMT regularly maintains qualified service personnel. The publishing of a list of any such service stations shall not imply any obligation upon BMT to maintain a regularly established service station on any of the locations specified in such list.

10.6. Subject to Clause 10.4 (c), if Goods are sent to a BMT establishment or a service station appointed by BMT within the warranty period, then, provided that shipping costs are prepaid by the Client and the part is found defective after inspection at the establishment or service station, replacement or repair of the defective part shall be made.

10.7. Where a service for any of the Goods is requested and such service does not relate to any warranty covered by this Agreement, then the warranty period applicable to such Service Work shall not exceed 30 days from the date of performance and completion of such Service Work. The warranty period for new spare parts however, shall be six (6) months after date of installation or shipment, whichever period shall first expire. The warranty for exchanged items shall be for a period not to exceed ninety (90) days from date of shipment.

10.8. In case of Goods sold but not manufactured by BMT or its subsidiaries or affiliates, BMT only obligation shall be to use its all reasonable endeavours to pass on or arrange for the passing on to the Client of the manufacturer's warranty, subject to any conditions set out by the manufacturer.

10.9. When BMT employees are required to travel for any maintenance and service checks within the warranty period the Client is required to pay the actual travel costs, plus travel time and subsistence costs for the employees.

10.10. BMT shall be entitled to charge the Customer at a per man day cost for any time for which BMT's engineers are kept waiting because the vessel fails to dock at the time and/or place specified by the Client (or the Client's Representative), or if the Client (or the Client's Representative) hinders BMT's engineers in carrying out the warranty or maintenance or where there are delays on the part of the Client, their representatives or ship's

masters. BMT shall also be entitled to charge the Client for any extra costs incurred by BMT due to a sudden request for a change of arrangements by the Client (or the Client's Representative).

10.11. The provisions above set forth BMT's sole liability in respect of, or for any defect or nonconformity in, any Goods; BMT shall have no obligation or liability in respect of any defect or nonconformity discovered after the lapse of the relevant warranty period as specified in the relevant sub-clause. All other warranties, whether express or implied, in contract, statute or at law, are so far as the law permits, expressly excluded. BMT shall have no other obligation or liability to the Client in respect of warranty matters.

## 11. INSPECTION AND SERVICE WORK

11.1. The Customer will pay BMT's standard rates for Service Work both within the Warranty period and outside the Warranty period (comprising daily rates, travel costs, travel time, waiting time and subsistence costs).

11.2. During any warranty period referred to in Clause 10, BMT shall be entitled to inspect any installed System or Product at any reasonable point of time. No costs shall be charged to the Client for these inspections.

11.3. If the Client should request an inspection of the System or any Product by BMT or its authorised service representatives, either during a warranty period or after expiry thereof, or if the Client should request repairs, service or other work ("Service Work") which BMT is not obliged to execute pursuant to its obligations by virtue of Clause 10, this inspection or Service Work, if agreed upon by BMT, will be executed at BMT's standard rates for Service Work which will reflect the location at which such service personnel are located and have to travel. In addition, BMT may charge the actual travelling and accommodation expenses of such personnel, at the rates applicable. If Service Work is required outside regular working hours, the Client shall pay such extra hours at the hourly rate for overtime applicable for the location of the personnel.

11.4. Publications in which BMT has indicated in which places service stations are to be found are for information purposes only and BMT is not obliged to retain such service stations nor shall it be liable for failing to retain them.

## 12. INSTALLATION TRAINING AND SOFTWARE SUPPORT

12.1. Installation, training and software support (if any) will be in accordance with the provisions relating thereto under separate agreement or in BMT's Proposal. Notwithstanding this, clauses 12.2 and 12.3 shall apply.

12.2. BMT's Software is under constant review and development. BMT reserves the right to make substitutions and modifications in the design and specifications of the Software, provided that such substitutions or modifications do not materially or adversely affect the performance of the Software or the way in which it operates. The Customer undertakes to accept and use, subject to the separate terms of any Maintenance and Software Support Agreement entered into, the latest release of the version of the Software. BMT hereby excludes all liability whatsoever for any loss or damage arising as a result of any failure by the Customer to cease to use any previous release promptly following delivery of a new release of the Software.

12.3. If during the course of this Agreement new releases of the Software are offered for sale to the Customer the conditions of

this Agreement shall continue to be binding on the Customer in respect of both the original Software and any subsequent releases provided to the Customer.

## 12.4. Indemnity in Respect of Property and Vessels

### 12.4.1. Indemnity from the Client

The Client shall indemnify and hold harmless BMT from and against any costs, loss, liability or claim for the loss of, or damage to, property (whether owned, leased, chartered or hired), including the relevant vessel, owned by or under the control of the Client or any member of the Client's group of companies, arising out of or in connection with performance of the Installation Services

The provisions of this Clause shall apply irrespective of any fault (including negligence) on the part of BMT or any member of the BMT group of companies.

### 12.4.2. Indemnity from BMT SMART

BMT shall indemnify and hold harmless the Client from and against any costs, loss, liability or claim for the loss of, or damage to, property (whether owned, leased, chartered or hired), including the relevant vessel (if any) owned by or under the control of BMT or any member of the BMT group of companies, arising out of or in connection with performance of the Installation Services

The provisions of this Clause shall apply irrespective of any fault (including negligence) on the part of the Client or any member of the Client's group of companies.

## 13. EQUIPMENT

13.1. The ownership of any equipment or items used, designed or made by BMT in connection with the work shall remain vested in BMT, except where alternative arrangements have been agreed in writing by BMT.

13.2. Where the Customer provides equipment for use in connection with the work ("**Customer Equipment**"), ownership of such items shall remain vested in the Customer.

13.3. Delivery of Customer Equipment shall, unless otherwise agreed in writing, be made by and at the expense of the Customer and in accordance with the requirements of BMT.

13.4. Until unloaded at BMT's premises all Customer Equipment shall remain the Customer's risk.

13.5. If, while in the course of transit to or being unloaded at BMT's premises, any Customer Equipment is lost or damaged to an extent which, in the opinion of BMT, renders it unfit for use in connection with the performance of the work, the Customer shall, at his own expense, supply BMT with a replacement for such equipment and if delay is caused thereby shall bear the consequences of such delay.

13.6. After being unloaded at BMT's premises, Customer Equipment shall be at BMT's risk, provided however that BMT shall incur no liability in respect of the destruction of or damage to any Customer Equipment in the course of performing the work unless such destruction or damage is

caused by the negligence of BMT, its officers, agents, or employees.

13.7. Any modifications required to be done to any models or other equipment provided by the Customer shall be done and charged to the Customer's account, except where some other arrangement has been agreed by BMT in writing.

13.8. The Customer Equipment shall cease to be at the risk of BMT and shall again be at the Customer's risk when loaded at BMT's premises for return to the Customer or his nominee in accordance with sub-Clause 13.9 and in any event such equipment shall be at the Customer's risk 28 days after either the posting by BMT of the final invoice raised upon the completion of the work or upon termination of the Contract, whichever shall occur first, except where some other arrangement has been agreed by BMT in writing.

13.9. Upon receipt of the final invoice, the Customer shall make arrangements with BMT for the immediate removal of all Customer Equipment and shall, at the Customer's expense, remove such equipment from BMT's premises in accordance with such arrangements. If the Customer fails within three months to make such arrangement or, having made such arrangements, fails to remove the equipment in accordance therewith, BMT may remove or dispose of such equipment in such manner as it shall think fit, without incurring any liability to the Customer to obtain the best possible or any price therefore. The Customer shall pay to BMT the costs and expenses incurred by BMT in connection with such removal or disposal.

13.10. The Customer shall indemnify and hold harmless BMT against any claims, expenses and liability incurred by BMT arising from any Customer Equipment or from the acts or omissions of any employee, agent, representative or invitee of the Customer whilst he or she is on BMT premises (including, in both cases, liability for death or personal injury).

#### 14. HARDWARE UPDATING

14.1. If BMT SMART (acting reasonably) considers that there is a need for the Hardware to be updated, then it will notify the Client accordingly. In the event that the Client does not agree that the Hardware needs to be updated, then it will notify BMT SMART of its view within 14 days of receiving such notice. If the parties cannot agree within a further period of 14 days of the need for updating the Hardware then BMT SMART shall have the choice of:

- Terminating the End User Licence and Provision of Internet Services Agreement, the Support and Maintenance Agreement and this Installation Services Agreement; such termination to become effective immediately (without prejudice to BMT SMART's rights accrued to the date of such termination)
- Continuing the licence under the End User Licence and Provision of Internet Services Agreement, but terminating either or both of the Support and Maintenance Agreement and this Installation Services Agreement, such termination to become effective immediately (without prejudice to BMT SMART's rights accrued to the date of such termination).

14.2. BMT SMART is interested in being informed by the Client of suggestions from the Client for general improvements.

14.3. If BMT SMART considers at its sole discretion that any suggestion for improvement is worth pursuing then it may do so. The intellectual property rights to any such improvement shall vest solely in BMT SMART.

#### 15. HARDWARE FAULTS

15.1. Except as otherwise provided in clause 7.4 of the End User Licence and Provision of Internet Services Agreement, for a period of three months from the Initial Installation Date (or three months from a subsequent Installation Date of replacement Hardware) BMT SMART undertakes to correct any fault in the Hardware reported and specified in writing by the Client provided that such fault has not caused by unsuitable operation or treatment of the System. The Client undertakes to use any reporting routines designated for this purpose by BMT SMART.

15.2. On receipt of the full details of any alleged fault in the Hardware in accordance with clause 15.1 above, BMT SMART undertakes to investigate the problem, or procure that the problem is investigated by its nominated sub-contractors. If a fault is found, then subject to the provisions of clause 15.1 above, BMT SMART will supply free of charge new Hardware or replacement parts to the Hardware to the Client. If a fault is found but outside the time limit specified in clause 15.1, or if on investigation there is no fault, then the Client shall reimburse BMT SMART in full for the costs of replacement Hardware or replacement parts to the Hardware supplied together with the costs of any testing and/or other expenses incurred to investigate the fault or alleged fault. In order to investigate the alleged fault BMT SMART may need to request further data from the Client. The Client undertakes to supply any such data reasonably requested and access to the Hardware promptly upon request.

#### 16. PREMISES

16.1. With the prior agreement of BMT the Client may be allowed access to BMT's premises (a "Visit").

16.2. All information of whatsoever nature acquired during a Visit shall be treated by the Client as having been acquired in confidence except in so far as the Client is entitled to such information in exercising its rights under these conditions.

16.3. The Client shall defend, indemnify and hold BMT harmless from all claims, actions, demands, loss and causes of action arising from injury, including death, to any person, or damage to any property, to the extent that such injury or damage results in whole or in part from the acts or omissions of the Client, the Client's employees, agents, representatives and/or sub-contractors during a Visit.

#### 17. LIMITATION OF LIABILITY

The Client's right to claim under this Clause 17 are in addition to its rights in respect of Warranty claims set out in Clause 10.4.

##### 17.1. Work

(a) BMT shall accept responsibility for all Work under a Contract, including sub-contract Work and where any Work has been found, during the twelve months following completion of the non-conforming Work or termination of the Contract not to be in accordance with the Work Scope the Client shall give BMT notice in writing of the alleged defect, and BMT shall repeat the non-conforming Work at BMT's own expense subject to the Client providing such facilities if any as were provided when the Work was originally performed and, if necessary and subject to sub-Clause 17.1 (c) below, reimburse the Client for direct

losses incurred as a result of the Client or their agents utilising the non-conforming Work.

- (b) If any Work is repeated as a result of the Client's notification that it was non-conformant and it is subsequently discovered that the original Work was in fact conformant then the Client shall reimburse BMT for the additional Work performed.
- (c) Notwithstanding anything else herein contained BMT's liability in respect of the Work for any one claim in any period of insurance (1<sup>st</sup> October to 30<sup>th</sup> September in each year) shall not exceed the Price paid by the Client to BMT in connection with the performance and delivery of the Work.

#### 17.2. **Damage to Property and Death or Injury to Persons**

BMT will indemnify the Client against direct damage to tangible property or death or injury to persons to the extent caused by the negligent acts or omissions of BMT, its sub-contractors, servants or agents, but not otherwise, by making good such damage to tangible property or compensating for such death or personal injury, provided that BMT's liability for any one claim in any period of insurance shall not exceed the sum of £2 million in respect of damage to tangible property.

#### 17.3. **Delay due to factors beyond BMT's reasonable control**

BMT shall not be liable for any delay or for the consequences of any delay in performing any of its obligations under a Contract if such delay is due to any cause whatsoever beyond its reasonable control and BMT shall be entitled to a reasonable extension of time for performing such obligations.

#### 17.4. **Exclusions of BMT's Liability in respect of increased cost or expenses, loss of profit, business, contracts, revenues, anticipated savings, special damage, indirect damage or consequential loss or damage.**

In any event, and notwithstanding anything contained in a Contract, in no circumstances shall BMT be liable, in contract, tort (including negligence or breach of statutory duty) or otherwise, howsoever and whatever the cause thereof;

- (a) for any increased cost or expenses (except in respect of non-conforming Work, where BMT's liability shall be limited in accordance with Clauses 10 and 17.1 (c) of these Conditions;
- (b) for any loss of profit, business, contracts, goodwill, revenues, or anticipated savings, or;
- (c) for any special indirect or consequential loss or damage of any nature whatsoever (other than direct physical damage to tangible property where the BMT's liability shall be limited in accordance with Clause 17.2 of these Conditions.

#### 17.5. **BMT's Maximum Liability to be proportionate**

The extent to which any loss or damage will be recovered from BMT by the Client will also be limited so as to be in proportion to BMT's contribution to the overall fault for such loss or damage, taking into account any contributory negligence by the Client, the Client's other consultants and/or other advisers and/or any other third parties responsible to the Client and/or liable in respect of such loss

#### 17.6. **BMT acting for undisclosed "Principal"**

Should BMT discover that the Client is/was acting for someone else, or if the Client discloses to BMT that the Client is/was acting for someone else, then BMT reserves the right to continue treating the Client as "principal" and also reserves the right not to provide or to stop providing services to the Client or to that person. If the Client fails to make such a disclosure to BMT, then BMT shall not be liable to the Client or to that other person for any damage arising, directly or indirectly, in connection with any services provided by BMT to the extent that damage arises as a result of the Client acting on behalf of that other person or relates to damage suffered by that other person.

#### 17.7. **Specific Exclusions in respect of the System, Materials and Goods**

BMT accepts no liability whether in contract, tort or otherwise for any losses, damages, claims and allegations arising from:

- (a) accident, negligence, or misuse by any Party other than BMT;
- (b) the abnormal use, misuse or neglect of the Materials or Goods;
- (c) failure of or defect in the System arising from the interface between the System with hardware or Software not provided by BMT;
- (d) physical or environmental conditions or electrical stress (including, for example, lightning) which damages the magnetic medium on which the Software is stored or which cause the System to fail or run incorrectly;
- (e) any party other than BMT modifying or adjusting the Software or Goods;
- (f) the Client failing to abide by the provisions of these Conditions and/or those contained in the user manual;
- (g) the improper storage, application or handling of the Goods. The Client should consult BMT if doubt exists with regard to the appropriate storage, application, or handling requirements; or
- (h) delay in performing a Contract.

#### 17.8. **Limitation of BMT's Liability – General Provisions**

In any event, and notwithstanding anything contained in a Contract, BMT's total liability in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever, and whatever the cause thereof, arising by reason of or in connection with a Contract (except in relation to :-

- i) death or personal injury caused by the negligence of BMT or its employees while acting in the course of their employment; or
- ii) any liability (or right) which either Party may have in respect of pre-contractual statements made or given fraudulently or dishonestly or in circumstances where there has been wilful concealment)

shall be limited to the amount actually reimbursed to BMT under its relevant insurance policy or policies in respect of any one claim in any period of insurance.

17.9. Each of the foregoing Clauses 17.1 to 17.8 is to be construed as a separate limitation (applying and surviving even if for any reason one or other of the said clauses is held inapplicable or unreasonable in any circumstances) and shall remain in force notwithstanding termination of a Contract.

17.10. The Client shall inform BMT of any act, statement omission or negligence on the part of BMT in connection with or in relation to a Contract in respect of which BMT is or may be legally liable to the Client whether in contract or in tort as soon as practicable after becoming aware of the same, and shall afford BMT reasonable opportunity to correct any deficiency in the Work.

17.11. In any event, BMT shall be discharged from all liability whatsoever or howsoever arising out of or under a Contract unless proceedings are commenced and served on BMT within nine (9) months of the date of the event or occurrence alleged to give rise to a cause of action against BMT.

## **18. INDEMNITY BY CLIENT**

18.1. The Client shall indemnify BMT against such actions, claims, costs, damages, direct or consequential, or liabilities arising from any of the Client's undertakings and obligations under these Conditions.

## **19. INTELLECTUAL PROPERTY**

19.1. Unless otherwise agreed and except as otherwise agreed in writing in respect of results specifically related to the scope of work for the Client, ownership of all of the Intellectual Property in respect of any Goods, materials and/or Confidential Information provided to the Client is vested and held by BMT and shall not be transferred to the Client.

For the avoidance of doubt, where raw data is provided by the Client then the ownership in that raw data continues to reside in the Client but all rights, title, interest in the processed data (including, if different, the results) shall vest in and be the property of BMT.

19.2. The trademarks, logos and trade names of BMT and BMT associated companies ("BMT Marks") shall not be used by the Client for any other purpose and no licence of any such BMT Marks is granted hereby. In the event that the Client wishes to use any BMT Mark for the purpose of resale of the Goods or any System then the Client must first obtain the prior written consent of BMT.

19.3. BMT shall indemnify and hold harmless the Client against all liability, costs and damages arising as a result of the infringement of any Intellectual Property of any third party caused by the Client's use of the Intellectual Property in accordance with a Contract provided that such infringement is not attributable to material or information supplied by or on behalf of the Client and provided further that, if any claim of such infringement is made against the Client by the holder of such rights the Client will promptly so inform BMT in writing. The Client authorises BMT solely to defend or settle such a claim (at BMT's discretion) and undertakes to provide all reasonable assistance in connection therewith. BMT shall be obliged to defend or settle such a claim at its own expense and to pay any damages awarded to the holder of such rights or agreed to be paid to him by BMT. In the event of any such claim, BMT shall have the option to provide the Client with:

- (a) the right to continue using the Intellectual Property; or
- (b) a non-infringing replacement or modification thereof without material diminution in performance or function; or
- (c) a refund of the price paid to BMT.

19.4. The Client shall indemnify and hold harmless BMT against all liability, costs and damages arising as a result of infringement of any Intellectual Property of any third party resulting from information or material supplied to BMT by the Client in connection with a Contract or used by the Client in connection with the Intellectual Property. The Client shall also indemnify and hold harmless BMT against all losses, costs, expenses and liabilities arising from breach by the Client of the terms of the End User Licence and Provision of Internet Services Agreement.

## **20. CONFIDENTIALITY**

20.1. Unless otherwise agreed in writing, each Party shall keep confidential all Confidential Information supplied by the other Party and shall not disclose it to any third party or use it for any purpose other than the proper performance of the Contract, unless and until such information is or becomes public knowledge without breach of this or any other confidentiality obligation.

20.2. The Client shall not publish any document containing any reference to BMT, whether express or implied, without BMT's prior written consent.

## **21. DOCUMENTS AND REPORTS**

21.1. All documents made available by the Client under these Conditions shall remain the property of the Client and shall be returned to the Client after use or on completion of the Work. BMT shall have the right to retain a copy of any document for its files. All other documents and records (including copies) generated by BMT and its sub-contractors etc. shall be the property of BMT.

21.2. Reports will remain the property of BMT until all invoices are paid in full. Reports shall be used only by the Client for the purpose set out in BMT's written Proposal and shall not be relied on or used for any other purpose whatsoever by the Client, or by any other party without the written consent of BMT.

21.3. Copyright in BMT's written Proposal and the report and any Intellectual Property rights arising from the Work shall at all times belong to BMT unless there is a specific written agreement.

21.4. The Client shall be given the opportunity to comment upon BMT's report, but if the Client does not do so within 7 days, then the Client shall be deemed to have accepted the report as drafted and BMT shall be entitled to treat such deemed acceptance as a basis for invoicing. If the Client does comment, then BMT shall consider as to whether and how, on the basis of its professional judgement, any of the Client's comments shall be incorporated and BMT shall re-submit the report with or without amendment. The Client shall not be entitled to reject BMT's report and shall not attempt to do so merely because BMT has decided, after using its professional judgement, not to change the report as a result of the Client's comments.



## 22. TERMINATION AND SUSPENSION

### 22.1. Circumstances in which a termination or suspension could occur

There are a number of circumstances in which termination or suspension could occur. These circumstances are (i) breach by BMT in performing its contractual obligations, (ii) breach by the Client in performing its contractual obligations (iii) the occurrences of Default Circumstances, (iv) termination for the Client's convenience (which includes where the Client finds it necessary to terminate a contract with BMT because its own contract with a third party is terminated) and (v) suspension of a Contract.

In these cases the following provision shall apply:

### 22.2. Notice of termination or suspension

All notices must be given in writing to the other party.

Where either party is in breach of performing its contractual obligations then a notice of rectification must be given by one party to the party in breach. If :

- (i) the breach is capable of remedy and is not rectified within a 30 day notice period or,
- (ii) if not capable of remedy within the said 30 days and the party in breach has not shown within that 30 days that it is diligently proceeding to cure the defect (by taking active effective and continuing steps to do so and the defect is in fact cured within a reasonable period after the 30 days), or
- (iii) If adequate compensation is not paid in lieu of the breach,

then termination will become immediately effective at the expiry of the said 30 day period.

In the event of Default Circumstances then a Contract may be terminated by immediate notice.

If the Client wishes for its own convenience, to suspend all or part of the Work under a Contract or to terminate a Contract prior to the date of completion specified in the Contract or (if no normal date of completion is specified) when all of the contract deliverables would normally be delivered then the Client must give at least two months written notice of suspension or termination to BMT.

### 22.3. Costs and Compensation

The costs and compensation vary according to the circumstances above in the following manner:

#### 22.3.1. Breach by BMT

If a Contract is terminated due to BMT being in breach, BMT shall nevertheless remain entitled to payment by the Client for all irrevocably committed costs associated with a Contract with the Client (including, but not limited to) the following costs or items:

- (a) the cost incurred by BMT to the end of the notice period in developing or customising any Software, Materials, Goods, Mathematical Models, Systems and/or Report;
- (b) the full cost if any, incurred by BMT of buying and/or hiring goods, plant, machinery or equipment specifically for the purposes of a Contract with the Client ;
- (c) the costs irrevocably committed by subcontractors of BMT specifically for the purposes of a Contract with the Client , including, in particular, any costs relating to the manufacture and supply of the Hardware even if this

commitment extends beyond the expiry of the notice period;

- (d) the costs of all work properly completed and delivered to the Client;
- (e) the costs of any work completed by BMT but not yet delivered;
- (f) the costs of Work In Progress including any preparatory work;
- (g) any other costs irrevocably committed by BMT (e.g. travel and accommodation costs) for the purposes of a Contract with the Client even if this commitment extends beyond the expiry of the notice period;
- (h) any fees/amounts due by the Client to BMT not already paid.

Unless BMT is in breach of contract then no fees or disbursements shall be returned by BMT under any circumstances.

#### 22.3.2. Breach by Client , or Termination for Client's convenience

If a Contract with the Client is terminated due to the Client being in breach or for the convenience of the Client, then BMT shall remain entitled to payment by the Client for all irrevocably committed costs including but not limited to those listed (a) to (h) above and shall in addition be entitled to payment of the following costs :

- (a) the full costs of terminating the employment of or laying off of any employees and consultants which BMT had informed the Client in advance that BMT has employed or hired specifically for the purposes of a Contract with the Client and which BMT cannot redeploy on other work ;
- (b) the full costs of buying and/or hiring any materials, goods, plant, machinery or equipment specifically for the purposes of a Contract with the Client ;
- (c) any demobilisation costs incurred by BMT which would not have been incurred had a Contract with the Client run until all deliverables had been delivered;
- (d) a fair and reasonable profit of 10% of the contract price.

#### 22.3.3. Default Circumstances

If a Contract with the Client is terminated due to the occurrence of Default Circumstances (defined at the end of this clause) then BMT shall be entitled to recover as much of the costs specified in the two lists immediately above (a) – (h) and (a) – (d)) as it is legally able to do.

#### 22.3.4. Suspension

In the event of suspension of a Contract with the Client for reasons of breach by the Client, force majeure circumstances or for the convenience of the Client, then the Client must pay BMT for :

- (a) The full costs of laying off (and re-hiring if necessary) any employees and consultants which BMT has informed the Client in advance of a Contract that BMT has employed or hired specifically for the purposes of the Contract and which BMT cannot redeploy on other work;

- (b) The costs irrevocably committed by subcontractors, under a subcontract which relates to a Contract with the Client, relating to the period of suspension;
- (c) Any other costs which BMT or its employees or agents have irrevocably committed in respect of the period of the suspension;
- (d) Loss of BMT's anticipated profit under a Contract with the Client for the period of the suspension.

Without prejudice to its rights hereunder BMT shall be entitled, at its option but shall not be obliged, to give notice of termination of a Contract with the Client if any period of suspension continues for a period of more than 30 days.

#### 22.4. Default Circumstances

For the purposes of this clause, then the following are "Default Circumstances":

- (a) if the Defaulting Party (being a company) shall pass a resolution for winding-up (otherwise than for the purposes of a solvent amalgamation or reconstruction where the resulting entity is at least as credit-worthy as the Defaulting Party and assumes all of the obligations of the Defaulting Party under the Contract) or a court shall make an order to that effect; or
- (b) if the Defaulting Party (being a natural person) shall die, or (being a partnership or other unincorporated association) shall be dissolved; or
- (c) if the Defaulting Party shall cease to carry on its business or substantially the whole of its business; or
- (d) if the Defaulting Party becomes or is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or
- (e) if a liquidator, receiver, administrator, administrative receiver, manager, trustee, or similar officer is appointed over any of the assets of the Defaulting Party.

#### 23. CHANGED CONDITIONS

23.1. If any event or circumstance beyond the reasonable control of BMT materially affects the extent of the Work to be performed by BMT or the manner of or the time required for performance (including, but not limited to, new or substantial alterations by the Client to data supplied to BMT, other requirements of the Client, or delay by the Client in providing information or data, requirements of public authorities or other third parties with relevant jurisdiction, changes in the law or changes in conditions) the remuneration of BMT and the time-scale for performance of the Work shall be adjusted by agreement to such extent as is fair and reasonable to take account of such matters.

#### 24. INSURANCE

24.1. BMT shall maintain insurance with cover and amounts which are normal for companies performing its type of work taking account of the Company's size. Such cover shall be maintained from the date of the commencement of the Work until completion provided always that such insurance continues to be available at commercially reasonable rates.

#### 25. ASSIGNMENT AND TRANSFER

25.1. Neither the rights nor obligations of the Client or BMT may be assigned, transferred, in whole or in part to any other Party, without prior written agreement of the other Party.

25.2. In the event that the ownership of a vessel upon which any of the Goods or the System is to be transferred to a third party,

then the Client shall use its best endeavours to ensure that these terms and conditions and any other relevant Contracts or licences from BMT to the Client are brought to the attention of the Transferee before the transfer of ownership takes place. In any event, the Client shall procure that the Transferee shall be bound by these terms and conditions and any other relevant Contracts or licences from BMT to the Client as if the Transferee was a party thereto and shall indemnify BMT against any loss or damage from the Client's failure to do so.

#### 26. SEVERABILITY

26.1. If any provision of the Contract is held by any competent authority to be invalid or unenforceable, in whole or in part, the validity of the other provisions of this Contract and the remainder of the provision in question shall not be affected.

#### 27. WAIVER

27.1. The rights and remedies of BMT under the Contract shall not be diminished, waived, or extinguished by the granting of any indulgence, forbearance or extension of time by BMT in asserting any such rights or remedies.

#### 28. FORCE MAJEURE

28.1. Neither party shall be liable to the other for any failure to perform or delay in performance of its obligations hereunder if and in so far as and for so long as such performance is delayed or prevented by the other's acts or omissions, or by circumstances beyond its reasonable control including but not limited to strikes, lock-outs or labour disputes of any kind (whether relating to its own employees or others), fire, flood, explosion, natural catastrophe, military operations, blockade, sabotage, revolution, riot, civil commotion, war or civil war, adverse weather conditions or prolonged power failure.

#### 29. LITIGATION

29.1. If the Client becomes aware of any claims or circumstance which might involve litigation or arbitration concerning the subject matter of a Contract, the Client shall immediately inform BMT. In the event of any such circumstances arising or coming to the notice of BMT during the currency of a Contract, BMT shall be entitled to discontinue the Work under a Contract and BMT shall forthwith be released from all liability to the Client but nothing herein shall prejudice any claim of BMT against the Client. If during the currency of a Contract the Client shall become aware of any such circumstances the Client shall forthwith notify BMT

29.2. The Client undertakes that it will not without the written consent of BMT use as evidence in any litigation or arbitration proceedings the results of BMT's Work of or any Materials relating thereto.

29.3. In the event of BMT or any of its affiliate or associated companies being called to give expert evidence for the Client, as a result of a case being brought against the Client even if subpoenaed so to do, then an appropriate rate shall be charged to the Client for the preparation and giving of expert evidence.

#### 30. BMT EMPLOYEE RESTRICTIONS

30.1. During the period of any Contract incorporating these conditions, and for a period of six months after its termination, neither the Client nor any affiliate will directly or indirectly solicit, seek or procure the services of any of

the employees of BMT (other than as specified in the said Contract) without the prior written consent of, and upon terms and conditions specified by BMT. In the event that, at any time during the period of the said Contract or six months after its termination, the Client offers a BMT employee permanent employment which he/she accepts, the Client shall pay liquidated damages to BMT equivalent to six months salary based upon the final salary which was paid to that employee whilst in the employment of BMT. The Parties agree that the level of liquidated damages is fair and reasonable bearing in mind the average recruitment and training costs of replacing an outgoing employee.

### **31. NOTICES**

31.1. Any notice to be given hereunder shall be in writing and shall be deemed to have been duly given if sent or delivered to the Party concerned at the Party's address on the Order Acceptance or such address as the Party may from time to time notify in writing and shall be deemed to have been served, if sent by post, 48 hours after posting.

### **32. DISPUTE RESOLUTION**

32.1. Any question or disagreement which may arise concerning the construction, meaning or effect of a Contract or concerning the rights or liabilities of the Parties under a Contract shall be referred to a single arbitrator to be agreed between the Parties. Any arbitration shall take place in England. Failing such agreement within 30 days of the request by one Party to the other that the matter be referred to arbitration in accordance with this clause, such reference shall be to an arbitrator appointed by the President for the time being of the Institution of Marine Engineering Science & Technology. The decision of such arbitrator shall be final and binding upon the Parties. Any reference under this clause shall be deemed to be a reference to arbitration within the meanings of the Arbitration Act 1950 – 1996.

### **33. ADDITIONAL ITEMS**

33.1. Any addition to the System and other items furnished or services performed by BMT for the Client in relation to a Contract, although not specifically identified herein, shall nonetheless be covered by a Contract unless such item or services is specifically covered by a separate written agreement executed by the Client and an authorised representative of BMT.

### **34. NO OTHER TERMS**

34.1. No modification, termination, extension, renewal, waiver of, or addition to, the terms and conditions of a Contract shall be binding upon BMT unless specifically set forth in writing and signed by an authorised representative of BMT.

34.2. The Client by its signature agrees that the Proposal and all documents referenced therein as forming part of the Contract are the complete and exclusive statement of the agreement between the Parties relating to the subject matter hereof and supersede all prior oral and written communications and agreement between the Parties relating to the subject matter hereof. The Client acknowledges that it is not relying on any representation or Warranty which is not expressly contained in the Contract or in the documents referenced in this paragraph

### **35. LAW AND JURISDICTION**

35.1. These Conditions or any Contract entered into under these Conditions shall be governed in accordance with the law of England and each Party agrees to submit to the exclusive jurisdiction of the English Courts.