



**STANDARD TERMS AND CONDITIONS FOR THE SALE OF GOODS AND/OR SUPPLY OF SERVICES**  
**(1 June 2014)**

**1. Definitions and Interpretation**

1.1. In these Standard Terms and Conditions, unless the context otherwise requires, the following words have the following meanings :

**“Customer”** means the person(s), firm(s) or company(ies) who purchases the **Goods** and/or **Services** from **XMH**, including the entity or entities named as the “Buyer” in the **Sales Quotation** (or **Services Quotation**), all of whom shall be jointly and severally liable under the **Contract**;

**“Contract”** means the **Sales Quotation** or **Services Quotation** (as the case may be), the **STCs** and **XMH’s** Field Service Published Rates (where applicable) only, to the exclusion of all other terms and conditions (including any terms or conditions which the **Customer** purports to apply under any purchase order, confirmation of order, specification or other document whatsoever and whenever);

**“Designated Entity”** means any specified persons, entities or bodies upon which any sanction, prohibition or restriction is imposed pursuant to United Nations Resolutions or trade or economic sanctions, laws or regulations of the European Union, United States of America or Singapore;

**“Equipment”** means any equipment, motors, generators, etc, on which the **Services** are to be performed or to which the **Goods** are to be used in conjunction / installed upon;

**“Goods”** means any goods agreed in the **Contract** to be supplied to the **Customer** by **XMH** (including any part or any part thereof, any software and any documentation);

**“Intellectual Property”** means any patent, copyright, trade mark, service mark or trade name, right in software, right in design, right in databases, image right, moral right, right in invention, right relating to passing off, domain name, right in confidential information (including trade secrets) or right of privacy, and all similar or equivalent rights in each case whether registered or not and including all applications (or rights to apply) for, or renewal or extension of, such rights which exist now or which will exist in the further in Singapore and all other countries in the world in each case whether registered or not and including any application for registration of the foregoing.

**“Sales Quotation”** means a quotation in writing from **XMH** to the **Customer** setting forth the particular terms of the sale of **Goods** (which may include the provision of **Services** relating to the commissioning of engine(s) or engine system(s)) by **XMH** to the **Customer**;

**“Services”** means any services, including the commissioning of engine(s) or engine system(s), agreed in the **Contract** to be provided by **XMH** to the **Customer**;

**“Services Quotation”** means a quotation in writing from **XMH** to the **Customer** setting forth the particular terms of the provision of **Services** by **XMH** to the **Customer**;

**“STCs”** means these standard terms and conditions in force as of 1 June 2014;

**“Vessel”** means the vessel to which the **Goods** are delivered and/or upon which the **Services** are carried out; and

**“Wearing Parts”** means **Goods** which are designed to wear in their normal working condition, including for example, seals, gaskets, etc.

**“XMH”** means Xin Ming Hua Pte. Ltd. (Singapore company registration No. 199100470N) or XMH Engineering Pte. Ltd. (Singapore company registration No. 200715269G) both with registered address at No. 55 Tuas Crescent #07-01, Singapore 638743, and shall include any of its branch offices, servants, agents and designated representatives ;



## 2. Basis of Contract

- 2.1. It is the **Customer's** obligation to ensure that the terms of the **Sales Quotation** (or **Services Quotation**) and any applicable specifications are complete and accurate. If the **Customer** does not within fourteen (14) days after the acceptance of the **Sales Quotation** (or **Services Quotation**) object to any of the terms contained in the **Sales Quotation** (or **Services Quotation**), the **Customer** shall be deemed conclusively to have accepted all the terms contained in such **Sales Quotation** (or **Services Quotation**) as true and accurate in all respects.
- 2.2. Any quotation or estimate made by **XMH** is given subject to these **STCs**.
- 2.3. **XMH's** performance of each **Contract** shall be subject to **XMH** being satisfied as to the **Customer's** credit status both prior to and during the period of the **Contract**. Without prejudice to **XMH's** rights at clause 9, where, at any time, **XMH** is or becomes dissatisfied with the **Customer's** credit status then **XMH** may suspend performance of the **Contract** until the **Customer** satisfies **XMH** as to the **Customer's** credit worthiness or gives **XMH** such security as **XMH** shall deem appropriate in all of the circumstances, including provision by the **Customer** of a suitable guarantee or an irrevocable letter of credit.
- 2.4. The headings of each section herein are descriptive only, and are provided for organisational purposes.

## 3. Description of Goods and/or Services

- 3.1. The description of the **Goods** and/or **Services** shall be set out in **XMH's Sales Quotation** (or **Services Quotation**).
- 3.2. All drawings, descriptive matter, specifications and advertising issued by or on behalf of **XMH** and any descriptions, information, data, details or illustrations contained in catalogues, pricelists or brochures, or other general product documentation distributed by **XMH** (whether or not issued or published by **XMH**) are issued or published for the sole purpose of giving an approximate idea of the **Goods** and/or **Services** described in them and they will not form part of the **Contract** unless otherwise agreed in writing.

## 4. Delivery and Acceptance of Goods

- 4.1. **Goods** shall be delivered in accordance with whichever **Incoterms** the **Customer** and **XMH** have specified in the **Sales Quotation**. Where no **Incoterms** has been specified in the **Sales Quotation**, the **Goods** shall be delivered Ex works (EXW) at No. 55 Tuas Crescent #07-01, Singapore 638743, according to Incoterms 2010. The **Customer** shall take delivery of the **Goods** within fourteen (14) days of being notified that such **Goods** are ready for delivery, except where the **Goods** are engine(s) or engine system(s) in which case the **Customer** shall take delivery of the **Goods** within thirty (30) days of being notified that such **Goods** are ready for delivery.
- 4.2. If the **Contract** states that delivery is to be in accordance with a term defined by **Incoterms** then this term shall be construed in accordance with Incoterms 2010, and where there is any conflict or ambiguity between these **STCs** and that delivery term, the **STCs** shall apply.
- 4.3. Partial shipments shall be permitted unless otherwise agreed and **XMH** shall be entitled to invoice the **Customer** for each shipment individually. Any delay in delivery or defect in a shipment shall not entitle the **Customer** to cancel any other shipment.
- 4.4. The **Customer** is responsible for obtaining, at its own cost, such import/export licences and other consents in relation to the **Goods** as are required from time to time and, if required by **XMH**, the **Customer** shall make those licences and consents available to **XMH** prior to the relevant shipment.
- 4.5. The **Customer** will be deemed to have checked and accepted the **Goods** as being in accordance with the **Contract** upon acceptance and/or signing of the delivery order for the **Goods** by the **Customer**, a person authorised by the **Customer**, the **Customer's** employee or servant, or the Master / Chief



Engineer of the vessel to which the **Goods** are supplied. The **Customer** shall not be entitled to reject the **Goods** and **XMH's** liability for any defect or failure in the **Goods** (except and to the extent of any warranty given by **XMH**), whether in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, shall cease and be extinguished once the delivery order for the **Goods** has been accepted or signed as aforesaid.

- 4.6. Any date(s) or time periods specified by **XMH** for delivery of the **Goods** are intended to be an estimate only and time for delivery shall not be of the essence. No claim shall be brought against **XMH** for late delivery of the **Goods** unless written notice has been given by the **Customer** of **XMH's** failure to deliver on time and **XMH** fails to deliver the **Goods** within three (3) months from the date of the said written notice. The **Customer's** written notice under this clause shall be a condition precedent to the **Customer's** right to claim or bring an action against **XMH** for any failure to deliver the **Goods** on time.
- 4.7. In addition to anything else stated in the **Contract**, if for any reason the **Customer** does not accept delivery of any of the **Goods** when they are ready for delivery, or **XMH** is unable to deliver the **Goods** because the **Customer** has not provided appropriate instructions, documents, licences or authorisations then (at **XMH's** sole discretion) :
  - 4.7.1. The **Goods** will be deemed to have been delivered to the **Customer** from the time the **Customer** does not accept delivery of the **Goods**, whether for the purpose of calculating the warranty period or otherwise ;
  - 4.7.2. The risk for the **Goods** will pass to the **Customer** when the **Customer** is notified that the **Goods** are ready for delivery (regardless of whether the **Customer** has provided appropriate instructions, documents, licences or authorisations) ;
  - 4.7.3. **XMH** may store the **Goods** until actual delivery whereupon the **Customer** will be liable for all related costs and expenses ; and/or
  - 4.7.4. **XMH** may dispose of the **Goods** as **XMH** deems fit, including but not limited to selling the **Goods** to other parties, regardless of whether the **Customer** has paid for the **Goods** in full or otherwise and upon the said disposal of the **Goods** the **Contract** shall be deemed to have been terminated without prejudice to the rights and remedies which have accrued to **XMH** at the date of the said disposal of the **Goods**.
- 4.8. If **XMH** is required, under the **Contract**, to deliver the **Goods**, the **Customer** will provide, at its expense, adequate and appropriate equipment and manual labour for unloading the **Goods** at the place of delivery.
- 4.9. **XMH's** liability for non-delivery or failing to deliver the **Goods** on time (late delivery), if any, shall be limited to the costs and expenses incurred by the **Customer** in obtaining replacement goods of similar description and quality in the cheapest market reasonably available, less the price of the **Goods**. **XMH** shall not be liable for any consequential losses arising from any failure to deliver or to deliver the **Goods** on time. **XMH** shall have no liability for any failure to deliver or to deliver the **Goods** on time, if such failure is caused by a Force Majeure Event.

## 5. Passing of Risk and Title

- 5.1. Full legal, beneficial and equitable title to and property in the **Goods** shall remain vested in **XMH** (notwithstanding that the **Goods** have been delivered and risk has passed to the **Customer**) until payment in full, in cash or cleared funds, for all the **Goods** has been received by **XMH**.
- 5.2. Until full legal, beneficial and equitable title to and property in the **Goods** passes to the **Customer** :
  - 5.2.1. **XMH** may at any time, on demand and without prior notice, require the **Customer** to deliver the **Goods** up to **XMH** and **XMH** may repossess and resell the **Goods** if any of the events specified in clause 9 occur or if any sum due to **XMH** from the **Customer** under the **Contract** is not paid when due ;



5.2.2. **XMH**, its employees, agents and sub-contractors will be entitled to free and unrestricted access to any premises owned, occupied or controlled by the **Customer** and/or any other location where any of the **Goods** are situated at any time without prior notice, for the purposes of enforcing **XMH's** rights under this clause ; and

5.2.3. **XMH** shall be entitled to maintain an action against the **Customer** for the price of the **Goods** notwithstanding that legal, equitable and beneficial title to and property in the **Goods** has not passed to the **Customer**,

but the **Customer** may use the **Goods** in the ordinary course of its business.

5.3. **XMH's** rights and remedies set out in this clause are in addition to and shall not in any way prejudice, limit or restrict any of **XMH's** other rights or remedies under the **Contract**, under any relevant legislation, in law and/or in equity.

## 6. Provision of Services

6.1. Except where the **Services** to be provided are the commissioning of engine(s) or engine systems(s), where the **Contract** requires provision of **Services** by **XMH**, the **Services** to be performed by **XMH** shall be limited in scope only to the items listed under the "Scope of Works" heading in the **Services Quotation**. Clauses 6.6 and 6.9 shall not apply if the **Services** to be provided under the **Contract** are the commissioning of engine(s) or engine systems(s).

6.2. Unless otherwise agreed in writing by **XMH**, the only warranty which shall be given by **XMH** in respect of **Services** that **XMH** agrees to provide in the **Contract** is that such **Services** will be performed with reasonable care and skill. **XMH** gives no guarantee that the **Services** provided will achieve a certain result or produce a specified outcome or effect.

6.3. Upon completion of the **Services**, **XMH** will produce a service report outlining steps taken and testing carried out by **XMH**. The service report when it is signed by the **Customer**, a person authorised by the **Customer**, the **Customer's** employee or servant, or the Master / Chief Engineer of the vessel upon which the **Equipment** (or **Goods**) is located, shall be conclusive evidence that **XMH** has performed the **Services** to the satisfaction of the **Customer**. **XMH's** responsibility and liability for the **Services**, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, shall cease and be extinguished from the time the **Customer**, a person authorised by the **Customer**, the **Customer's** employee or servant, or the Master / Chief Engineer of the vessel upon which the **Equipment** is located, accepts and/or signs the service report.

6.4. Any dates specified by **XMH** for provision of the **Services** are intended to be an estimate only and time for delivery shall not be of the essence.

6.5. Where **XMH** is to perform the **Services** outside its premises, the **Customer** shall ensure safe access to the premises and the provision of adequate power, lighting, heating, safety equipment and other facilities, supplies, materials or equipment for **XMH's** employees, personnel, contractors, sub-contractors and/or agents in accordance with the demands of any applicable legislation and as **XMH** shall reasonably require. The **Customer** shall ensure that **XMH's** employees, personnel, contractors, sub-contractors and/or agents are informed of any safety regulations in force at the premises where the **Services** are to be performed.

6.6. In the course of carrying out the **Services** on the **Equipment**, the **Equipment** may have **Wearing Parts** and/or other components which may require replacement or renewal. The said replacement parts may be supplied by the **Customer** or, if requested by the **Customer**, by **XMH** for a price to be agreed. Unless otherwise agreed in writing, the **Customer** shall only use parts from the original brand or parts of the equivalent quality when carrying out the **Services** on the **Equipment**.

6.7. The **Customer** shall provide technical documentation (ie up to date drawings, descriptions, charts and instructions) in his possession which is necessary for carrying out the **Services**.



- 6.8. The **Customer** shall be responsible for the necessary daily care of the **Equipment** and warrants that, at the time **XMH** carries out the **Services**, the **Equipment** (apart from the part(s) / component(s) of the **Equipment** covered by the **Services**) is in good and proper working order. **XMH** is entitled to withhold provision of the **Services** if **XMH** is, in its absolute discretion, of the view that the **Customer** is in breach of this warranty. The **Customer** shall remain liable to pay for any costs and/or expenses incurred by **XMH** even though the **Services** have not been provided.
- 6.9. Without prejudice to Clause 6.3, **XMH's** responsibility for the **Services** shall cease immediately upon the **Customer**, its servants and/or agents and/or contractors, without **XMH's** consent, carrying out diagnostic work on the **Equipment**. This diagnostic work shall include but is not limited to the following :  
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- 6.9.1. Diagnosing the condition and functionality of the **Equipment** and/or component(s) and/or part(s) thereof ;
- 6.9.2. Making adjustments to the **Equipment** and/or component(s) and/or part(s) thereof ;
- 6.9.3. Replacement and renewal of any component(s) and/or part(s) of the **Equipment** ;
- 6.9.4. Cleaning and lubrication of the **Equipment** and/or component(s) and/or any part(s) thereof ; and/or
- 6.9.5. Remedying (or attempted remedying) of any fault or defect in the **Equipment** and/or component(s) and/or any part(s) thereof.
- 6.10. The **Services** will be deemed to be completed and the relevant element of the **Contract** price to be due and payable according to the terms of the **Contract** ;
- 6.10.1. When **XMH** issues a written notice to the **Customer** confirming such completion ; or
- 6.10.2. If **XMH** is available to perform the **Services** but is prevented from doing so by reason of :
- (i) the lack of relevant assistance and support from the **Customer** (such as lack of availability of test components or parts from the **Customer**) ; and/or
- (ii) the **Customer's** failure to provide the conditions stated at clause 6.5.
- 6.11. Where the **Services** are to be provided outside of Singapore, the following clauses will apply : -
- 6.11.1. The **Customer** shall give all necessary assistance to secure that **XMH's** employees, personnel, contractors, sub-contractors and/or agents will in good time, obtain visas and any official entry, exit or working permits and (if necessary) tax certificates required in the country where the **Services** are to be provided.
- 6.11.2. The **Customer** shall inform **XMH** of all necessary information concerning the local laws and regulations applicable to the **Services** to be provided.
- 6.11.3. The **Customer** shall inform **XMH** of all relevant safety regulations in force at the site where the **Services** are to be provided.
- 6.11.4. The **Customer** shall inform **XMH** of any special dangers which the provision of the **Services** may entail.
- 6.11.5. The **Customer** shall comply with all reasonable requests by **XMH** for the provision of additional safety measures against special dangers present in the country where the **Services** are to be provided.



- 6.11.6. In the event of accident or illness to **XMH's** employees, personnel, contractors, sub-contractors and/or agents who are deployed to provide the **Services**, the **Customer** shall assist **XMH** in obtaining the best available medical attention, hospital treatment and medicines, whether the accident or illness occurs in or outside working hours. If **XMH** considers it necessary to repatriate any of its deployed employees personnel, contractors, sub-contractors and/or agents on medical grounds or in the event of death, the **Customer** shall give **XMH** all reasonable assistance in arranging the persons return home or the transport of the deceased.
- 6.12. Clauses 6.12.1 to 6.12.5 are applicable only where the **Services** to be provided by **XMH** under the **Contract** are the commissioning of engine(s) or engine systems(s).
- 6.12.1. The attendance of **XMH's** authorised personnel for the commissioning of engine(s) or engine system(s) shall take place at date(s)/time(s) to be mutually agreed by the **Customer** and **XMH**.
- 6.12.2. The **Customer** is to ensure that the engine(s) or engine system(s) are installed, mounted, aligned and/or calibrated in accordance with the requirements provided by **XMH**. For the avoidance of doubt, **XMH's** pre-commissioning checklist is not a substitute for the manufacturer's instructions, recommendations, and/or guidelines on the installation, mounting, alignment and/or calibration of the engine(s) or engine system(s). **XMH** shall not be liable in contract and/or tort (including negligence or breach of statutory duty) for any loss or damage arising from a failure to install, mount, align and/or calibrate the engine(s) or engine system(s) adequately.
- 6.12.3. For the following categories of **Goods**, commissioning shall consist of : -
- 6.12.3.1. For Propulsion (based on factory test report parameters): Alignment check, dock trial, and sea trial.
- 6.12.3.2. For Genset (based on factory test report parameters): Test run of the genset with load bank. The required load bank, fuel and cables are to be provided by the **Customer** at the **Customer's** expense.
- 6.12.4. **XMH** may, at its sole discretion, decline to attend for the commissioning of the engine(s) or engine system(s) until the pre-commissioning checklist is adequately completed.
- 6.12.5. If the commissioning of the engine(s) or engine system(s) cannot be completed within the duration and/or in the number of trips specified in the **Contract** due to the improper installation, mounting, alignment, and/or calibration of the engine(s) or engine system(s), the **Customer** shall bear the costs of any additional trips required to complete the commissioning of the engine(s) or engine system(s).
- 6.12.6. In addition to whatever else is stated in clause 6.3, when the service report is signed by the persons described in clause 6.3, **XMH** shall be discharged of all responsibility and liability in relation to the **Goods**, whether in contract or tort (including negligence or breach of statutory duty), except for any warranty given by **XMH**.

## 7. Liability

- 7.1. Where the **Contract** is for the sale of engine(s) or engine system(s), clauses 7.3 and 7.4 shall not apply to the **Contract**.
- 7.2. Without prejudice to anything stated in these **STCs**, where a defect or failure is detected in the **Goods** that may cause damage to the **Equipment** (or any component(s) or any part(s) thereof), or to the **Customer's** property, or to the vessel upon which the **Equipment** is located, the **Customer** shall immediately inform **XMH** in writing and cease the use of the said **Goods** and/or the **Equipment**, failing which the **Customer** shall bear the risk of any damages howsoever arising resulting from his failure to so notify and/or to cease use of the **Goods** and/or the **Equipment**.



- 7.3. In addition to whatever else is stated in the **Contract**, **XMH** shall not be liable for the following whether in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise : -
- 7.3.1. Defects arising out of materials provided or a design stipulated or specified by the **Customer** ;
  - 7.3.2. Defects which arise from improper use of the **Goods** and/or the **Equipment**, use of the **Goods** and/or the **Equipment** outside the conditions of normal operations, or the failure of the **Customer** to follow **XMH's** instructions in relation to the use of the **Goods** and/or the **Equipment** (whether oral or in writing) ;
  - 7.3.3. Defects specifically excluded by **XMH** by written notice ; and / or
  - 7.3.4. Defects caused by faulty daily maintenance, incorrect installation, faulty repair, alterations, normal wear and tear, and/or deterioration of the **Goods** and/or the **Equipment**.
- 7.4. On receipt of the notice under clause 7.2, **XMH** shall at its own option, at its sole discretion and within a reasonable time investigate the alleged defect or failures in the said notice.
- 7.4.1. If **XMH** determines that the alleged defect or failure does exist is one which **XMH** is liable for, **XMH** shall at its own cost replace or repair the defective **Goods**, or make good such defect or failure in such **Goods** and/or **Services** within a reasonable time.
  - 7.4.2. If no defect or failure is found for which **XMH** is liable, **XMH** shall be entitled to compensation for the costs it has incurred as a result of the notice under clause 7.2.
  - 7.4.3. If the defect or failure can be remedied by replacement or repair of the defective **Goods** and if the dismantling and re-installation of the **Goods** do not require special knowledge, the **Customer** shall, at **XMH's** request and according to **XMH's** instructions, send the defective **Goods** to **XMH** or to a destination specified by **XMH**. Unless otherwise agreed, necessary transport of the **Goods** and/or parts thereof to and from **XMH** in connection with the remedying of defects for which **XMH** is liable shall be at the risk and expense of the **Customer**.
  - 7.4.4. **XMH** shall be discharged of its liability in respect of the defect or failure when (at **XMH's** option) it delivers duly repaired **Goods** or replacement **Goods** to the **Customer**, makes good such defect or failure in the **Goods** and/or the **Services**, or issues a credit note to the **Customer** in respect of the whole or part of the **Contract** price of such **Goods** as appropriate having taken back such **Goods**.
- 7.5. Where the **Contract** is for the sale of engine(s) or engine system(s) : -
- 7.5.1. **XMH** warrants that the **Goods** are free of substantial defects in workmanship and materials during the Warranty Period stated in the **Sales Quotation**, including any extensions to the Warranty Period agreed between the Parties (“the **Warranty**”). All conditions, warranties or other terms, whether express or implied (by statute or otherwise), inconsistent with this clause are hereby excluded to the fullest extent permitted by law. The **Warranty** may only be invoked by the **Customer** and shall not be transferable or assignable.
  - 7.5.2. For the avoidance of doubt, the **Warranty** will not apply where the defect complained of arises, whether in part or wholly, from improper installation/mounting/alignment/calibration of the **Goods**, normal wear and tear, accidental damage, lack of maintenance, wilful damage, and/or the **Customer's** negligence. The **Warranty** shall be voided upon unauthorised modifications and/or repairs being carried out to the **Goods**, use or operation of the **Goods** otherwise than as recommended by **XMH** or the manufacturer of the **Goods**, failure to follow **XMH's** or the manufacturer's instructions relating to the use or operation of the **Goods**, and/or, where commissioning services are included in the sale, operation of the **Goods** by persons (other than **XMH's** authorised personnel) before the commissioning process is completed.



- 7.5.3. **XMH** shall not be liable under the Warranty unless the **Customer** notifies **XMH** in writing pursuant to clause 7.2 within one (1) working day from the day when the defect first manifests.
- 7.5.4. The **Customer** shall, at its own expense, deliver the allegedly defective item to **XMH** at No. 55 Tuas Crescent #07-01, Singapore 638743, whereupon **XMH** shall investigate the complaint and remedy the defect through replacement or repairs (at **XMH's** option) if it is **XMH's** responsibility to do so under the **Warranty**. If **XMH** elects to remedy the defect through replacement or repairs, the **Customer** agrees that **XMH** may substitute parts of the **Goods** with new, reconditioned, rebuilt, or repaired parts (at **XMH's** option) in the course of remedying the defect. The **Warranty** shall not be extended by reason of any replacement of or repairs carried out to the **Goods**. The **Warranty** shall be the **Customer's** only remedy for any defect in workmanship or material in the **Goods** and **XMH** shall have no further liability in contract, negligence or otherwise. **XMH** is entitled to compensation for the costs incurred as a result of the **Customer's** complaint if no defect is found for which **XMH** is liable.
- 7.6. Unless otherwise stated in the **Contract**, the warranties set out in these **STCs** are the only warranties which shall be given by **XMH** and all warranties, conditions and other terms implied by statute, common law or equity are, to the fullest extent permitted by law, excluded from the **Contract**.
- 7.7. **XMH** shall not be liable for any damage to property, whether owned by the **Customer** or otherwise, caused by the **Goods** after it has been delivered.
- 7.8. The **Customer** shall indemnify, defend and hold **XMH** harmless from and against any liability for, or costs arising in connection with any claim by a third party as described in the preceding paragraph.
- 7.9. The **Customer** shall indemnify, defend and hold **XMH** harmless from and against any liability for, or costs arising in connection with any pollution which is due to the **Goods** or any act or omission in the supply of the **Goods** or provision of the **Services**.
- 7.10. Nothing in these **STCs** excludes or limits **XMH's** liability for :
- 7.10.1. Death or personal injury caused by **XMH's** negligence ;
  - 7.10.2. Fraud or fraudulent misrepresentation ;
  - 7.10.3. Breach of the terms implied by section 12 of the Sale of Goods Act [Cap. 393] ; or
  - 7.10.4. Breach of the terms implied by section 6(1) of the Hire-Purchase Act [Cap 125].
- 7.11. Unless otherwise stated in the **Contract**, **XMH** shall not be liable whether in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise in connection with the **Contract** for any :
- 7.11.1. Loss of profit ;
  - 7.11.2. Loss of production ;
  - 7.11.3. Loss of revenue ;
  - 7.11.4. Loss of business ; or
  - 7.11.5. Loss of anticipated savings ;
- in each case whether direct or indirect, or for any indirect, punitive, special or consequential loss or damage, howsoever arising.





- 7.12. Where the **Contract** is for the sale of engine(s) or engine system(s), notwithstanding anything stated in these **STCs**, unless suit is brought by the **Customer** against **XMH** within twelve (12) months from the date of delivery of the **Goods** and/or **Services**, any claim(s) by the **Customer** against **XMH** arising from the provision of **Goods** and/or **Services**, under the **Contract** and/or in tort and/or for any breach of duty, shall be extinguished and **XMH** shall be discharged from all liability whatsoever.
- 7.13. Apart from clause 7.12, and notwithstanding anything stated in these **STCs**, unless suit is brought by the **Customer** against **XMH** within three (3) months from the date of delivery of the **Goods** and/or **Services**, any claim(s) by the **Customer** against **XMH** arising from the provision of **Goods** and/or **Services**, under the **Contract** and/or in tort and/or for any breach of duty, shall be extinguished and **XMH** shall be discharged from all liability whatsoever
- 7.14. Unless otherwise agreed, in no circumstances shall the total liability of **XMH** for all claims hereunder (whether in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise) exceed the initially agreed price under the **Contract**. In the event that clause 4.9 applies, the total liability of **XMH** for all claims hereunder (whether in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise) shall not exceed the lower of the sums stipulated in clause 4.9 or clause 7.14.

## 8. Force Majeure

- 8.1. A “**Force Majeure Event**” means any event outside the reasonable control of either party affecting its ability to perform any of its obligations (other than payment) under the **Contract**, including act of God, fire, flood, lightning, compliance with any law or government order, rule, regulation or direction, war, revolution, act of terrorism, riot or civil commotion, strikes, lock outs and industrial action, failure of supplies of power, fuel, transport, equipment, raw materials, or other goods or services.
- 8.2. **XMH** shall not be liable to the **Customer** as a result of any delay or failure to perform its obligations under the **Contract** as a result of a **Force Majeure Event**.
- 8.3. If the **Force Majeure Event** prevents **XMH** from providing any of the **Services** and/or **Goods** for more than two (2) weeks, **XMH** shall, without limiting its other rights or remedies, be entitled to suspend or terminate the **Contract** immediately by giving written notice to the **Customer**.

## 9. Termination

- 9.1. For the purpose of Clause 9 only, where the **Customer** is a subsidiary within the meaning of section 5 of the Companies Act (Cap 50), any reference to “the **Customer**” in Clause 9.2 shall also include the entity or entities of which the **Customer** is a subsidiary.
- 9.2. **XMH** may immediately terminate the **Contract**, without payment of compensation or other damages caused to the **Customer** solely by such termination, by giving written notice to the **Customer** if any one or more of the following events happened :
  - 9.2.1. The **Customer** commits a material breach of any of its obligations ;
  - 9.2.2. The **Customer** fails to remedy, where it is capable of remedy, or persists in any breach of any of its obligations under the **Contract** (save as to payment) after having been required by **XMH** in writing to remedy or desist from such breach within a period of seven (7) days.
  - 9.2.3. The **Customer** suspends, or threatens to suspend, payment of its debts (whether principal or interest) or is deemed to be unable to pay its debts within section 254(2) of the Companies Act [Cap. 50].
  - 9.2.4. The **Customer** calls a meeting, gives a notice, passes a resolution or files an application, or an order is made, in connection with the winding up of the **Customer**.



- 9.2.5. The **Customer** has a receiver or administrative receiver appointed over all or any part of its assets or a person becomes entitled to appoint a receiver or administrative receiver over such assets.
- 9.2.6. A judicial manager is appointed over the **Customer** or an application is filed to appoint a judicial manager over the **Customer**.
- 9.2.7. The **Customer** takes any steps in connection with proposing a scheme of arrangement or a scheme of arrangement is passed in relation to it, or it commences negotiations with any or all of its creditors with a view to rescheduling any of its debts.
- 9.2.8. Any step is taken by a secured lender to obtain possession of the **Company's** property on which it has security or otherwise to enforce its security.
- 9.2.9. The **Customer** has any distress, execution or sequestration or other such process levied or enforced on any of its assets which is not discharged within seven (7) days of it being levied.
- 9.2.10. Any proceedings in any jurisdiction, to which the **Customer** is subject, are commenced against the **Customer** or any event happens in any such jurisdiction that has an effect equivalent or similar to any of the events in clauses 9.2.3 to 9.2.9.
- 9.2.11. The **Customer** ceases, or appears in the reasonable opinion of **XMH** likely or is threatening to cease, to carry on all or a substantial part of its business.
- 9.3. The termination of the **Contract** shall be without prejudice to the rights and remedies of either party which may have accrued up to the date of termination.
- 9.4. Upon termination of the **Contract** for any reason whatsoever :
  - 9.4.1. The **Customer** shall immediately pay to **XMH** all outstanding unpaid invoices and interest and, in respect of **Goods** and/or **Services** supplied but for which no invoice has yet been submitted, **XMH** shall submit an invoice, which shall be payable by the **Customer** immediately upon receipt.
  - 9.4.2. Subject to clause 11.2, the relationship of the parties shall cease as (and to the extent) expressly provide for in clause 11.3.
  - 9.4.3. Any provision which expressly or by implication is intended to come into or remain in force on or after termination shall continue in full force and effect.
  - 9.4.4. The **Customer** shall immediately return to **XMH** all of **XMH's** property in the **Customer's** possession at the date of termination including all confidential information, together with all copies of such confidential information and shall certify that it has done so, and shall make no further use of such confidential information.

#### **10. Restriction on Sales in Violation of Sanctions**

- 10.1. The **Customer** warrants that at the date of entering into this **Contract** and continuing until the purchase price is paid in full and delivery is accepted by the **Customer**:
  - 10.1.1. The **Customer** is not or will not be a **Designated Entity** ;
  - 10.1.2. The **Customer** is not subject to any sanctions, prohibitions, restrictions or designation imposed pursuant to United Nations Resolutions or trade or economic sanctions, laws or regulations of the European Union, United States of America or Singapore which prohibit or render unlawful any performance under this **Contract** ;



- 10.1.3. The **Customer** is not purchasing the **Goods** as agent, trustee or nominee of any **Designated Entity** or person within whom transactions are prohibited or restricted under any sanctions, prohibitions, restrictions or designation imposed pursuant to United Nations Resolutions or trade or economic sanctions, laws or regulations of the European Union, United States of America or Singapore ; and
- 10.1.4. The **Vessel** is not designated or part of a fleet designated under United Nations Resolutions or trade or economic sanctions, laws or regulations of the European Union, United States of America or Singapore.
- 10.2. If at any time during the performance of the **Contract**, **XMH** becomes aware that the **Customer** is in breach of warranty as aforesaid, **XMH** may terminate the **Contract** immediately by written notice to the **Customer** and comply with the orders or directions given by any regulatory or administrative body acting with powers to compel compliance.
- 10.3. Notwithstanding anything to the contrary in Clause 10, **XMH** shall not be required to do anything which constitutes a violation of the laws and regulations of any country to which **XMH** or the **Customer** is subject.
- 10.4. The **Customer** is liable to indemnify **XMH** against any losses, damages, fines, and/or expenses suffered by **XMH** resulting from any breach of warranty as stated in clause 10.1 or by reason of **XMH's** compliance with the orders or directions given by any regulatory or administrative body acting with powers to compel compliance.

## 11. Payment

- 11.1. The price for **Goods** shall be the price set out in the **Sales Quotation** or, if no price is stated, the price set out in **XMH's** price list prevailing on the date of delivery or deemed date of delivery of the **Goods**.
- 11.2. The price for the **Services** shall be the price set out in the **Services Quotation** or, if no price is stated, calculated according to the tariffs set out in **XMH's** field service rates (copy available upon request) prevailing at the date of completion or deemed completion of the **Services**.
- 11.3. The price for any **Services** does not include the cost of any **Goods** which are supplied (subject to the prior written agreement of the **Customer**) by **XMH** in the course of the performance of such **Services**, the price of which (unless otherwise agreed) shall be payable by the **Customer** when it is due to pay for the relevant **Services**.
- 11.4. The price for the **Goods** and/or **Services** shall be exclusive of any Goods and Services Tax or other similar taxes or levies, or any import and/or export taxes or duties.
- 11.5. Unless otherwise stated in **Contract** or in the invoice, the **Customer** shall pay all invoices in full and cleared funds free of bank charges, without any deduction, or withholding, within fourteen (14) days of the date of the invoice. Time for payment shall be of the essence.
- 11.6. The **Customer** shall make any payments due under the **Contract** without any deduction whether by way of set-off, withholding, counterclaim, discount, abatement or otherwise.
- 11.7. No indulgence granted by **XMH** concerning the **Customer's** payment obligations shall be or deemed to be a credit facility, or be taken to be any waiver of **XMH's** right to payment.
- 11.8. If any sum due from the **Customer** to **XMH** under the **Contract** or any other contract is not paid on or before the due date for payment then all sums then owing by the **Customer** to **XMH** shall become due and payable immediately and, without prejudice to any other right or remedy available to **XMH**, **XMH** shall be entitled (at its sole discretion) to :
- 11.8.1. Cancel or suspend its performance of the **Contract**.



- 11.8.2. Appropriate any payment made by the **Customer** to the payment of any particular invoice of part thereof, including but not limited to, interest charges, legal fees and other charges.
- 11.8.3. Require the **Customer** to pay for the **Goods** prior to their despatch or collection from **XMH's** place of business.
- 11.8.4. Charge the customer interest on the overdue amount both before and after any judgment at the prevailing overdraft interest rate of **XMH's** bank (accruing on a daily basis and compounded monthly).
- 11.9. **XMH** is entitled to be indemnified by the **Customer** for all expenses, legal fees and court costs on a solicitor and client basis, incurred by **XMH** to collect and obtain payment of any outstanding sums due from the **Customer** to **XMH**.

## 12. Assignment, Sub-Contracting and Third Party Rights

- 12.1. The **Contract** is personal to the **Customer**. The **Customer** shall not assign, delegate, subcontract, transfer, charge or otherwise dispose of all or any of its rights and responsibilities under the **Contract** without the prior written consent of **XMH**.
- 12.2. **XMH** may assign, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of its rights and responsibilities under the **Contract** at any time without the prior written consent of the **Customer**.
- 12.3. A person who is not a party to this **Contract** has no right under the **Contracts** (Rights of Third Parties) Act (Cap 53B) to enforce any term of this **Contract**.

## 13. General

- 13.1. **Intellectual Property** created by **XMH** in the course of the performance of the **Contract** or otherwise shall remain **XMH's** property. Nothing in the **Contract** shall be deemed to have given the **Customer** a licence or any other right to use any of the **Intellectual Property** of **XMH**.
- 13.2. Nothing in the **Contract** shall create or be deemed to create a partnership, or joint venture or relationship of employer and employee or principal and agent between the parties and no employee of the **Customer** shall be deemed to be or have become an employee of **XMH**.
- 13.3. The waiver by either party of any breach of the **Contract** shall not prevent the subsequent enforcement of that provision and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.
- 13.4. If at any time any part of the **Contract** is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from the **Contract** and the validity and/or enforceability of the remaining provisions of the **Contract** shall not in any way be affected or impaired as a result of that omission.
- 13.5. The **Contract** may be amended by written agreement between **XMH** and the **Customer**.
- 13.6. Any notice or other communication required to be given to a party under or in connection with the **Contract** shall be in writing. Notice by email is deemed to be in writing.

## 14. Law and Jurisdiction

- 14.1. The **Contract** and any issues, disputes or claims arising out of or in connection with it (whether contractual or non-contractual in nature) shall be governed by, and construed in accordance with, the laws of the Republic of Singapore. The United Nations Convention on Contracts for the International Sale of Goods and/or the Sale of Goods (United Nations Convention) Act shall not apply to the **Contract**. Notwithstanding the choice of law, **XMH's** right to apply and assert a maritime lien or any other lien and/or right to arrest or detain the **Vessel** in any jurisdiction is expressly preserved.



- 14.2. Subject to clause 14.3, any dispute arising out of or in connection with the **Contract**, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("**SIAC Rules**") for the time being in force, which rules are deemed to be incorporated by reference in this clause. The language of the arbitration shall be English. The Tribunal shall consist of three (3) arbitrators where the **Contract** is for the sale of engine(s) or engine systems(s) and one (1) arbitrator for all other cases.
- 14.3. Where the quantum of **XMH's** claim against the **Customer** is below SGD 20,000 or the equivalent value in other currencies, the **Customer** irrevocably submits to the exclusive jurisdiction of the Small Claims Tribunal as constituted under the Small Claims Tribunal Act [Cap 308], but **XMH** may (at its sole discretion) pursue proceedings against the **Customer** in arbitration as stated at clause 14.2.