

CATHELCO LIMITED
STANDARD TERMS AND CONDITIONS

1. INTERPRETATION

1.1 The following definitions and rules of interpretation apply in these terms and conditions ("the Conditions"):-

Authorised Person: any director of Cathelco.

Buyer: the person, firm or company who purchases the Goods from Cathelco.

Cathelco: Cathelco Limited, a company registered in England and Wales under registered company number 562740 and whose registered address is 18 Hipper Street South, Chesterfield, Derbyshire, S40 1SS United Kingdom.

Commercial Arbitration: an arbitration process conducted by (and in accordance with the rules of) the London Court of International Arbitration:-

- i) consisting of one arbitrator;
- ii) taking place in London;
- iii) conducted in the English language; and
- iv) seated in England

Contract: any contract between Cathelco and the Buyer for the sale and purchase of the Goods incorporating the Conditions.

Date of Commissioning: the date that the vessel to which the Goods have been fitted is completed and the commissioning report has been signed. In the case of retrospective fittings on vessels that are already operating, the Date of Commissioning will be the date upon which either the fitting is completed or (in the event that the vessel is in dry dock during fitting) the vessel is returned to the water.

Delivery Documents: means the delivery receipt, bill of lading, airway bill or such other document as specified in the Contract as to be passed to the Buyer on delivery as receipt of delivery.

Delivery Point: such location as is specified in the order confirmation issued by Cathelco or as advised by the Buyer.

Goods: any goods agreed in the Contract to be supplied to the Buyer by Cathelco (including any part or parts of them).

Incoterms: Incoterms 2000 as published by the International Chamber of Commerce.

Intellectual Property Rights: all copyright, database rights, topography rights, design rights, trade marks, patents, domain names and any other intellectual property rights of a similar nature (whether or not registered) subsisting anywhere in the world in or associated with the Goods.

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and in the plural include the singular.

2. APPLICATION OF TERMS

2.1 Subject to any variation under Condition 2.2, the Contract shall be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document) other than those specified by Cathelco in their quotation.

2.2 These Conditions apply to all Cathelco's sales and any variation to these Conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by an Authorised Person. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Cathelco which is not set out in the Contract. Nothing in this Condition shall exclude or limit Cathelco's liability for fraudulent misrepresentation.

2.3 Each order or acceptance of a quotation for Goods by the Buyer from Cathelco shall be deemed to be an offer by the Buyer to buy Goods subject to these Conditions. No order placed by the Buyer shall be deemed to be accepted by Cathelco until a written acknowledgement of order is issued by Cathelco or (if earlier) Cathelco delivers the Goods to the Buyer.

2.4 Any quotation is given on the basis that no Contract shall come into existence until Cathelco despatches an acknowledgement of order to the Buyer.

3. DESCRIPTION/PRICE

3.1 Subject to Condition 3.4 below, the quantity, description and price of the Goods shall be as set out in Cathelco's quotation or acknowledgement of order subject to availability.

3.2 The Buyer shall ensure that the terms of its order and any specifications are complete and accurate. The specification shall include the waters that the vessel will operate in as well as a full specification of the vessel to which the Goods will be fitted along with any such other details or information requested by Cathelco.

3.3 Unless the quotation specifies otherwise, all quoted prices for Goods are inclusive of packing, but exclusive of carriage, insurance, VAT and all other duties, fees and taxes.

3.5 All samples, drawings, descriptive matter, specifications and advertising issued by Cathelco (other than those provided in the written quotation provided by Cathelco) and any descriptions or illustrations contained in Cathelco's catalogues, brochures or website are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract.

4. DELIVERY

4.1 Delivery of the Products shall take place at the Delivery Point. Acceptance of any change to the Delivery Point requested by the Buyer shall be at Cathelco's sole discretion and the Buyer shall be liable for any additional expenses incurred by Cathelco as a result of such change. Cathelco shall arrange for suitable transport to the Delivery Point.

4.2 On delivery Cathelco (or its appointed carrier) shall where necessary provide the Buyer with any UK licence required for the export of the Goods along with Delivery Documents.

4.3 Any dates specified by Cathelco for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice unless otherwise agreed in writing by Cathelco. If no dates are so specified, delivery shall be within a reasonable time taking into account all relevant factors (including without limitation the distance and chosen method of delivery). The Buyer shall take delivery of the Goods on receipt of adequate notice from Cathelco (being not less than 4 days) that the Goods are ready for delivery.

4.4 Cathelco may deliver the Goods by separate installments unless otherwise stipulated on the Purchase Order. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract. Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

4.5 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or Cathelco is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:

- (a) risk in the Goods shall pass to the Buyer (including for loss or damage caused by Cathelco's negligence);
- (b) the Goods shall be deemed to have been delivered; and
- (c) Cathelco may store the Goods until the Buyer takes possession of the Goods, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

4.6 Unless agreed otherwise in the quotation (including by way of reference to a relevant Incoterm) the Buyer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for unloading the Goods.

4.7 The Buyer shall examine the Goods as soon as reasonably practicable after delivery and shall immediately notify Cathelco of any incomplete or failed delivery or any loss or damage during carriage. Unless the Buyer so notifies Cathelco within 30 days after the date at which the Buyer became or ought reasonably to have become aware of the incomplete or failed delivery or loss or damage to the Goods during carriage, the Buyer will be treated as having waived all claims connected with the matter.

4.8 Where the Buyer has entered into more than one Contract with Cathelco failure to deliver the Goods under this Contract will not affect the Buyer's obligation to comply with the terms of any other contracts.

5. IMPORT AND EXPORT LICENCES

If appropriate, Cathelco undertakes to obtain any UK licence required for the export of the Goods from the UK by Cathelco. The Buyer shall comply with any such licence and shall obtain and comply with all other necessary licences, permits and consents. If required by Cathelco, the Buyer shall make any such licences or consents available to Cathelco prior to delivery.

6. RISK/TITLE

6.1 The Goods are at the risk of the Buyer from the time of delivery. The condition and security of the Goods from the date of delivery to the Date of Commissioning is the sole responsibility of the Buyer.

6.2 Ownership of the Goods shall not pass to the Buyer until Cathelco has received in full (in cash or cleared funds) all sums due to it in respect of the Goods and all other sums which are or which become due to Cathelco from the Buyer on any account. Cathelco shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from Cathelco.

6.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:

- (a) hold the Goods on a fiduciary basis as Cathelco's bailee;
- (b) store the Goods (at no cost to Cathelco) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as Cathelco's property;
- (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- (d) maintain the Goods in satisfactory condition and keep them in a safe and secure manner.

6.4 The Contract and the Buyer's right to possession of the Goods shall terminate immediately if:

- (a) the Buyer commits a breach of any term of any Contract and (if the breach is capable of remedy) fails to remedy it within 30 days after receipt of notice in writing requiring it to do so; or
- (b) the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction) or an encumbrancer takes possession or a receiver is appointed of any of the property or assets of the Buyer, or the Buyer ceases, or threatens to cease, to carry on business; or
- (c) any event analogous to those described in condition 6.4(b) which occurs in relation to the Buyer in any jurisdiction in which the Buyer is incorporated, resident or carries on business.

6.5 The Buyer grants Cathelco, its agents and employees an irrevocable licence to enter any of its premises or vessels where the Goods are or may be stored in order to recover Goods when the Buyer's right to possession of the Goods has terminated.

6.6 On termination of the Contract, howsoever caused, Cathelco's rights contained in this Condition 6 shall remain in effect.

7. PAYMENT

7.1 Subject to Conditions 7.2 and 7.5 and unless otherwise agreed in writing in accordance with Condition 2.2, invoices shall be settled within 30 days of the date of the invoice and time for payment shall be of the essence.

7.2 Should Cathelco stipulate a requirement for security for payment before dispatch of the Goods, Cathelco shall have the right to withhold delivery of the Goods until such security has been received.

7.3 No payment shall be deemed to have been received until Cathelco has received cleared funds in the currency stated on the invoice. In the event of any failure to pay Cathelco any sum due pursuant to the Contract and without prejudice to any other remedies available to Cathelco under the Conditions, the Buyer shall be liable to pay interest to Cathelco at 6% above HSBC Bank Plc base rate for the time being per annum accruing on a daily basis until payment is made, whether before or after judgement.

7.4 All payments payable to Cathelco under the Contract shall become due immediately on its termination despite any other provision.

7.5 All payments under the Contract are due in full without deduction by way of set-off, counterclaim, discount, or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by Cathelco to the Buyer.

7.6 Where the Buyer has entered into more than one contract with Cathelco, failure to pay Cathelco any sum due pursuant to the Contract will entitle Cathelco to terminate all other contracts with and/or suspend any deliveries to the same Buyer and seek payment of all outstanding sums.

7.7 The Buyer shall indemnify Cathelco against all costs, charges and expenses (including legal costs) incurred by Cathelco in recovering sums owing by the Buyer (including but not limited to seizure of vessels).

8. QUALITY

8.1 Cathelco warrants that (subject to the other provisions of the Conditions) the Goods will conform in all material respects to the specification provided by the Buyer in accordance with Condition 3.2. Cathelco further provides a one year warranty applying to all Cathelco systems but excluding all consumable items. The warranty period starts from the delivery date. Consumable items are not included in the warranty unless they fail before their recommended operating period. The condition and security of the equipment from the date of receipt to the date of commissioning is the sole responsibility of the purchaser. All other warranties or conditions (whether express or implied) as to quality, condition, description, compliance with sample or fitness for purpose (whether statutory or otherwise) other than those expressly set out in this agreement are excluded from this agreement to the fullest extent permitted by law.

8.2 Cathelco shall not be liable for a breach of the warranty in Condition 8.1 unless the Buyer gives written notice of the defect to Cathelco within 30 days of the date of which the Buyer became or ought reasonably to have become aware of the breach and Cathelco is given a reasonable opportunity after receiving the notice to examine such Goods. The Buyer shall as far as possible preserve the Goods for inspection by Cathelco.

8.3 Cathelco shall not be liable for a breach of the warranty in Condition 8.1 if:

- (a) the Buyer makes any further use of such Goods after giving such notice; or
- (b) the Buyer alters or repairs such Goods without the written consent of Cathelco; or
- (c) the defect was caused in any way by the Buyer's failure to provide a full and accurate specification of the vessel that the Goods would be applied to and/or the waters that the Goods would be used in (as required by Condition 3.2); or
- (d) the defect was caused in any way by the Buyer's failure to follow good trade practice or the Cathelco's oral or written instructions as to storage, installation, use or maintenance of the Goods.

8.4 Subject to Conditions 8.2 and 8.3, if any of the Goods do not conform with the warranty in Condition 8.1, Cathelco shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if requested, the Buyer shall return the Goods to Cathelco.

8.5 If Cathelco complies with Condition 8.4 (or if Cathelco's reasonable attempts to comply with its preferred remedy under Condition 8.4 are obstructed by the Buyer), Cathelco shall have no further liability for a breach of the warranty in Condition 8.1 in respect of such Goods.

8.6 Where Goods are returned to Cathelco, Cathelco will accept no responsibility for the condition of the Goods received from the Buyer. It is the responsibility of the Buyer to ensure that the packing is sufficient to protect the Goods during transit. The Buyer will be required to pay for the replacement of Goods received which are damaged beyond economical repair or for repairs where such damage is caused by transit.

9. INSTALLATION AND TESTING

9.1 It is the sole responsibility of the Buyer to ensure that the Goods are installed correctly and in compliance with Cathelco's instructions. Cathelco can accept no responsibility for any damage or loss to Goods or otherwise arising as a result of incorrect installation. The conditions of warranty may be extended if the installation is supervised by a Cathelco approved engineer but any such extensions of warranty must be agreed in writing and signed by an Authorised Person. The supervision will not apply to the structural applications involving preparation, cutting or welding of the vessel for the purposes of mounting and securing the installed equipment.

9.2 Cathelco accepts no responsibility for testing and commissioning unless it is carried out by a Cathelco-approved engineer. In such cases, Cathelco warrants that the engineer will exercise reasonable care and skill within the meaning of the Supply of Goods and Services Act 1982. This warranty will run for one year from the Date of Commissioning where the Cathelco-approved engineer has signed the commissioning report and it has also been countersigned by a recognised representative of the shipyard.

10. LIMITATION OF LIABILITY – THE BUYER'S ATTENTION IS PARTICULARLY DRAWN TO THE CONTENTS OF THIS CONDITION

10.1 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

10.2 Nothing in the Conditions excludes or limits the liability of Cathelco:

- (a) for death or personal injury caused by Cathelco's negligence; or
- (b) under section 2(3) or any other applicable section under the Consumer Protection Act 1987; or
- (c) for any matter which it would be illegal for Cathelco to exclude or attempt to exclude its liability; or
- (d) for fraud or fraudulent misrepresentation.

10.3 The Buyer will not be entitled to claim any damages in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising from the performance or contemplated performance of the Contract unless they have first given notice of the claim to Cathelco in compliance with Condition 8.2.

10.4 Subject to Conditions 10.1 and 10.2:-

(a) Cathelco's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the total cost of the Goods; and

(b) Cathelco shall not be liable to the Buyer for:-

- i) any indirect, special or consequential loss or damage; or
- ii) loss of data or other equipment or property; or
- iii) economic loss or damage; or
- iv) incurring of liability for loss or damage of any nature whatsoever suffered by third parties (including in each case incidental and punitive damages); or
- v) any loss of actual or anticipated profit, interest, revenue, anticipated savings or business or damage to goodwill even if Cathelco is advised in advance of the possibility of any such losses or damages.

The Buyer acknowledges and agrees that the price of the Goods reflects the limitations of liability contained in the Contract.

11. INTELLECTUAL PROPERTY

11.1 The Buyer acknowledges that:

(a) the Intellectual Property Rights are Cathelco's (or its licensor's) property;

(b) nothing in this Contract shall be construed as conferring any licence or granting any rights in favour of the Buyer in relation to the Intellectual Property Rights; and

(c) any reputation in any trade marks affixed or applied to the Goods shall accrue to the sole benefit of Cathelco or any other owner of the trade marks from time to time.

11.2 The Buyer shall not remove any copyright notices, confidential or proprietary legends or identification from the Goods save for any removal which is a necessary result of an installation process.

11.3 The Buyer shall not use or seek to register any trade mark or trade name (including any company name) which is identical to, confusingly similar to or incorporates any trade mark or trade name which Cathelco or any of its associated companies own or claim rights to anywhere in the world.

11.4 The Buyer shall promptly and fully notify Cathelco of:

(a) any actual, threatened or suspected infringement of any Intellectual Property Rights which comes to the Buyer's notice; and

(b) any claim by any third party that comes to the Buyer's notice that the sale or advertisement of the Goods infringes the rights of any person.

11.5 The Buyer agrees (at Cathelco's request and expense) to do all such things as may be reasonably required to assist Cathelco in taking or resisting any proceedings in relation to any infringement or claim referred to in Condition 11.4.

11.6 On termination of the Contract howsoever caused Cathelco's rights contained in this Condition 11 shall remain in effect.

12. FORCE MAJEURE

Cathelco shall not be liable for any delay in performing or failure to perform any of its obligations under this Contract if such delay or failure results from events or circumstances outside its reasonable control which shall include (without limitation): natural disasters; war; terrorism; accidents; explosions; incidents; breakdown of equipment or machinery; sabotage; strikes or other labour disturbances (regardless of the reasonableness of the demands of labour); acts or omissions of government; port congestions; and shortage of supplies or labour. Such delay or failure shall not constitute a breach of this Contract and the time for performance shall be extended by a period equivalent to that during which performance is so prevented or a period of 21 days, whichever is the shorter, after the expiry of which the Buyer shall be entitled to give notice in writing to Cathelco to terminate the Contract with respect to any Goods undelivered at that time.

13. SEVERANCE

13.1 If any Condition (or part of a Condition) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other Conditions will remain in force.

13.2 If any invalid, unenforceable or illegal Condition would be valid, enforceable or legal if some part of it were deleted, that Condition will apply with whatever modification is necessary to make it valid, enforceable and legal.

13.3 The parties agree, in the circumstances referred to in Condition 13.1 to substitute for any invalid, unenforceable or illegal Condition a valid, enforceable and legal Condition which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable Condition.

14. WAIVER

Failure or delay by Cathelco in enforcing or partially enforcing any term of the Contract shall not be construed as a waiver of any of its rights under the Contract. Any waiver by Cathelco of any breach of, or any default under, any term of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

15. THIRD PARTIES

15.1 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it. This Condition 15.1 does not affect any right or remedy of any person that exists or is available otherwise than pursuant to that Act.

15.2 Each party shall promptly notify the other of any claims brought or contemplated by third parties in relation to the Contract or the particular Goods sold hereunder and shall comply with the other's reasonable requirements to minimise and/or avoid any further liability and shall allow the other conduct of any action and/or settlement on reasonable terms.

16. ASSIGNMENT

Cathelco may assign the Contract or any part of it without the prior written consent of the Buyer. The Buyer shall not assign this Contract or any rights hereunder in whole or in part to any third party without the prior written consent of an Authorised Person.

17. LAW, JURISDICTION AND DISPUTES

17.1 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law. The parties submit to a final resolution of any dispute by Commercial Arbitration rather than through the English Courts. For the avoidance of doubt, the United Nations Convention on the International Sale of Goods shall not apply to this Agreement.

17.2 Nothing in this Condition 17 shall limit the right of Cathelco to take proceedings against the Buyer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

17.3 Incoterms shall apply to the Contract but where they conflict with the Contract, the Contract shall prevail.

17.4 Subject to Condition 17.1, any disputes that cannot be resolved between the parties must be referred to Commercial Arbitration within one year of either (i) the date of this Contract, or (ii) the end of the warranty period as defined in Condition 8.3, whichever is the later.

18. COMMUNICATIONS

18.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post (or airmail if sent from outside the UK) or sent by fax or e-mail:

(a) (in case of communications to Cathelco) to the Sales Team at Cathelco's registered office; or

(b) (in the case of the communications to the Buyer) to any address of the Buyer as shall be notified to Cathelco by the Buyer.

18.2 Communications shall be deemed to have been received:-

(a) if delivered by hand, at the time of delivery;

(b) if posted first-class within the United Kingdom, 48 hours after posting;

(c) if posted by airmail, five days after the date of posting; and

(d) if sent by fax or e-mail on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.