

## 1. DEFINITIONS

In these Conditions, the following terms have the following meanings:

**Agreement:** any written agreement between the Parties regarding the Solutions which attaches, refers to or otherwise incorporates these Conditions.

**Cloud Service:** any cloud-based service to be provided by Supplier to Customer under the Contract which shall be delivered online and hosted and managed by or on behalf of Supplier.

**Conditions:** these terms and conditions.

**Contract:** the contract between the Parties for the supply of the Solutions including these Conditions, together with any Quotation, accepted Order and/or any Agreement, as well as any attachments and exhibits, specification, additional terms and other information, physically or digitally attached or incorporated by reference thereto.

**Customer:** the contracting party which agrees to purchase the Solutions from Supplier under the Contract.

**Documentation:** any document(s) made available to Customer by Supplier which sets out a description of the Solutions and the user instructions for the Solutions.

**Equipment:** any hardware products supplied by Supplier to Customer in connection with the Solutions.

**IPR:** means all patents, rights to inventions, copyright and related rights, trade marks, domain names, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, data and database rights, confidential information (including know-how and trade secrets), and all other intellectual property rights and similar or equivalent rights which subsist or will subsist now or in the future in any part of the world;

**Licensed Software:** a copy of any Software which is delivered and licensed by Supplier to Customer pursuant to the Contract and which shall be hosted and managed by Customer on its vessel or other premises, including software embedded in hardware or otherwise installed in Customer's systems.

**Order:** an order placed by Customer with Supplier for the Solutions.

**Parties:** Supplier and Customer, and **"Party"** means either one of them as applicable.

**Quotation:** a quotation provided by Supplier to Customer for the supply of the Solutions.

**Service Term:** if applicable to the Solutions, the initial term and any applicable renewal term agreed in the Contract.

**Software:** means any software programs which form part of the Licensed Software and/or Cloud Service included in the Solutions.

**Solutions:** the digital products and services, including any Software and/or Cloud Service as applicable, to be provided by Supplier to Customer under the Contract.

**Supplier:** means the legal entity which is party to the Contract as supplier of the Solutions.

**Supplier Affiliate:** any other company within Supplier's group of companies;

**Support Services:** any support, maintenance, advisory or other services ancillary to the Solutions to be provided by Supplier to Customer under the Contract (if applicable);

**Users:** those individuals authorized by or on behalf of the Customer to use the Solutions.

**User Terms:** the terms of use which each User must accept prior to using the Solutions (if applicable).

## 2. BASIS OF CONTRACT, ORDERS & PRECEDENCE OF THE CONDITIONS

- (a) These Conditions apply to the provision of the Solutions by Supplier to the exclusion of all other terms and conditions which Customer may seek to impose or incorporate in any order or similar document or by trade, custom, practice or course of dealing.
- (b) All Quotations shall be subject to these Conditions and unless otherwise stated or unless withdrawn by Supplier shall be valid for a period of sixty (60) days from the date of the Quotation. The Quotation is not an offer to proceed, and the Customer shall place an Order with Supplier.
- (c) Any Order constitutes an offer by Customer to purchase the Solutions in accordance with these Conditions. An Order shall only be deemed to be accepted when Supplier issues an acceptance of the Order or starts to fulfil it (whichever is earlier), at which point the Contract shall come into

existence. Once accepted by Supplier no Order can be amended or cancelled except with Supplier's prior written approval and upon such terms as Supplier may require.

- (d) In case of conflict between these Conditions and the terms of an Agreement and/or an Order and/or a Quotation, the order of priority shall be, as applicable: (i) Agreement; (ii) Quotation (iii) any other documents forming part of the Contract (other than these Conditions and an Order); (iv) Conditions, and (v) Order (if accepted by Supplier).

## 3. PROVISION OF THE SOLUTIONS

- (a) Supplier will supply the Solutions as set out in the Contract and generally in accordance with the Documentation. Supplier reserves the right to amend the Solutions and/or Documentation without liability to Customer if required by any applicable statutory or regulatory requirements. In addition, Supplier may develop and update the Solutions and/or Documentation from time to time and Supplier shall not be liable in such cases except where the variation is materially adverse to Customer.
- (b) Supplier will supply the Support Services (if applicable) in accordance with the Contract. The Supplier is not liable for any decisions, acts, omission or work carried out or assistance provided by the Customer or by any third party, even though carried out with actual or attributable assistance or knowledge of the Supplier or based on any recommendation provided as part of the Solutions or Support Services.
- (c) Unless covered in the Agreement or other part of the Contract, any sale of Equipment by Supplier to Customer shall be subject to Supplier's General Terms and Conditions of Contract - Marine which are available at <https://www.nacosmarine.com/legal#GTCs> or on request. If there is any conflict between any parts of these Conditions and the applicable terms in respect of the sale of Equipment, the applicable Equipment terms shall prevail to the extent that there is a conflict.

## 4. SOFTWARE TERMS, RIGHTS GRANTED & RESTRICTIONS

### (a) Licensed Software

Subject to Customer's compliance with these Conditions, Supplier grants Customer a non-exclusive, worldwide license to use the Licensed Software in connection with the normal and proper use of the Solutions pursuant to the terms of the Contract. Customers may make copies of the Licensed Software only where essential for its lawful operation or for necessary back-up purposes.

### (b) Cloud Service

If any Cloud Service forms part of the Solutions, then, subject to the Customer's compliance with these Conditions, Customer may access and use the Cloud Service for the duration agreed by the parties in the Contract. During the term of the Contract, Supplier may make changes and updates to the Cloud Service at its sole discretion except where any variation is materially adverse to the Customer.

### (c) Scope of Use and Restrictions

- (i) Except as expressly stated in this clause 4, Customer shall not (nor allow its Users or any other parties to) copy, adapt, modify, create derivative works from, reverse-engineer, disassemble, decompile or otherwise attempt to derive the source code of any Software.
- (ii) Unless otherwise stated in the Contract, the supply of Software does not include updates, upgrades, maintenance, support or other additional services and any such items shall be subject to separate written agreement and additional cost.
- (iii) Customer shall not have any title to or ownership of the Software.
- (iv) The use of the Software may be subject to separate User Terms as updated from time to time by Supplier.
- (v) Where the Software includes any third-party software, its use shall be subject to any separate license terms of the third party.

### (d) Distribution of Solutions

- (i) Any onward supply of the Licensed Software or Cloud Service to Customer's customers or other end users, shall be subject to the applicable terms of the Contract and these Conditions (or substantially equivalent terms), and Customer shall procure that each such customer or end user accepts such terms before using the Solutions.
- (ii) Customer shall make no representations or warranties regarding the Software, to Customer's customers or any other third party, from or on behalf of Supplier, and Customer shall not create or purport to create any obligations or liabilities for Supplier. Supplier will have no

obligation to provide support or other services or remedies to Customer's customers or other end users.

## 5. OWNERSHIP

- (a) Supplier, or its licensors, retain all ownership and IPR to the Solutions, the Software and the Documentation. Supplier retains all ownership and IPR in anything developed and delivered by Supplier under the Contract.
- (b) If third party technology is appropriate or necessary for use with the Solutions, Customer's right to use such third-party technology is governed by the terms of the third-party technology license agreement.
- (c) Customer may not (and shall procure that its Users shall not) without Supplier's written agreement:
  - (i) remove or modify any Software markings or any notice of Supplier's or its licensors' proprietary rights; or
  - (ii) license, sell, rent, lease, transfer, assign, distribute, or otherwise commercially exploit or make the Solutions, Software or materials available, to any third party other than as expressly permitted under the terms of the Contract or otherwise agreed in writing by Supplier.
- (d) The rights granted to Customer under the Contract are also conditional on the following:
  - (i) if applicable, the rights of any specified User licensed to use the Solutions (e.g. on a "named user" basis) cannot be shared or used by more than one individual (unless such license is reassigned in its entirety to another authorized user, in which case the prior authorized user shall no longer have any right to access or use the license); and
  - (ii) Customer agrees to make all reasonable efforts to prevent unauthorized third parties from accessing the Solutions.

## 6. WARRANTIES, DISCLAIMERS and EXCLUSIVE REMEDIES

- (a) Warranty
  - (i) Subject to 6(b), Supplier warrants that (A) the Licensed Software shall not contain any material non-conformance with Supplier's technical specification for such software for a period of one (1) year after delivery and (B) the Cloud Service will perform substantially in accordance with the Contract and Documentation for the duration of the applicable term provided in the Contract.
  - (ii) To the extent that any defect which is the responsibility of Supplier prevents the Licensed Software or Cloud Service from operating in accordance with the foregoing warranty in this clause 6(a), Supplier will use commercially reasonable efforts to correct the defect within a reasonable period. If the problem cannot be corrected, Supplier will in its sole discretion either replace the Licensed Software or Cloud Service, or install a new release or update, which constitutes the Customer's sole and exclusive remedy for any breach of the warranty.
- (b) Warranty Exclusions and Disclaimers
  - (i) The warranty at 6(a) shall not apply to the extent of any non-conformance which is caused by the use of the Solutions contrary to the Supplier's instructions, or modification or alteration of the Solutions by any party other than the Supplier or the Supplier's duly authorized contractors or agents.
  - (ii) Supplier does not guarantee that the Solutions will be performed error-free, virus-free, free from vulnerabilities or uninterrupted, or that Supplier will correct all service errors.
  - (iii) Customer acknowledges that Supplier does not control the transfer of data over communications facilities, including the internet, and that the solutions may be subject to limitations, delays and other problems inherent in the use of such communications facilities. The supplier is not responsible for delays, delivery failures or other damage resulting from such problems.
  - (iv) To the maximum extent permitted by applicable law, Customer accepts the Software "as is" and as available. Except as expressly provided in the Contract, to the extent not prohibited by law, these warranties are exclusive and there are no other express or implied warranties or conditions including for satisfactory quality, merchantability, fitness for a particular purpose, accuracy, completeness, operability and interoperability, cyber security.
  - (v) If the Parties agree that Customer may use the Solutions for trial purposes, such use shall be subject to the terms and conditions of the Contract, provided that Supplier does not offer any warranties for such use.

## 7. IPR INDEMNIFICATION

- (a) If any third-party claims that the Solutions or any part thereof infringes its IPR, Supplier will defend Customer and itself against all such claims and will be fully responsible for the cost of the defense, and any reasonable cost or liability caused to Customer as a result thereof provided that the provisions of this clause 7(a) are subject to the following:

- (i) Supplier is given prompt notice of any such claim.
  - (ii) Customer provides reasonable co-operation to Supplier in the defence and settlement of such claim, at Supplier's expense; and
  - (iii) The supplier is given sole authority to defend or settle the claim.
- (b) In the defence or settlement of any claim, Supplier has the right to decide the course of action, which may include procuring the right for Customer to continue using the Solutions, replacing or modifying the Solutions so that they become non-infringing or, if such remedies are not reasonably available, terminating the Contract on immediate notice to Customer without any additional liability or obligation to pay liquidated damages or other additional costs to Customer.
  - (c) In no event shall Supplier, its employees, agents and subcontractors be liable to the Customer to the extent that the alleged infringement is based on any act or omission of Customer including but not limited to:
    - (i) a modification of the Solutions or Documentation by anyone other than the Supplier.
    - (ii) combination of the Software with any product not approved by Supplier.
    - (iii) Customer's breach of this Contract.
    - (iv) Customer's use of the Solutions or Documentation in a manner contrary to any instructions given to the Customer by Supplier.
    - (v) Customer's use of the Solutions or Documentation after notice of the alleged or actual infringement from Supplier or any appropriate authority.
    - (vi) Supplier's modification of Licensed Software in compliance with specifications provided by Customer; or
    - (vii) failure of the Customer to implement updates provided by Supplier.
  - (d) The foregoing provisions of this clause state Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any IPR.

## 8. RESTRICTIONS ON THE USE OF THE SOLUTIONS

The customer agrees (and shall procure that its Users agree) not to use or permit use of the Solutions for any purpose that may (a) constitute an infringement of IPR or other proprietary rights, or (b) otherwise violate applicable laws or regulations. In addition to any other rights afforded to Supplier under the Contract, Supplier reserves the right to remove or disable access to any material that violates the foregoing restrictions. Supplier shall have no liability to Customer if Supplier takes such action. Customer agrees to defend and indemnify Supplier against any claim arising out of a violation of Customer's (and its Users') obligations under this clause.

## 9. CUSTOMER ACKNOWLEDGEMENTS & OBLIGATIONS

Customer acknowledges and agrees that:

- (a) it shall provide Supplier with all necessary co-operation and provide Supplier without charge all access, information, authorizations and facilities necessary and/or requested by Supplier to enable Supplier to provide the Solutions, investigate any potential faults in the Solutions and verify compliance with the Contract.
- (b) it shall use the Solutions in accordance with all applicable laws and regulations, the Documentation, User Terms and all reasonable instructions issued by Supplier.
- (c) it shall ensure compliance with the Contract and User Terms by third parties who make use of the Solutions and shall be liable under the Contract for the acts and omissions of third parties as if they were Customer's acts omissions.
- (d) it shall notify Supplier of any defect in the Solutions immediately in case of emergencies or urgent situations and, for all other cases, as soon as possible but no later than 10 days of it becoming apparent.
- (e) except as otherwise expressly provided in the Contract, Customer is solely responsible for procuring, maintaining and securing adequate network connections and telecommunications links to enable the Solutions and shall allow the Solutions to pass its firewalls, and Customer is solely responsible for all problems, delays, delivery failures and all other loss or damage arising from or relating to Customer's network connections or telecommunications links or caused by the internet;
- (f) except as otherwise expressly agreed in the Contract, Supplier shall not be responsible for (i) the integration of the Solutions with other software, systems or equipment or (ii) protection of Customer's equipment, software or systems against cyber security threats.
- (g) The customer is responsible for all usage and costs of communications and data in the use of the Solutions.

- (h) In connection with the Solutions, Supplier may provide certain technical advice and technical recommendations to Customer. Any technical advice and technical recommendations related to the operation of Customer's vessels or other premises are provided by Supplier only as an aid to Customer's decision making. The safe voyage planning, navigation, maneuvering, operation and monitoring of and instructions and advice given to the Customer vessels or other premises are dependent on human skill and judgement and are the responsibility of the relevant appropriately qualified personnel responsible for such tasks in accordance with all applicable laws, regulations and best practices. Accordingly, NACOS will not be liable for any accident, damage or delay caused by or to any vessel or other premises owned or operated by the Customer or any other person whether or not the accident or damage is related to the use, reliance upon, operation or failure of the Solutions.
- (i) to the extent that Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission or failure to perform any of its obligations under the Contract by Customer, Supplier shall be relieved from the performance of any of its obligations and shall not be liable for any costs or losses incurred directly or indirectly as a result.

## 10. FEES AND PAYMENT

- (a) Customer shall pay Supplier for the Solutions in accordance with the fees and payment terms agreed in writing between the parties in the Contract. If such terms include any advance payments, Supplier shall not be obliged to provide access to the Solutions until the advance payment relating to the Solutions has been paid. In the absence of any other payment terms agreed in the Contract, payment for the Solutions shall be made within thirty (30) days of the date of the relevant invoice issued by Supplier. Any sums not paid on the due date shall be subject to an interest charge at the rate of eight percent (8%) per annum on all amounts overdue until payment thereof, such to run from day to day and to accrue after as well as before any judgment. Customer shall pay the interest together with the overdue amount.
- (b) Unless otherwise stated all prices are quoted excluding taxes, levies, duties or similar governmental assessments of any nature including Without limitation value added, sales, use or withholding taxes, assessable by any jurisdiction, which are payable by Customer.
- (c) Supplier may, after giving reasonable advance notification to Customer:
  - (i) vary the fees for the Solutions from time to time, but not more than once per calendar year and subject to a maximum increase of 10% per year.
  - (ii) if Supplier's suppliers of products and services used in the Solutions increase their prices or change the terms relating thereto, pass such increases or changes on to Customer.
- (d) Any additional products and services which are not specified in the Contract but are agreed by the Parties to be provided by Supplier shall be subject to additional charges.
- (e) Fees due under the Contract are non-cancelable and sums paid non-refundable. Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law.

## 11. TECHNICAL DATA COLLECTION

Notwithstanding anything to the contrary in these Conditions, Supplier may collect and use technical data, gathered in connection with the Solutions, in order to provide, monitor and support the Solutions, to provide new services or technologies to Customer and to support and develop its products, solutions and services. Data may be transferred within Supplier Affiliates and to third parties who act for or on their behalf for processing the data. Supplier and Supplier Affiliates shall own any enrichment, report or derivative work developed or derived from such data. The rights granted hereunder shall survive any termination or expiration of the Contract. Subject to the foregoing provisions of this clause, the Confidential Information clause below shall apply to such data.

## 12. CONFIDENTIAL INFORMATION

- (a) 'Confidential Information' means all information of a confidential nature disclosed (whether in writing, orally or by another means and whether directly or indirectly) by one Party (the 'Disclosing Party') to the other Party (the 'Receiving Party') whether before or after the date of the Agreement including, without limitation, information relating to the Disclosing Party's technical or commercial information, products, services, IPR, business affairs, operations, processes, plans or intentions.
- (b) The Parties shall at all times, both during the term of the Contract, and for

a period of five (5) years after its termination, keep in strict confidence all Confidential Information belonging to the other Party and restrict disclosure of such Confidential Information to such of its employees, professional advisers, agents or sub-contractors on a need to know basis for the purposes of discharging that Party's obligations or exercising its rights under this Agreement and shall ensure that such employees, professional advisers, agents or sub-contractors are subject to the same obligations of confidentiality as bind that Party. This obligation will not apply to the extent that the Receiving Party can demonstrate (i) the disclosed information at the time of disclosure is part of the public domain and became part of the public domain without breach of the provisions of these Conditions; (ii) the disclosed information was in the possession of the Receiving Party at the time of its disclosure by the Disclosing Party; or (iii) the disclosed information is received from a third party without similar restrictions.

- (c) The Receiving Party may disclose Confidential Information as required to comply with applicable laws or regulations but only to the extent required and will immediately notify the Disclosing Party (unless prohibited from doing so by law).

## 13. LIABILITY

- (a) The warranties given in these Conditions are the only warranties given by Supplier and otherwise these Conditions specify the entire liability of Supplier including liability for negligence and in particular but without limitation all statutory or other express implied or collateral terms conditions or warranties are excluded to the fullest extent permitted by law. Further, Customer assumes sole responsibility for results obtained from its use of the Solutions and the Documentation.
- (b) Nothing in these Conditions shall limit or exclude Supplier's liability for:
  - (i) death or personal injury caused by its negligence, or by the negligence of its employees, agents or subcontractors.
  - (ii) fraud or fraudulent misrepresentation; or
  - (iii) any other liability which cannot legally be excluded.
- (c) Subject to sub-clause (b) above, Supplier shall under no circumstances whatever be liable to Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise for:
  - (i) any loss (whether direct or indirect) of profits, business opportunities, revenue, turnover, reputation or goodwill.
  - (ii) any loss or corruption (whether direct or indirect) of data or information.
  - (iii) loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time);
  - (iv) business interruption or any loss or liability (whether direct or indirect) under or in relation to any other contract; or
  - (v) any indirect or consequential loss or liability whatsoever.
- (d) Subject to sub-clause (b) above, Supplier's total liability to Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed one hundred percent (100%) of the amount paid to Supplier under the Contract for the immediately preceding twelve (12) month period.
- (e) Customer is required to notify Supplier of any claim as soon as reasonably possible and in any event within ten (10) days of Customer suffering any alleged loss or damage.

## 14. FORCE MAJEURE

- (a) For the purposes of these Conditions, **Force Majeure Event** means an event beyond the reasonable control of Supplier (whether foreseen or unforeseen) including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of Supplier or any other party), cyber incidents, failure of a utility service (including, without limitation, failure of electrical, internet or telecommunications) or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, imposition of sanctions, accident, breakdown of plant or machinery, fire, flood, storm, epidemic or default of suppliers or subcontractors.
- (b) Both Parties will use their reasonable efforts to mitigate the effect of a Force Majeure Event.
- (c) Supplier shall not be liable to Customer for any delay or failure to perform its obligations under the Contract as a result of a Force Majeure Event.

- (d) If the Force Majeure Event prevents Supplier from providing the Solutions (in whole or in part) for more than 90 days, the Supplier may terminate the Contract immediately by giving written notice to the Customer. This clause does not excuse the Customer's obligation to take reasonable steps to follow its normal disaster recovery procedures or obligations to pay for the Solutions.

## 15. END OF CONTRACT, TERMINATION AND SUSPENSION

- (a) Where applicable, the Contract shall continue for a term unless terminated earlier in accordance with its terms. At the end of the Contract, all rights to access or use the Solutions shall end.
- (b) Without prejudice to any claim or right it might otherwise make or exercise, Supplier shall have the right forthwith to terminate the Contract with immediate effect by notice and to claim for any losses, costs or expenses thereby incurred if:
  - (i) Customer commits a material breach of any term of the Contract (including a failure to pay any amount due under the Contract on the due date for payment) and (if such a breach is remediable) fails to remedy that breach within 30 days of being notified in writing to do so.
  - (ii) Customer becomes insolvent, enters administration, liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), is wound up (unless for a solvent restructuring), has a receiver appointed to any of its assets or ceases to carry on business, or if any analogous step or action is taken in another jurisdiction
- (c) Without limiting its other rights or remedies, Supplier may suspend all or any part of the Solutions:
  - (i) if Customer is in breach of the Contract, including but not limited to any failure to pay the fees for the Solutions, and has not remedied such breach within 30 days of notice of the same.
  - (ii) if Customer puts the Supplier, its platform or Solutions at risk of technical or security threat, third party claims due to infringing or illegal content or data or exposes the Supplier to some other liability or risk.
  - (iii) to comply with any legal requirement; or
  - (iv) if it is necessary to carry out maintenance, modifications or improvements of the Solutions (although Supplier will provide reasonable prior notice and keep suspension to a minimum).

If Supplier suspends the Solutions for a reason set out above, Customer shall remain liable throughout the period of suspension for all fees and such suspension shall not be regarded as a service failure or breach of contract.
- (d) On termination of the Contract for any reason Customer shall immediately pay to Supplier all of Supplier's outstanding unpaid fees.
- (e) Termination of the Contract shall not affect any of the Parties' rights and remedies that have accrued as at termination, including the right to claim monies due or damages in respect of any breach of the Contract that existed at or before the date of termination.
- (f) Customer agrees and acknowledges that Supplier has no obligation to retain any of Customer's data which is collected via the Solutions and that such data may be irretrievably deleted following the termination of the Contract.

## 16. GENERAL

- (a) **Governing Law and Disputes.** These Conditions shall be governed by and construed in accordance with the laws of the Kingdom of Denmark excluding any conflict of law rules applicable. Any dispute arising out of or in connection with these Conditions shall be referred to and finally resolved by arbitration under the Rules of Arbitration of the International Chamber of Commerce with three arbitrators appointed in accordance with the said rules. The seat, or legal place, of arbitration shall be Copenhagen, Denmark or as per the choice of the Supplier. The language to be used in the arbitral proceedings shall be English. A request by a Party to a court of competent jurisdiction for interim measures necessary to preserve that party's rights, including pre-arbitration attachments or injunctions, shall not be deemed incompatible with, or a waiver of, this agreement to arbitrate. The arbitration award shall be final and binding upon the Parties.
- (b) **Assignment and subcontracting.** Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract provided that if Supplier subcontracts its obligations, it shall remain liable for them. Customer may not assign, transfer, charge, subcontract or deal in any other manner with

any or all of Customer's rights or obligations under the Contract without Supplier's prior written consent.

- (c) **Notices.** Any notice or other communication given to a Party under or in connection with the Contract shall be in writing, addressed to that Party at its registered office, its principal place of business or such other address as that Party may have specified to the other Party in writing, and shall be delivered personally or commercial courier. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- (d) **Severance.** If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- (e) **Waiver.** A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a Party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- (f) **Third Parties.** Except as expressly provided, a person who is not a party to it has no rights to enforce any term of the Contract.
- (g) **Survival of Terms.** The provisions of the Contract which expressly or by implication survive expiration or termination thereof shall continue in full force and effect until all obligations are satisfied.
- (h) **Entire Agreement.** The Contract constitutes the entire agreement between the Parties. These Conditions supersede all previous conditions, understandings, commitments, agreements or representations whatsoever whether oral or written relating to the subject matter hereof.
- (i) **Variation.** No modification of these Conditions or any other provision of the Contract shall be effective unless made by an express written agreement between the Parties.
- (j) **Anti-Bribery.** Each Party represents and confirms that it is aware of, understands, and will comply with all applicable country laws and regulations relating to anti-corruption and anti-bribery. In addition, each Party agrees that so long as it is conducting business with the other Party or the other Party's affiliates, it will not, directly or indirectly, on behalf of the other Party or the other Party's affiliates promise, offer, solicit, authorize, give or receive a bribe, or other corrupt payment, item or service of value, or any other corrupt advantage, whether in cash or in kind, in relation to the performance of the Contract. Supplier agrees that Supplier may (i) identify Customer as a recipient of the Solutions and use Customer's logo in sales presentations, marketing materials and press releases, and (ii) develop a brief customer profile for use by Supplier for promotional purposes.
- (k) **Data Protection.** Each Party shall comply with and assist the other in complying with all applicable requirements of all data protection legislation that applies to the Contract. Supplier's personal data processing activities are set out in Supplier's Privacy Notice which is available at: <https://www.nacosmarine.com/legal#Privacy-Notice> and incorporated herein by reference. Parties agree that in relation to any personal data shared between them, unless otherwise provided in the General Data Protection Regulation (EU 2016/679) ("GDPR"), or agreed between the Parties, both are acting as data controllers as described in GDPR.
- (l) **Cyber incidents.** Supplier is not liable for cyber incidents or breaches, any unauthorized access, interference, intrusion, leakage and/or theft of data or information within Customer's systems. In the event that either party becomes aware of any security breach or cyber incident that impacts either party's ability to perform its duties relevant to the scope of work under the Contract, that party shall notify the other party without undue delay.
- (m) **Further Assurances.** Supplier and Customer agree to provide such information, execute and deliver any instruments and documents, and take such other actions as may be necessary or reasonably requested by the other Party (at the cost and expense of the other Party) in order to give full effect to this Contract and to carry out the intent of this Contract.

## 17. SANCTIONS AND EXPORT AND IMPORT CONTROL COMPLIANCE

- (a) The Solutions shall be delivered and provided subject to and in compliance with all applicable sanctions and export and import control laws, regulations and restrictive measures adopted by the United Nations, and by the European Union, the Kingdom of Denmark and the United States of America, as amended and applicable at any time in the jurisdiction of the Supplier, ("Sanctions and Export and Import Control Rules"). The Customer shall ensure full and continuous compliance with all applicable Sanctions and Export and Import Control Rules. The Customer accepts that certain export, import, transfer or other activities under or in connection with a Contract also may be affected by laws, regulations or measures of other jurisdictions that apply in the jurisdiction of the Supplier or any other NACOS Marine Company. The Customer accepts that the Solutions and all related technical information, documents and materials may not be exported, re-exported, transhipped, traded, diverted, imported or transferred, directly or indirectly, contrary to such Sanctions and Export and Import Control Rules.

- (b) In this clause 17, "Solutions" shall include any Equipment, Non-Standard Equipment, Spare Part, Software, Licensed Software, Service and/or Cloud Service provided or to be provided by the Supplier to the Customer under or in connection with a Contract. "Sanctioned Party" means any person or entity listed on any list of sanctioned (designated) persons and entities adopted by the European Union (EU), the United Nations (UN), the Kingdom of Denmark, the United States of America, as applicable at any time in the jurisdiction of the Supplier and amended at any time.

The obligations under this clause 17 apply to all goods, products, software, technology and services, including any Solutions, provided or to be provided by the Supplier to the Customer under or in connection with a Contract.

- (c) The Customer represents and warrants all the following:
- (i) The Customer, and all its directors, officers, employees, owners and ultimate beneficial owners, are not a Sanctioned Party and are not owned or controlled, directly or indirectly, by a Sanctioned Party.
  - (ii) The Customer will take appropriate measures to ensure that the Customer does not use any Solutions in breach of any applicable Sanctions or Export or Import Control Rule.
  - (iii) The Customer will take appropriate measures to ensure that no Solutions, directly or indirectly, will be sold, transferred or otherwise made available by the Customer, or by any other customer further down the commercial chain, to any Sanctioned Party or to any other party in breach or circumvention of any applicable Sanctions or Export or Import Control Rule.
  - (iv) The Customer will as soon as possible after being requested to do so provide relevant information and documentation, including end-user certificates, to the Supplier in relation to compliance with Sanctions and Export and Import Control Rules and this clause 17. The Customer will provide such information and documentation in a form and with content as reasonably specified by the Supplier.
  - (v) The Customer will take appropriate measures to ensure that contractual obligations equivalent to the Customer's obligations under this clause 17 apply to its customers and other customers further down the commercial chain.
- (d) Notwithstanding any other term or condition of this clause 17 or a Contract, the Customer shall ensure full and continuous compliance with all the following provisions:
- (i) The Customer shall not sell, export or re-export, directly or indirectly, to the Russian Federation or for use in the Russian Federation any Solutions, supplied under or in connection with the Contract that fall under the scope of Article 12g of Council Regulation (EU) No 833/2014.
  - (ii) The Customer shall not sell, export or re-export, directly or indirectly, to Belarus or for use in Belarus any Solutions, supplied under or in connection with the Contract that fall under the scope of Article 8g of Council Regulation (EU) No 765/2006.
  - (iii) The Customer shall not sell, export or re-export, directly or indirectly, to another jurisdiction, or for use in another jurisdiction, any Solutions, supplied under or in connection with the Contract, if such sale, export or re-export to that other jurisdiction fall under any applicable Sanctions or Export or Import Control Rule prohibiting such sale, export or re-export to that other jurisdiction.
  - (iv) The Customer shall undertake its best efforts to ensure that the purpose of paragraphs (i)–(iii) is not frustrated by any third parties further down the commercial chain, including by possible resellers.

(v) The Customer shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers, that would frustrate the purpose of paragraphs (i)–(iii).

(vi) Any violation of paragraph (i), (ii), (iii), (iv) or (v) shall constitute a material breach of an essential element of the Contract, and the Supplier shall be entitled to seek and apply appropriate remedies, including but not limited to:

- (a) termination of the Contract; and
- (b) penalty of five percent (5%) of the total value of the Contract (the Contract Price) or the price of the Solutions exported, whichever is higher.

(vii) The Customer shall immediately inform the Supplier about any problems in applying paragraph (i), (ii), (iii), (iv) or (v), including any relevant activities by third parties that could frustrate the purpose of paragraphs (i)–(iii). The Customer shall make available to the Supplier information concerning compliance with the obligations under paragraphs (i), (ii), (iii), (iv) and (v) within two weeks of the simple request of such information.

- (e) The Supplier may suspend its performance of obligations and provision of Solutions under a Contract with immediate effect if the Supplier has reasonable grounds to suspect a breach or a potential breach of this clause 17 by the Customer or any party acting directly or indirectly on its behalf.
- (f) Any breach of this clause 17 by the Customer, or any party acting directly or indirectly on its behalf, shall entitle the Supplier to terminate the Contract with immediate effect and without liability.
- (g) The Customer shall indemnify the Supplier and any NACOS Marine Company against any loss, damage, penalty, cost or liability resulting from any breach of this clause 17 by the Customer or any party acting directly or indirectly on its behalf.
- (h) The Customer shall as soon as possible notify the Supplier in writing of any actual or suspected breach of this clause by the Customer, or any party acting directly or indirectly on its behalf, or any request, enquiry or circumstance that could lead to such a breach.