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## COMMERCIAL AGREEMENT

**1. RISK OF LOSS AND DELIVERY.** All deliveries quoted are subject to prior sale. Title to the equipment shall pass to Purchaser upon delivery. Delivery is Ex Works (Incoterms 2010) SMI's manufacturing facility. Purchaser shall assume risk of loss of the equipment, and shall fully insure the same with loss payable for the benefit of SMI until payment in full of the purchase price is received by SMI. SMI shall not be liable for any delays, loss or damage in transit.

**2. DATA BOOK.** An electronic copy of the data book per vessel is available (includes the U1A, Drawing and Calculations) upon request for new equipment only. No charge if requested at time of order. Additional documentation is available. Pricing upon request.

**3. SPARE PARTS.** No spare parts included unless otherwise stated in quote.

**4. MAINTENANCE.** No maintenance included. SMI can provide maintenance upon request at additional cost.

**5. SERVICES IN CONNECTION WITH EQUIPMENT SOLD.** Upon Purchaser's request and for Purchaser's account, SMI will furnish the services of a technical representative to assist Purchaser in the installation and operation of the equipment. Notwithstanding the foregoing, Purchaser shall retain ultimate control and responsibility for installation and operation of the equipment purchased from SMI.

**6. WARRANTY.** SMI warrants to Purchaser that its services will be performed in a good and workman like manner. In addition, SMI warrants to Purchaser that the equipment fabricated by SMI shall be free from material defects in material and workmanship under normal uses and service. Such warranties shall be in effect from the earlier to occur of (a) eighteen (18) months from written notification of readiness to deliver or delivery or (b) twelve (12) months from start-up ("SMI's Warranty"). SMI shall have no warranty obligation whatsoever unless written notice of such defect is given to SMI by Purchaser within ten (10) days of discovery of the defect. Upon receipt of written notice and verification of the claim, SMI sole obligation, and Purchaser's sole and exclusive remedy, under this warranty shall be for SMI, at its option, to either: (a) repair or replace its equipment or re-perform the services at either SMI's or Purchaser's site (at SMI's option) during normal business hours; or (b) refund an equitable portion of the purchase price. SMI shall not be liable for reimbursement of any costs of transporting the equipment to SMI's establishment, or for removal or reinstallation of the equipment when necessary in connection with a warranty repair.

**a) Third Party Warranties.** All goods and products manufactured by a third party and distributed to Purchaser by SMI and/or obtained by SMI from third parties and used in the fabrication of the equipment described herein carry only such warranty as given by the manufacturer. Said warranty, if any, is hereby assigned to Purchaser by SMI, and SMI will endeavor to assist Purchaser, at Purchaser's cost and expense, with all third party warranties in the event there are any warranty issues. Such warranty shall be furnished to Purchaser upon request.

**b) Purchaser's Acts Voiding Warranties.** SMI's Warranty will be rendered void by improper installation of the equipment, damage to the equipment caused by improper operation, overloading, over speeding, overheating, improper maintenance, erosion or corrosion, accident or improper storage. Purchaser shall release SMI, its parent and affiliates and its and their directors, officers, employees, agents and invitees ("SMI Group") from and defend, indemnify and hold harmless SMI Group from and against any and all liability, including personal injury, bodily injury, illness, or death and from property damage, arising out of the aforementioned causes. SMI will not be liable or obligated for any claims or back charges by Purchaser for repairs performed on the equipment unless approved in advance in writing by SMI.

**c) THE WARRANTIES EXPRESSLY FURNISHED HEREIN ARE IN LIEU OF ALL OTHER WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT.**

**7. STORAGE.** If Purchaser delays taking delivery at the time(s) specified herein, title and risk of loss to the equipment passes to Purchaser upon written notification by SMI that the equipment is ready for delivery. SMI may, but is under no obligation to, store the equipment for Purchaser after such written notification of readiness for delivery at Purchaser's cost and risk. SMI may invoice Purchaser for reasonable storage and insurance fees. Any equipment stored may incur "make ready" fees.

**8. TAXES.** Sales tax, personal property tax, use tax, excise tax, duties and any other taxes, duties, tariffs and similar or dissimilar fees imposed by any federal, state or municipal authorities, and incurred by SMI through performance of this order, shall be for Purchaser's account and are in addition to the prices quoted herein.

**9. CHANGE ORDERS.** Upon acceptance of an Order by SMI no changes may be made unless in writing, approved by both Parties, and attached to the original Order. If Purchaser desires to make a change to an Order after SMI's acceptance of the Order, Purchaser shall make a written request to SMI detailing the nature of and the reason for the change. SMI will prepare a change order in line with the request detailing the changes and their impact upon the price and schedule. SMI reserves the right to halt fabrication in the event that a change order cannot be mutually approved. The change order will become effective when approved by both Parties and attached to the original Order. In the event SMI expends a substantial amount of engineering resources, and Purchaser chooses not to implement a requested change order, SMI may invoice Purchaser in accordance with



SMI's then current rate sheet for the time and materials it expended in the preparation of the change order. Change orders will be invoiced upon receipt of approved change order. Invoices are due 30 days from invoice date.

**10. NONCONFORMANCE.** Purchaser shall have ten (10) business days to notify SMI of any order that does not comply with the purchase order (a "Non-Conformance") and Purchaser shall return the Non-Conformance as instructed by SMI. No equipment or parts shall be returned to SMI without prior written authorization and receipt of SMI's shipping instructions. Items returned for credit will be subject to SMI's restocking/cancellation charges. SMI may, in its sole discretion, without liability or penalty, make partial delivery of goods to Purchaser, and Purchaser shall pay for the units delivered whether such delivery is in whole or partial fulfillment of an order.

**11. CANCELLATION.** Purchaser may terminate the order at any time in writing. SMI will accept the cancellation based on Purchaser agreeing to payments as outlined below. For stock equipment or parts, the termination fees shall be 20% of the purchase price if the order has not shipped and if the order has shipped, 20% of the purchase price plus a 20% restocking fee. For custom orders, the termination fees shall be based on a percentage of the purchase price and the status of the project at the time of SMI's written receipt of such termination as set forth below:

Milestone Reached Termination Fee (as percentage of the purchase price):

Issuance of Purchase Order:	15%
Issuance of Drawings:	25%
Drawing Approval:	35%
Delivery of Major Materials (i.e. Heads & shells):	75%
Notification of Vessel Hydro test:	100%

Purchaser shall also compensate SMI for all costs and expenses incurred, including but not limited to, cancellation costs to sub-vendors. No equipment or parts shall be returned to SMI without prior written authorization and receipt of SMI's shipping instructions.

**12. TERMS OF PAYMENT, INTEREST CHARGES AND COSTS OF COLLECTION.** All invoices shall be due and payable in full in US dollars by Purchaser upon invoice date. Payments not received by SMI within thirty (30) days shall bear interest at the greater of (a) 12% per annum, or (b) the maximum rate allowable by law. In addition to interest charges, Purchaser shall be liable to SMI for all cost of collection of all amounts unpaid, including court costs, repossession fees, and reasonable attorney's fees. The payment terms on projects of \$50,000.00 or more or with delivery of sixty (60) days or more are as follows:

Due Date Payment Due (as a percentage of the purchase price):

Upon receipt of order:	30%
Upon material delivery	30%
Upon 50% completion of each unit:	20%
Upon notification of completion of each unit:	20%

**13. BID VALIDITY.** Thirty (30) days from the date of proposal. Prices are subject to escalation, contingent upon steel price index.