

General terms and conditions

1. DEFINITIONS

“ESS” shall mean any company under ESS Group of companies contracting to supply Goods and/or Services.

“ESS Group” shall mean Everise Shipping Service Pte. Ltd., ESS (Shanghai) Company limited and Everise Shipping Service (Panama) S.A.

“Goods” shall mean any and all items ordered by the Purchaser and/or supplied by ESS for use on board a Vessel or an offshore oil rig or similar, or incidental to the operation of the aforesaid.

“Parties” shall mean ESS and the Purchaser together and individually as Party.

“Purchaser” shall mean the person placing an order in respect of Goods and/or Services and where such person acts as agent of or otherwise for a third party (“the Principal”), such person and the Principal and the Vessel to which Goods and/or Services are provided shall jointly and severally be referred to as the Purchaser.

“Services” shall mean any and all services ordered by the Purchaser and/or supplied by ESS to a Vessel or an offshore oil rig or similar, or incidental to the operation of the aforesaid.

“Vessel” shall mean the vessel or vessels to which Goods and/or Services are supplied or intended to be supplied by ESS. The Purchaser will declare the name of the Vessel to ESS at the time of placing an order.

2. GENERAL

Unless otherwise expressly agreed in writing the following conditions shall apply to all contracts, orders and deliveries. These General Terms and Conditions shall supersede all other terms and conditions which the Purchaser purports to apply at the time of the enquiry, order, acceptance or specifications or any document of the Purchaser, unless expressly accepted in writing by ESS. **By providing the Purchase Order, or any other form of approval of order to ESS, the Purchaser is deemed to have accepted the General terms and conditions of this document.**

3. ORDERS AND DELIVERIES

- a. The Purchaser shall communicate as soon as reasonably practicable to ESS its order or orders, specifying the name of the Vessel, stipulated date and time, port of delivery, Goods and/or Services required, quantity and any preferred brand of the Goods etc., but not later than 48 hours before the estimated delivery.
- b. For any orders communicated by the Purchaser less than 48 hours before the estimated delivery, ESS shall have the right to charge additional cost.
- c. ESS shall endeavor to provide the quotation on the Goods and/or Services as soon as practicable, if not already provided or listed on its official website.
- d. ESS shall be at liberty to decline the request to supply on any items of the order and the order will only be deemed confirmed once ESS confirms the purchase order.
- e. Any cancellation or changes on the Goods and/or Services is permitted only if it has been instructed to ESS not less than 24 hours before the stipulated time of delivery. For any cancellations or changes made less than the stipulated time of delivery, paragraph 4e shall apply.
- f. Any changes in the Goods and/or Services shall only be available to the Purchaser after ESS has confirmed the price of the change.
- g. Provided the prevailing circumstances reasonably permits, ESS shall supply and deliver to the Purchaser the Goods and/or Services as ordered at the time and place stipulated by the Purchaser insofar as ESS has agreed to do so and such Goods and/or Services are available at the agreed port or port-area.
- h. ESS’s responsibility for transport of the Goods shall end at the nearest point to the Vessel that the delivery vehicle(s) may, with the necessary authority, reach (“the Point of Delivery”).
- i. The Purchaser shall be responsible to arrange any permits or approvals for ESS to deliver the Goods and/or Services to the Point of Delivery.
- j. All orders and receipt notes will be signed by the master or his authorised representative at the time of delivery. Signature by the master or his authorized representative shall deem to mean that the Goods and/or Services received were satisfactory and in good order and obligation of ESS shall be considered fulfilled.

- k. In the event that any Goods are damaged, lost or stolen after signing the receipt note by the master or his authorized representative as per paragraph 3k above, ESS does not accept liability, nor does ESS accept any liability for any damage to the Goods or the Purchaser's Vessel during the delivery and supply process.

4. PRICES

- a. Subject to the following provisions of this paragraph 4, in respect of the Goods and/or Services supplied by ESS, ESS shall charge to the Purchaser the prices current at the relative port or port-area at the time of delivery.
- b. Where requested to do so, ESS shall submit a quotation to the Purchaser. Where the Purchaser accepts that quotation, ESS shall charge the Purchaser the sum quoted, subject to any necessary adjustment for reasonable variations in the quantities actually delivered, as agreed in advance with the Purchaser.
- c. Goods which cannot be offered at a price fixed in advance, shall be clearly so marked on any such list and in this case paragraph 4a shall apply.
- d. The cost of packaging and transportation of Goods to the Point of Delivery shall be agreed in advance or otherwise charged at cost shall apply. Any special request on packaging or transport/handle the Goods beyond the Point of Delivery as defined in paragraph 3d, the costs of such additional delivery/handling shall be agreed in advance.
- e. If there is a cancellation or changes to the order made less than 24 hours before the stipulated time delivery, ESS, in case of cancellation, reserves the right to charge the full amount at its discretion, including the transportation and packaging, agreed on the order before the cancellation and in case of changes on the order, charge additional costs for the inconvenience.
- f. If delivery is requested outside the normal hours of the agreed port or port-area or on Saturdays, Sundays or religious or national or legal holidays in places where the delivery is to take place, expenses incidental to such delivery shall be payable by the Purchaser as additional costs. Transport costs shall be invoiced and payable by the Purchaser.
- g. The Goods shall be deemed delivered on the arrival of the Goods at the stipulated time at the Point of Delivery. The responsibility, cost and risk of unloading the delivery vehicle(s) and delivering on board are on account of the Purchaser. Risk in the Goods shall, in all respects, pass to the Purchaser upon delivery.
- h. The Purchaser shall pay to ESS any costs or expenses incidental to any waiting period beyond a reasonable time.
- i. Where ESS is requested to deliver Goods other than to the Vessel, responsibility rests with the Purchaser to ensure that the person responsible for accepting delivery gives a full and proper receipt for the Goods delivered. Signed receipt by that party shall constitute acceptance of delivery by and to the Purchaser.
- j. Where ESS gives the benefit of a quantified discount (whether in percentage terms, in a stated sum or otherwise) then the Purchaser’s entitlement to such discount is strictly conditional upon full payment of the ESS’s invoice within the agreed payment period. Where full payment is not made within the agreed period the ESS invoices shall be deemed to be adjusted to exclude any such discount.
- k. The Purchaser shall pay all taxes incurred by ESS on the order.

5. PAYMENT

- a. The Purchaser shall pay, prior to the Vessel’s departure the invoiced amount or amounts in the currency stipulated, or by the express agreement of ESS at a later stipulated date.
- b. Notwithstanding paragraphs 7 herein, the Purchaser shall not be entitled to withhold payment of any sums after they have become due in the ordinary course for payment by reason of any claim, right of set-off or counterclaim which the Purchaser may allege or for any reason whatsoever.
- c. Where ESS has granted credit to the Purchaser and the Purchaser is in default in payment of any sums due by the Purchaser, ESS shall be entitled to give immediate notice of the withdrawal of credit, entitling ESS to treat all unpaid charges for Goods and Services provided to the Purchaser as due for immediate payment. Interest shall accrue on such sums from the date of the notice, and the ESS shall be entitled to take immediate legal action to recover the sums due.

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- d. If payment is not made within the stipulated period the Purchaser shall pay ESS interest on all overdue or unpaid sums at a rate of 2% per month or part thereof, or the equivalent to the commercial prime lending rate customarily charged at the time by ESS' bank in the ESS' country, whichever may be the higher. Interest shall be calculated from the due date until actual date of payment.
- e. Regardless of any allocation stipulated by the Purchaser upon making any payment, ESS shall be entitled to apply payments received from the Purchaser in any way that it considers appropriate, including allocation firstly to interest that has accrued in accordance with paragraph 5d or costs incurred in accordance with paragraph 5f.
- f. ESS shall be entitled to recover from the Purchaser any and all costs and/or expenses which may be incurred by ESS in recovering or seeking to recover from the Purchaser any overdue or unpaid sums whether or not formal legal steps (including but not limited to the arrest of a Vessel) have been undertaken. Such costs include both internal costs and costs and expenses incurred to external advisers, lawyers or debt collectors instructed for such purpose. Such costs shall be payable by the Purchaser to the ESS upon demand on a full indemnity basis and may be included in the claim for which a Vessel is arrested.
- g. ESS may, if requested by the Purchaser, send to the Purchaser a list stating the prices of Goods and the period for which such prices are to apply. If such a list has expired and not been renewed, paragraph 4a shall apply.
- h. Any complaint by the Purchaser with regard to ESS's invoice will be absolutely barred unless lodged in writing by the Purchaser with ESS at the ESS's usual business address within 8 days of delivery of the invoice.
- i. Notwithstanding delivery and the passing of risk, property in and title to the goods shall remain with ESS until ESS has received payment of the full price of all Goods and/or Services supplied by ESS to the Purchaser. Payment of the full price shall include, without limitation, the amount of any interest or other sum payable under the terms of this General Terms and Conditions.

6. QUALITY AND PACKING

- a. The Goods shall be of standard or prime quality as rated at the time and place of delivery. The Goods shall be supplied in the packing customary at the time and place of delivery. At the time of placing its order, the Purchaser shall inform ESS of any special packing requirements in view of the destination of the ship and/or Goods. Any additional expenditure incurred in complying with such requirements shall be chargeable to and payable by the Purchaser.
- b. Returnable packing material and containers supplied by ESS shall be clearly marked as such on the receipt-note and shall be returned by the Purchaser to ESS as soon as reasonably practicable.
- c. Returnable packing material and containers shall be charged separately at the prices current at the time and place of delivery. The amounts so charged shall be refunded by ESS to the Purchaser, provided such packing material and containers are returned undamaged within a reasonable period.

7. CLAIMS AND LIABILITY

- a. Subject only to paragraph 7b below, by taking delivery of the Goods and signing the accompanying receipt-note, the Purchaser shall be deemed to have approved and accepted the Goods in every respect.
- b. Any claims with regard to the conformity or quality of the delivered Goods must be notified in writing to ESS within 8 days from delivery and in the absence of such notification, the Purchaser shall be deemed to have approved and accepted the Goods in every respect. Exception is made in the case of fresh products and perishable Goods, for which claims must be notified in writing at the time of delivery or as soon as practicable thereafter. Where a claim is made in accordance with the provisions of this paragraph and where such claim is accepted by ESS, the Purchaser shall be entitled to a refund of the price of the affected Goods upon inspection of said Goods by ESS or as otherwise agreed in writing by the Parties.
- j. In the event of a claim pursuant to paragraph 7b above, the Purchaser shall be required to prove that, since delivery, the Goods were continuously handled, treated and stored by the Purchaser as a prudent administrator in keeping with the nature of the Goods and their propensity to deteriorate and that any alleged deficiency is not attributable to the Purchaser's fault or negligence. The Purchaser shall be required to make the Goods under claim available for inspection.
- c. Save for claims for death or personal injury, any damages/compensation

shall be strictly limited to a refund of the price paid to ESS for the affected Goods and/or Services.

- d. ESS shall not under any circumstances whatsoever including ESS' negligence be liable for any claim for consequential loss, damage or injury arising out of the supply, or late supply or failure to supply, of any Goods and/or Services. ESS shall not be liable for the financial consequences arising from any delay to the Vessel or any period that the Vessel may be off-hire or otherwise unable to earn.

8. HANDLING OF THIRD PARTY GOODS

- a. ESS may agree to handle Purchaser's own goods (hereafter "Purchaser's Goods"), including arranging custom's clearance, inland or international carriage, storage and delivery to a nominated Vessel. In the absence of any contrary terms agreed between ESS and Purchaser in relation to such activity this paragraph 8 sets-out the terms upon which such Services are provided.
- b. When ESS instructs any third party in connection with the clearance, handling or movement of Purchaser's Goods, it does so strictly as agent for the Purchaser and the Purchaser authorises ESS to act as its agent and to contract on the usual terms of those third parties.
- c. The Purchaser is responsible for fully and accurately declaring, describing and documenting the contents of any package or packages passed to ESS for handling, such declaration, description and documentation being appropriate for the place at which ESS is required to handle the Purchaser's Goods.
- d. All Purchaser's Goods shall be properly and adequately packaged for the period of transit and storage envisaged. ESS shall not be responsible for inspecting said packaging, or taking any remedial steps in relation to deficiencies. ESS shall not be responsible for inspecting the condition of the contents of any packages for loss or damage. The Purchaser shall remain at all times responsible for compliance with the ISPS Code as concerns the acceptance of goods on board vessels.
- e. Where the Purchaser's Goods require particular handling or care, ESS shall only be required to provide such handling and care if it has agreed in writing to do so, in advance of the Purchaser's Goods being consigned to them.
- f. It is envisaged that ESS' charges shall be agreed in advance of Purchaser's Goods being consigned to them. Where no such agreement is in place, ESS shall be entitled to charge a reasonable sum, consistent with similar work for similar clients.
- g. The Purchaser shall insure the Purchaser's Goods for all carriage and storage risks during the period that they are under the custody, care or control of ESS on terms that the insurer waives any rights of subrogation or recourse against ESS. The ESS has no obligation or requirement to insure Purchaser's Goods.
- h. ESS shall not be liable for loss or damage to the Purchaser's Goods otherwise than by its own negligence or default. Any claims in respect of the Purchaser's Goods lost or damaged whilst in the custody of third parties instructed on behalf of the Purchaser by ESS shall be made directly to the relevant third party, who details ESS shall provide.
- i. Where ESS is liable in respect of the Purchaser's Goods lost or damaged then its liability shall be strictly limited to the price the Purchaser was paying for the Services of the Purchaser's Goods, and such limits shall apply in all cases including loss or damage caused by ESS's breach of contract or negligence. ESS shall not be liable for any other losses, claims or damages and for the avoidance of doubt shall not be liable for losses arising from a failure to deliver or a delay in delivery of the Purchaser's Goods, including losses arising from delay to the vessel, including detention, demurrage or periods off-hire.
- j. ESS shall have a right of general lien over the Purchaser's Goods and any documents related thereto in respect of any sums due from the Purchaser, whether related to the Purchaser's Goods under lien or Goods/Services supplied to the Purchaser.
- k. Where the Purchaser's Goods are (i) held under lien; or (ii) held for a period of more than 60 days without instructions for their delivery or forwarding the Purchaser shall be entitled to sell or dispose them, upon 5 days' notice to the Purchaser of an intention to do so, and may apply the proceeds to any sums due from the Purchaser.
- l. The Purchaser shall immediately upon written demand from ESS fully indemnify ESS for all costs, expenses, penalties, fines, taxes, duties or other

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dues arising from the handling and delivery of the Purchaser's Goods including those arising from the Purchaser's incorrect or false declaration of the content of any package.

- m. ESS' liability under this paragraph 8 shall in no event be more than the price paid by the Purchaser to ESS for the Purchaser's Goods.

9. FORCE MAJEURE

If ESS is unable to make delivery, or to make delivery in good time, owing to force majeure (which shall include all or any circumstances or conditions for which ESS cannot be held responsible and as a consequence whereof it is not reasonably possible to make delivery in good time or at all) then ESS' obligation to deliver shall cease or if appropriate be suspended for the duration of such force majeure.

10. MARITIME LIEN

Goods are sold and delivered on the credit of the Vessel supplied, as well as the credit of the Purchaser, and the Purchaser agrees and warrants on behalf of the Vessel and its owner that ESS shall have and may assert and maritime lien against the Vessel supplied in accordance with the laws of England.

11. LAW AND JURISDICTION

- a. Subject always to paragraph 11d any dispute arising out of or in connection with these General Terms and Conditions, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in England and governed by the Arbitration Act 1996.
- b. Notwithstanding the commencement of arbitration proceedings, ESS shall be entitled to commence proceedings in any other jurisdiction or before any court in order to obtain security for its claim, including security for interest due and legal costs to be incurred.
- c. Notice of arbitration shall be validly served if sent to one or more of the email addresses, fax numbers or physical addresses used or identified by the Party served during the course of their prior business dealings.
- d. ESS shall be entitled at any time prior to the commencement of arbitration proceedings pursuant to this paragraph 11 to commence substantive proceedings against the Purchaser, its assets including the Vessel or any sister or associated vessel in the court of any jurisdiction where the Purchaser may be located, domiciled or present or where any assets, including its Vessel or sister or associated vessel may be located. In the event that ESS exercises that option then neither Party shall be entitled to commence arbitration proceedings and any disputes must be submitted to the court at which ESS has commenced proceedings.