



GRAIG CHINA LIMITED

General Conditions for Consultancy and Inspection Services

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1. Definitions for these Conditions

- 'Background IP'** those works or parts of works severable from the Report and comprising those Intellectual Property Rights subsisting prior to the date of the Contract and developed independently of the Supplier's obligations under the Contract or in connection with the Services including, without limitation, the template format of the report document on which the Report is to be completed.
- 'Charges'** the charges payable by the Customer for the supply of the Services in accordance with condition 5.
- 'Commencement Date'** has the meaning set out in condition 2.1.
- 'Conditions'** these terms and conditions as amended from time to time in accordance with condition 21.2.
- 'Contract'** the contract between Graig China Ltd and the Customer for the supply of Services in accordance with these Conditions.
- 'Customer'** the person, firm or company, who purchases Services from Graig China Ltd.
- 'Intellectual Property Rights'** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
- 'Report'** the report to be prepared by the Supplier in accordance with the Service Quotation.
- 'Services'** the service supplied by Graig China Ltd to the Customer as set out in the Service Quotation.
- 'Supplier'** Graig China Limited, whose registered office is 1 Caspian Point, Caspian Way, Cardiff, CF10 4DQ.
- 'Supplier Materials'** has the meaning set out in condition 4.1(h).
- 'Vessel'** includes any floating unit or storage unit and any other man-made structure designed for use at sea and whether or not fixed to the seabed.

1.2 A reference to **writing** or **written** includes electronic e-mail, telex, and cable; fax transmission and comparable means of communication.

2. BASIS OF CONTRACT

- 2.1 The Service Quotation constitutes an offer by the Supplier to purchase Services in accordance with these Conditions.
- The Service Quotation shall only be deemed to be accepted when the Customer issues written acceptance of the Service Quotation at which point and on which date the Contract shall come into existence (**'Commencement Date'**).
 - The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.
 - Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
 - These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3. SUPPLY OF SERVICES

- 3.1 The Supplier shall supply the Services to the Customer in accordance with the Service Quotation in all material respects.
- 3.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Service Quotation, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 3.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care, skill and diligence and in accordance with normal professional standards within the shipping industry.
- 3.5 The Supplier shall be entitled to procure performance of its obligations hereunder by appointing a suitably qualified and skilled substitute to perform the Services on its behalf. Any such performance of all and any of the Supplier's obligations by the substitute shall be and constitute full and sufficient performance by the Supplier of its obligations under the Contract. Any performance of the Supplier's obligations by the substitute shall be without prejudice to the rights of the Customer for any failure by the Supplier in performance of the Supplier's duties and obligations and notwithstanding performance by the substitute the Supplier shall remain solely responsible to the Customer for the performance of their obligations hereunder.

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4 CUSTOMER'S OBLIGATIONS

4.1 The Customer shall:

- (a) ensure that the terms of the Service Quotation are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Services including, without limitation, the appointment of a Customer representative;
- (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's Vessel, premises, office accommodation and other facilities as reasonably required by the Supplier, which shall include making all necessary arrangements, at the Customer's expense, to provide carriage from the port of docking of the Vessel to the Vessel itself;
- (d) provide the Supplier promptly with such records, information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
- (e) prepare the Customer's Vessel and/or premises for the supply of the Services, including, without limitation, ensuring that those parts of the Customer's Vessel and/or premises which the Supplier is required to access are free from hazardous materials and are a safe working environment;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
- (g) be responsible for notifying the Supplier of all relevant health and safety, environmental, operational and security policies and procedures from time to time in force at the Customer's Vessel, premises and/or the relevant port authority at the location at which the Vessel is situated including, without limitation, all requirements for accessing and boarding the Vessel and accessing confined spaces within the Vessel itself; and
- (h) keep and maintain all materials, equipment, documents and other property of the Supplier ('**Supplier Materials**') at the Customer's Vessel and/or premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.

4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ('**Customer Default**')

- (a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

5 CHARGES AND PAYMENT

5.1 The Charges for the Services shall be on a time and materials basis and:

- (a) the Charges shall be calculated in accordance with the Supplier's standard daily fee rates, as set out in the Service Quotation;
- (b) any increase in Charges relating to any changes required by the Customer to the Service Quotation shall be calculated in accordance with the Supplier's standard daily fee rates, as set out in the Service Quotation; and
- (c) the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

5.2 The Supplier shall invoice the Customer on completion of the Services.

5.3 The Customer shall pay each invoice submitted by the Supplier:

- (a) within 30 days of the date of the invoice;
- (b) in full and in cleared funds to a bank account nominated in writing by the Supplier; and
- (c) time for payment shall be of the essence of the Contract.

5.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax (or equivalent) chargeable for the time being ('**VAT**') (if applicable). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

5.5 Without limiting any other right or remedy of the Supplier, if the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment ('**Due Date**'), the Supplier shall have the right to charge interest on the overdue amount at the rate of four per cent (4%) per annum above the then current base lending rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.

5.6 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

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6 INTELLECTUAL PROPERTY RIGHTS

- 6.1 Subject to condition 6.2, all Intellectual Property Rights in the Report shall be owned by the Customer;
- 6.2 All Intellectual Property Rights in the Background IP and arising out of or in connection with the Services, other than as set out in condition 6.1 above, shall be owned by, and are the exclusive property of, the Supplier.
- 6.3 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.
- 6.4 All Supplier Materials are the exclusive property of the Supplier.

7 CONFIDENTIALITY

The Supplier shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to them by the Customer, its employees, agents or subcontractors, and any other confidential information concerning the Customer's business or its products or its services which the Supplier may obtain. The Supplier shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Supplier's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Supplier. This condition 7 shall survive termination of the Contract.

8 LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION

- 8.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation; or
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 8.2 Subject to condition 8.1:
- (a) the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any consequential, indirect or special losses including, without limitation: (i) financial or economical loss; (ii) loss of profit, (iii) loss of business or business opportunity; (iv) corruption, loss of or loss of use of data; (v) loss of revenue; (vi) loss of anticipated savings; or (vii) loss of contracts, by the Consultant howsoever arising out of or in connection with the Contract, save where otherwise provided by statute, including any losses that may result from the Supplier's deliberate personal repudiatory breach of the Contract; and
 - (b) the Supplier's total liability to the 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, including losses caused by the Supplier's deliberate personal repudiatory breach shall not exceed an amount equal to ten (10) times the Charges payable for the Services.
- 8.3 The Supplier and Customer agree that having regard to the nature of the Services, the Charges paid for such Services by the Customer and all other circumstances known to the Supplier and the Customer relating to the Services, the foregoing limits of liability are fair and reasonable.
- 8.4 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 8.5 This condition 8 shall survive termination of the Contract.

9 REPORTS AND INSPECTIONS

- 9.1 The Services are personal to the Customer and the Report provided by the Supplier is personal to, and for the private and confidential use of, the Customer, is issued solely to the Customer and the Customer shall not reproduce or make available, in whole or any part, the Report without the prior written consent of the Supplier other than where required by law. The Report may not be relied upon by any other party without the express written consent of the Supplier.
- 9.2 Any inspection of a Vessel provided as part of the Services shall be, unless otherwise agreed in writing by the parties:
- (a) subject to the service set out in the Service Quotation;
 - (b) limited to those areas of a Vessel which are visible, exposed, uncovered, readily accessible and made available to the Supplier; and
 - (c) applicable only at the time and date the inspection is being conducted.

10 TERMINATION

- 10.1 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect, without liability to the other party, by giving written notice to the other party if:
- (a) the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within fourteen (14) days of the other party being notified in writing of the breach;
 - (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986

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or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company);
- (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within fourteen (14) days;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- (h) a floating charge holder over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 10.1(b) to condition 10.1(i) (inclusive);
- (k) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (l) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

10.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer (i) is subject to a change of control or (ii) fails to pay any amount due under this Contract on the due date for payment.

10.3 Without limiting its other rights or remedies, each party shall have the right to terminate the Contract by giving the other party five (5) days' written notice or as specified in the Service Quotation. In the event of such termination by the Customer, the Customer shall reimburse the Supplier for all work performed up to the date on which the termination takes effect and shall pay all costs and expenses reasonably incurred by the Supplier as a consequence of such termination.

10.4 Without limiting its other rights or remedies, the Supplier shall have the right to suspend provision of the Services under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in condition 10.1(b) to condition 10.1(l), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

11 CONSEQUENCES OF TERMINATION

11.1 On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Supplier Materials which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's Vessel and/or premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

12 FORCE MAJEURE

12.1 Force majeure:

- (a) For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to:
 - (i) acts of God;
 - (ii) governmental actions;
 - (iii) war or national emergency;
 - (iv) acts of terrorism, piracy or armed conflict;
 - (v) protests, riot, civil commotion or malicious damage;
 - (vi) fire, explosion, loss at sea, flood or epidemic;
 - (vii) lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce);
 - (viii) restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials;
 - (ix) interference by civil or military authorities;
 - (x) compliance with any law or governmental order, rule, regulation or direction;
 - (xi) accident, breakdown of plant or machinery; or
 - (xii) default of suppliers or subcontractors.
- (b) The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

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- (c) If the Force Majeure Event prevents the Supplier from providing any of the Services for more than four (4) weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

13 DISCLAIMER

The Report is issued on the strict condition that nothing therein shall be deemed to relieve any designer, manufacturer, seller, supplier, repairer or operator of any warranty, express or implied and the Supplier's liability shall be limited to the acts and omissions of its employees, agents or subcontractors and is subject to these Conditions for the provision of the Services. The Report is personal to, and for the private and confidential use of, the Customer and is issued solely to the Customer and the Customer shall not reproduce or make available, in whole or part, the Report without the prior written consent of the Supplier other than where required by law. The Report may not be relied upon by any other party without the express written consent of the Supplier.

14 RECOVERY OF SUMS DUE

Wherever under the Contract the Supplier considers that any sum of money is recoverable from or payable by the Customer, that sum may be deducted from any sum then due, or which at any later time may become due, to the Customer under the Contract or under any other agreement or contract with the Supplier.

15 ASSIGNMENT AND SUB-CONTRACTING

- 15.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 15.2 The Supplier shall not, without the prior written consent of the Customer, assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 15.3 Each party that has rights under the Contract is acting on its own behalf and not for the benefit of another person.

16 HIMALAYA

It is hereby expressly agreed that no employee or agent of the Supplier (including every sub-contractor from time to time employed by the Supplier and the employees or agents of any such sub-contractor) shall in any circumstance whatsoever be under any liability whatsoever to the Customer for any loss, damage, delay arising or resulting directly or indirectly from any neglect or default on his part while acting in the course of or in connection with his employment and, without prejudice to the generality of the foregoing provisions in this condition, every exemption, limitation, condition and liberty herein contained and every right, exemption from liability defence and immunity of whatsoever nature applicable to the Supplier or to which the Supplier is entitled hereunder shall also be available and shall extend to protect every such employee or agent of the Supplier acting aforesaid.

17 THIRD PARTY RIGHTS

Nothing in these Conditions shall create any rights for third parties under the Contracts (Rights of Third Parties) Act 1999. No variation to these Conditions and no supplemental or ancillary agreement to these Conditions shall create any such rights unless expressly so stated in any such agreement by the parties. This does not affect any right or remedy of a third party which exists or is available otherwise than pursuant to that Act.

18 WAIVER AND SEVERANCE

- 18.1 No waiver of the Supplier's rights shall be effective unless in writing and signed by an authorised representative of the Supplier. A waiver shall only apply to the specific circumstances in which it is given and shall not effect the enforcement of the Supplier's rights in relation to different circumstances or the recurrence of similar circumstances.
- 18.2 If any court or competent authority finds any provision of these Conditions (or part of any provision) is invalid, illegal or unenforceable, that 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 these Conditions shall not be affected. If any invalid, unenforceable or illegal provision of the Conditions 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.

19 NOTICES

Any notice given pursuant to the Contract may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted by telex, telemessage, facsimile transmission or other means of telecommunication resulting in the receipt of a written communication in permanent form and if so sent or transmitted to the address of the party shown on the Service Quotation, or to such other address as the party may by notice to the other have substituted therefor, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

20 PREVENTION OF CORRUPTION

The Customer shall not offer or give, or agree to give, to any member, employee or representative of the Supplier or any other third party any gift or consideration of any kind as an inducement or reward for doing or refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this Contract or any other contract with the Supplier or for showing or refraining from showing favour or disfavour to any person in relation to this or any such contract. The attention of the Customer is drawn to the criminal offences created by the Bribery Act 2010.

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21 HEADINGS AND VARIATION

- 21.1 The headings to these Conditions shall not affect their construction or interpretation.
- 21.2 No variation of these Conditions or the documents referred to in them shall be valid unless it is in writing and signed by or on behalf of each of the parties.

22 GOVERNING LAW

These Conditions shall be governed by and construed in accordance with the laws of England and Wales and the Customer hereby irrevocably submits to the exclusive jurisdiction of the English and Welsh courts.

23 GENERAL

- 23.1 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 23.2 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by the Supplier.

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