



Purchase Order Terms and Conditions

As used herein, "Seller" includes Seller, its subsidiaries and affiliates; "SMC" Seaspan Marine Corporation includes Seaspan Marine Corporation, Vancouver Shipyards Co. Ltd., Victoria Shipyards Co. Ltd., Vancouver Drydock Company Ltd., Seaspan Ferries Corporation, any member company of Seaspan Marine Corporation, and their subsidiaries and affiliates. Seller and SMC hereby agree as follows:

1. SERVICES & DELIVERABLES.

Seller agrees to perform the services ("Services") and/or provide the goods or Services deliverables (collectively referred to as "Goods"), described in any purchase order, in accordance with the applicable purchase order, scope of work and with these Purchase Order Terms and Conditions (the "Agreement"). Upon acceptance of a purchase order, shipment of Goods or commencement of Services, Seller shall be bound by the provisions of this Agreement, including all provisions set forth on the face of any applicable purchase order, whether or not Seller acknowledges or otherwise signs this Agreement or the purchase order.

This writing does not constitute a firm offer by SMC, and may be revoked at any time by SMC prior to acceptance by Seller. Any terms or conditions contained in any acknowledgment, invoice or other communication of Seller, which are inconsistent with the terms and conditions herein, are hereby rejected. To the extent that this Agreement might be treated as an acceptance of Seller's prior offer, such acceptance is expressly made on condition of assent by Seller to the terms hereof, and shipment of the Goods or beginning performance of any Services by Seller shall constitute such assent. SMC hereby reserves the right to reschedule any delivery or cancel any purchase order issued at any time prior to shipment of the Goods or prior to commencement of any Services. SMC shall not be subject to any charges or other fees as a result of such cancellation.

2. DELIVERY.

Time is of the essence. Delivery of Goods shall be made pursuant to the schedule, via the carrier and to the place specified on the face of the applicable purchase order. SMC reserves the right to return, shipping charges collect, all Goods received in advance of the delivery schedule. If no delivery schedule is specified, the order shall be filled promptly and delivery will be made by the most expeditious form of land transportation. If no method of shipment is specified in the purchase order, Seller shall use the least expensive carrier. In the event Seller fails to deliver the Goods within the time specified, SMC may, at its option, decline to accept the Goods and terminate the Agreement or may demand its allocable fair share of Seller's available Goods and terminate the balance of the Agreement. Acknowledgment of delivery of Goods shall not constitute acceptance. Seller shall package all Goods in suitable containers to permit safe transportation and handling. Each delivered container must be labeled and marked to identify contents, including quantities and weight, without opening, and all boxes and packages must contain packing sheets listing contents. Seller's name and address, the packing slip number, and SMC's purchase order number must appear on all shipping containers, packing sheets, delivery tickets and bills of lading.

3. IDENTIFICATION, RISK OF LOSS & DESTRUCTION OF GOODS.

Seller assumes all risk of loss of Goods until receipt by SMC. Title to the Goods shall pass to SMC upon receipt by it of the Goods at the designated destination. If the Goods ordered are destroyed prior to title passing to SMC, SMC may at its option cancel the Agreement or require delivery of substitute Goods of equal quantity and quality. Such delivery will be made as soon as commercially practicable. If loss of Goods is partial, SMC shall have the right to require delivery of the Goods not destroyed.

4. PAYMENT; INVOICING.

As full consideration for the performance of the Services, delivery of the Goods and the assignment of rights to SMC as provided herein, SMC shall pay Seller (i) the amount agreed upon and specified in the applicable purchase order, or (ii) Seller's quoted price on date of shipment (for Goods), or the date Services were started (for Services), whichever is lower. Applicable taxes and other charges such as shipping costs, duties, customs, tariffs, and government imposed charges shall be stated separately on Seller's invoice. Payment is made when SMC's cheque is mailed or SMC initiates an inter-bank transfer. Payment shall not constitute acceptance. All personal property taxes assessable upon the Goods prior to receipt by SMC of Goods conforming to the purchase order shall be borne by Seller. Seller shall invoice SMC for all Goods delivered and all Services actually performed. Each invoice submitted by Seller must be provided to SMC within ninety (90) days of completion of the Services or delivery of Goods and must reference the applicable purchase order, and SMC reserves the right to return all incorrect invoices. SMC will receive a 2% discount of the invoiced amount for all invoices that are submitted more than ninety (90) days after completion of the Services or delivery of the Goods. Unless otherwise specified on the face of a purchase order, SMC shall pay the invoiced amount subject to the following payment terms:

- Net 45 Days.

Days shall be calculated based on date of Materials and/or Services received by SMC **OR** the date the Seller's Invoice is received by SMC Accounts Payable, whichever is later.

Each invoice shall include a sufficient description of the Goods or Services supplied, as well as SMC's purchase order number. When shipment is made from outside of Canada, customs invoices must be in quadruplicate and must be certified in accordance with the Canada Customs and Revenue Agency regulations.



5. WARRANTIES.

5.1 Services: Seller represents and warrants that all Services shall be completed in a professional, workmanlike manner, with the degree of skill and care that is required by current, good and sound professional procedures. Further, Seller represents and warrants that the Services shall be completed in accordance with applicable specifications and shall be correct and appropriate for the purposes contemplated by this Agreement. Seller represents and warrants that the performance of Services under this Agreement will not conflict with, or be prohibited in any way by, any other agreement or statutory restriction to which Seller is bound.

5.2 Goods: Seller warrants that all Goods provided will be new, will not be used or refurbished, will be of the highest marine and commercial standards, and will be free and clear of all charges, liens, claims and encumbrances. Seller is aware of the intended use of the Goods and warrants that the Goods supplied are reasonably fit for their intended use. Seller warrants that all Goods delivered shall be free from defects in materials and workmanship and shall conform to all applicable specifications for a period of fifteen (15) months from the date of delivery to SMC or for the period provided in Seller's standard warranty covering the Goods, whichever is longer. Seller hereby agrees that it will make spare parts for the Goods available to SMC for a period of five (5) years from the date of delivery at Seller's then current price, less applicable discounts. Additionally, Goods purchased shall be subject to all written and oral express warranties made by Seller's agents, and to all warranties provided for by the British Columbia Sale of Goods Act [RSBC 1996] Chapter 410. All warranties shall be construed as conditions as well as warranties and shall not be exclusive. Seller shall furnish to SMC Seller's standard warranty and service guaranty applicable to the Goods. All warranties and Services guaranties shall run both to SMC and to its customers.

5.3 Warranty Remedies: If SMC identifies a warranty problem with the Goods during the warranty period, SMC will promptly notify Seller of such problems and will return the Goods to Seller, at Seller's expense. Within five (5) business days of receipt of the returned Goods, Seller shall, at SMC's option and Seller's expense, either repair or replace such Goods, or credit SMC's account for the same. Replacement and repaired Goods shall be warranted for the remainder of the warranty period or six (6) months, whichever is longer. The warranties outlined in this Section 5 shall survive acceptance of and payment for the Goods and Services.

6. INSPECTION.

SMC shall have a reasonable time after receipt of Goods and before payment to inspect them for conformity hereto, and Goods received prior to inspection shall not be deemed accepted until SMC has run an adequate test to determine whether the Goods conform to the specifications hereof. Use of a portion of the Goods for the purpose of testing shall not constitute an acceptance of the Goods. If Goods tendered do not wholly conform to the provisions hereof, SMC shall have the right to reject such Goods. Nonconforming Goods will be returned to Seller freight collect and risk of loss will pass to Seller upon SMC's delivery to the common carrier.

Mandatory quality assurance inspections will be conducted on all Services supplied by Seller at SMC sites. No Services are to be carried out at SMC sites until such inspections are conducted to SMC's satisfaction. All Services performed by Seller are subject to SMC's acceptance, and if rejected in SMC's sole discretion, such Services shall be re-performed at Seller's expense.

7. SELLER ON-SITE.

7.1 Safety: Prior to commencing any work at a SMC site (which includes vessels under the care and control of SMC), Seller must report to the site's first aid/safety facility. At this facility, Seller will receive a briefing on site-specific safety and environmental policies. Upon completion of this briefing, Seller must sign the briefing log.

7.2 Workers' Compensation Board: All work performed for SMC by an on-site Seller shall be in accordance with Workers' Compensation Board ("WCB") regulations and SMC's safe work procedures and policies. Prior to the commencement of work, and upon completion of the work, the on-site Seller must forward to SMC a current WCB clearance letter. No payment will be made by SMC to the on-site Seller without this certification.

7.3 SMC Customers: An on-site Seller may not directly contact SMC customers such as vessel owners or agents. All communications related to Seller's work must be directed to SMC staff on-site. An on-site Seller will not accept instructions or directions pertaining to the performance of its duties from any source other than SMC staff.

7.4 Esquimalt Graving Dock: All work performed at the Esquimalt Graving Dock by Seller must meet with the Federal Government's "Esquimalt Graving Dock Environmental Best Management Practices."

7.5 Hazardous Materials: Seller shall keep its work areas at any SMC site clean and tidy at all times, or as directed by SMC. All hazardous materials and waste are to be clearly marked and handled in accordance to SMC Policies.

7.6 Delay: All work performed by an on-site Seller must be completed within the agreed upon time schedule. Work completed behind schedule, unless otherwise mutually agreed or due to a force majeure situation, will incur a penalty of 2% of the contract value for each day of delay.

8. INDEPENDENT CONTRACTOR.

SMC is interested only in the results obtained under this Agreement; the manner and means of achieving the results are subject to Seller's sole control. Seller is an independent contractor for all purposes, without express or implied authority to bind SMC by contract or otherwise. Neither Seller nor its employees, agents or subcontractors ("Seller's Assistants") are agents or employees of SMC, and therefore are not entitled to any employee benefits of SMC, including but not limited to, any type of insurance. Seller shall be responsible for all costs and expenses incident to performing its obligations under this Agreement and shall provide Seller's own supplies and equipment.



9. SELLER RESPONSIBLE FOR TAXES.

Seller shall be solely responsible for paying all federal, provincial and municipal taxes or fees, including estimated taxes and employment taxes, due with respect to Seller's receipt of payment under this Agreement. SMC shall have no responsibility to pay or withhold from any payment to Seller any federal, provincial or municipal taxes or fees.

10. INSURANCE.

Seller shall be solely responsible for maintaining and requiring Seller's Assistants to maintain such adequate health, auto, workers' compensation, unemployment compensation, disability, liability, and other insurance, as is required by law or as is the common practice in Seller's and Seller's Assistants' trades or businesses, whichever affords greater coverage. Upon request, Seller shall provide SMC with certificates of insurance or evidence of coverage satisfactory to SMC before commencing performance under this Agreement. Seller shall provide adequate coverage for any SMC property under the care, custody or control of Seller or Seller's Assistants.

11. INDEMNITY.

Seller shall indemnify, hold harmless, and at SMC's request, defend SMC, its officers, directors, customers, agents and employees, against all claims, liabilities, damages, losses and expenses, including legal fees and cost of any action arising out of or in any way connected with the Goods or Services provided under this Agreement, including, without limitation, (i) any claim based on the death or bodily injury to any person, destruction or damage to property, or contamination of the environment and any associated clean up costs, (ii) Seller failing to satisfy the Canada Customs and Revenue Agency's guidelines for an independent contractor, (iii) any claim based on the negligence, omissions or willful misconduct of Seller or any of Seller's Assistants, and (iv) any claim by a third party against SMC alleging that the Goods or Services, the results of such Services, or any other products or processes provided under this Agreement, infringe a patent, copyright, trademark, trade secret or other proprietary right of a third party, whether such are provided alone or in combination with other products, software or processes. Seller shall not settle any such suit or claim without SMC's prior written approval. Seller agrees to pay or reimburse all costs that may be incurred by SMC in enforcing this indemnity, including legal fees.

Should SMC's use, or use by its distributors, subcontractors or customers, of any Goods or Services purchased from Seller be enjoined, be threatened by injunction, or be the subject of any legal proceeding, Seller shall, at its sole cost and expense, either (a) substitute fully equivalent non-infringing Goods or Services; (b) modify the Goods or Services so that they no longer infringe but remain fully equivalent in functionality; (c) obtain for SMC, its distributors, subcontractors or customers the right to continue using the Goods or Services; or (d) if none of the foregoing is possible, refund all amounts paid for the infringing Goods or Services.

12. CONFIDENTIALITY.

Seller will acquire knowledge of SMC Confidential Information (as defined below) in connection with its performance hereunder and agrees to keep such SMC Confidential Information in confidence during and following termination or expiration of this Agreement. "SMC Confidential Information" includes but is not limited to all information, whether written or oral, in any form, including without limitation, information relating to the research, development, products, methods of manufacture, trade secrets, business plans, customers, vendors, finances, personnel data, Work Product (as defined herein) and other material or information considered proprietary by SMC relating to the current or anticipated business or affairs of SMC which is disclosed directly or indirectly to Seller. In addition, SMC Confidential Information means any third party's proprietary or confidential information disclosed to Seller in the course of providing Services or Goods to SMC. SMC Confidential Information does not include any information (i) which Seller lawfully knew without restriction on disclosure before SMC disclosed it to Seller, (ii) which is now or becomes publicly known through no wrongful act or failure to act of Seller, (iii) which Seller developed independently without use of the SMC Confidential Information, as evidenced by appropriate documentation, or (iv) which is hereafter lawfully furnished to Seller by a third party as a matter of right and without restriction on disclosure. In addition, Seller may disclose Confidential Information which is required to be disclosed pursuant to a requirement of a government agency or law so long as Seller provides prompt notice to SMC of such requirement prior to disclosure.

Seller agrees not to copy, alter or directly or indirectly disclose any SMC Confidential Information. Additionally, Seller agrees to limit its internal distribution of SMC Confidential Information to Seller's Assistants who have a need to know, and to take steps to ensure that the dissemination is so limited, including the execution by Seller's Assistants of nondisclosure agreements with provisions substantially similar to those set forth herein. In no event will Seller use less than the degree of care and means that it uses to protect its own information of like kind, but in any event not less than reasonable care to prevent the unauthorized use or disclosure of SMC Confidential Information.

Seller further agrees not to use the SMC Confidential Information except in the course of performing its obligations hereunder and will not use such SMC Confidential Information for its own benefit or for the benefit of any third party. The mingling of the SMC Confidential Information with information of Seller shall not affect the confidential nature or ownership of the same as stated hereunder. Seller agrees not to design or manufacture any products which incorporate SMC Confidential Information. All SMC Confidential Information is and shall remain the property of SMC. Upon SMC's written request or the termination of this Agreement, Seller shall return, transfer or assign to SMC all SMC Confidential Information, including all Work Product, as defined herein, and all copies thereof.

13. OWNERSHIP OF WORK PRODUCT.

For purposes of this Agreement, "Work Product" shall include, without limitation, all designs, discoveries, creations, works, devices, masks, models, work in progress, Services deliverables, inventions, products, computer programs, procedures, improvements, developments, drawings, notes, documents, business processes, information and materials made, conceived or developed by Seller alone or with others which result from or relate to the Services performed hereunder. Standard Goods manufactured by Seller and sold to SMC without having been designed, customized or modified for SMC do not constitute Work Product. All Work Product shall at all times be and remain the sole and exclusive property of SMC. Seller hereby agrees to irrevocably assign and transfer to SMC and does hereby assign and transfer to SMC all of its worldwide right, title and interest in and to the Work Product including all associated intellectual property rights. SMC will have the sole right to determine the treatment of any Work Product, including the right to keep it as trade secret, to execute and file patent applications on it, to use and disclose it without prior patent application, to file registrations for copyright or trademark in its own name, or to follow any other procedure that SMC deems appropriate. Seller agrees: (a) to disclose promptly in writing to SMC all Work Product in its possession; (b) to assist SMC in every reasonable way, at SMC's expense, to secure, perfect, register, apply for, maintain, and defend for



SMC's benefit all copyrights, patent rights, mask work rights, trade secret rights, and all other proprietary rights or statutory protections in and to the Work Product in SMC's name as it deems appropriate; and (c) to otherwise treat all Work Product as SMC Confidential Information as described above. These obligations to disclose, assist, execute and keep confidential survive the expiration or termination of this Agreement. All tools and equipment supplied by SMC to Seller shall remain the sole property of SMC.

Seller will ensure that Seller's Assistants appropriately waive any and all claims and assign to SMC any and all rights or any interests in any Work Product or original works created in connection with this Agreement. Seller irrevocably agrees not to assert against SMC or its direct or indirect customers, assignees or licensees any claim of any intellectual property rights of Seller affecting the Work Product.

SMC will not have rights to any works conceived or reduced to practice by Seller which were developed entirely on Seller's own time without using equipment, supplies, facilities, trade secrets or SMC Confidential Information, unless (i) such works relate to SMC's business or SMC's actual or demonstrably anticipated research or development, or (ii) such works result from any Services performed by Seller for SMC.

14. NONINTERFERENCE WITH BUSINESS.

During and for a period of two years immediately after the termination or expiration of this Agreement, Seller agrees not to unlawfully interfere with the business of SMC in any manner, and further agrees not to solicit or induce any employee or independent contractor to terminate or breach an employment, contractual or other relationship with SMC.

15. TERMINATION.

SMC may terminate this Agreement upon written notice to Seller if Seller fails to perform or otherwise breaches this Agreement, files a petition in bankruptcy, becomes insolvent, or dissolves. In the event of such termination, SMC shall pay Seller for the portion of the Services satisfactorily performed and those conforming Goods delivered to SMC through the date of termination, less appropriate offsets, including any additional costs to be incurred by SMC in completing the Services or sourcing the undelivered Goods.

SMC may terminate this Agreement for any other reason upon thirty (30) days' written notice to Seller. Seller shall cease to perform Services and/or provide Goods under this Agreement on the date of termination specified in such notice. In the event of such termination, SMC shall be liable to Seller only for those Services satisfactorily performed and those conforming Goods delivered to SMC through the date of termination, less appropriate offsets.

Seller may terminate this Agreement upon written notice to SMC if SMC fails to pay Seller within sixty (60) days after Seller notifies SMC in writing that payment is past due.

Upon the expiration or termination of this Agreement for any reason: (a) each party will be released from all obligations to the other arising after the date of expiration or termination, except for those which by their terms survive such termination or expiration; and (b) Seller will promptly notify SMC of all SMC Confidential Information or any Work Product in Seller's possession and, at the expense of Seller and in accordance with SMC's instructions, will promptly deliver to SMC all such SMC Confidential Information and/or Work Product.

16. REMEDIES.

If Seller breaches this Agreement, SMC shall have all remedies available by law and at equity. For the purchase of Goods, Seller's sole remedy in the event of breach of this Agreement by SMC shall be the right to recover damages in the amount equal to the difference between market price at the time of breach and the purchase price specified in the Agreement. No alternate method of measuring damages shall apply to this transaction. Seller shall have no right to resell Goods for SMC's account in the event of wrongful rejection, revocation of acceptance, failure to make payment or repudiation by SMC, and any resale so made shall be for the account of Seller.

17. FORCE MAJEURE.

SMC shall not be liable for any failure to perform, including failure to (i) accept performance of Services or, (ii) take delivery of the Goods as provided, caused by circumstances beyond its control which make such performance commercially impractical including, but not limited to, acts of God, fire, flood, acts of war, government action, accident, labor difficulties or shortage, inability to obtain materials, equipment or transportation. In the event SMC is so excused, either party may terminate the Agreement and SMC shall at its expense and risk, return any Goods received to the place of shipment.

18. SEVERABILITY.

If any provision of this Agreement shall be deemed to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

19. LIMITATION OF LIABILITY.

IN NO EVENT SHALL SMC BE LIABLE TO SELLER OR SELLER'S ASSISTANTS, OR ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT, WHETHER OR NOT SMC WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

20. ASSIGNMENT; WAIVER.

Seller may not assign this Agreement or any of its rights or obligations under this Agreement, without the prior written consent of SMC. Any assignment or transfer without such written consent shall be null and void. This Agreement shall inure to the benefit of, and be binding



upon, the successors and assigns of SMC without restriction. A waiver of any default hereunder or of any term or condition of this Agreement shall not be deemed to be a continuing waiver or a waiver of any other default or any other term or condition.

21. NONEXCLUSIVE AGREEMENT.

This is not an exclusive agreement. SMC is free to engage others to perform Services or provide Goods the same as or similar to Seller's. Seller is free to, and is encouraged to, advertise, offer and provide Seller's Services and/or Goods to others; provided however, that Seller does not breach this Agreement.

22. NOTICES.

Except for purchase orders, which may be sent by local mail, facsimile transmission, or electronic mail, all notices and other communications hereunder shall be in writing, and shall be addressed to Seller or to an authorized SMC representative, and shall be considered given (a) when delivered personally, (b) when sent by confirmed telex or facsimile, (c) when sent by commercial overnight courier with written verification receipt, or (d) three (3) days after having been sent, postage prepaid, by first class or certified mail.

23. SURVIVAL OF OBLIGATIONS.

Any obligations and duties which by their nature extend beyond the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement.

24. GOVERNING LAW.

This Agreement and performance hereunder shall be governed and interpreted by the laws of British Columbia and applicable laws of Canada. The parties irrevocably agree to attorn to the exclusive jurisdiction of the courts of the Province of British Columbia sitting in the City of Vancouver, British Columbia and agree that a judgment or order of such courts may be enforced in any other jurisdiction in any manner permitted by law and to attorn to any such jurisdiction in which such judgment or order is sought to be enforced. The applicability of the UN Convention on Contracts for the International Sale of Goods is hereby expressly waived by the parties and it shall not apply to the terms and conditions of this Agreement.

25. ENTIRE AGREEMENT; MODIFICATION.

This Agreement is the complete, final and exclusive statement of the terms of the agreement between the parties, and except where specified herein, supersedes any and all other prior and contemporaneous negotiations and agreements, whether oral or written, between them relating to the subject matter hereof. The terms and conditions of this Agreement shall prevail notwithstanding any variance with the terms and conditions of any acknowledgment or other document submitted by Seller. This Agreement may not be added to, modified, superseded or otherwise altered by Seller. All SMC additions, deletions or revisions to the terms of this Agreement from time to time shall be confirmed in writing to Seller, and Seller accepts such revised terms by its delivery of Goods or Services, or a portion thereof, following such written confirmation by SMC.

26. COMPLIANCE WITH LAWS.

26.1 General: Seller shall comply fully with all applicable federal, provincial and local laws in the performance of this Agreement including, but not limited to, all applicable employment, tax, export control and environmental laws.

26.2 Hazardous Materials: If Goods include hazardous materials, Seller represents and warrants that Seller understands the nature of any hazards associated with the manufacture, handling and transportation of such hazardous materials.

27. INJUNCTIVE RELIEF.

Seller acknowledges and agrees that the obligations and promises of Seller under this Agreement are of a unique, intellectual nature giving them particular value. Seller's breach of any of the promises contained in this Agreement will result in irreparable and continuing damage to SMC for which there will be no adequate remedy at law and, in the event of such breach, SMC will be entitled to seek injunctive relief, or a decree of specific performance.