

## Terms and Conditions Applicable to Shaver's Purchase of Services

1. **Definitions:** "Order" means this purchase order and includes all Terms and Conditions. "Shaver" means Shaver Transportation Co., its parent, subsidiary, or affiliated companies, and their shareholders, officers, directors, agents, and employees. "Services" includes all design, delivery, installation, inspection, and testing specified or required to provide the repair, improvement, or other work as the Order specifically describes. "Property" means the vessel, equipment, property or other Shaver items for which or on which Seller is to provide services, and includes all Shaver facilities and real property where services occur. The word "including" means "including without limitation."

2. **Manner and Materials:** Seller will perform the services in a workmanlike manner, at the location Shaver designates and in accordance with Shaver's specifications. Seller will supply all drawings, materials, equipment, and workmanship involved in performing the services, which must be of a quality that conforms to the best commercial practice for the type of services ordered.

### 3. Warranties:

3.1. Seller must keep the property free and clear of all liens, encumbrances, and claims of every nature, including statutory and maritime liens, in favor of workmen, supplies, subcontractors or others arising by, through, or under Seller. Seller must immediately discharge all such liens or other claims. Seller waives all liens, possessory or otherwise, in its favor that would otherwise attach to the property.

3.2. Seller will correct to Shaver's satisfaction all defects in workmanship or in materials Seller furnishes that develop within one year after Seller completes the services.

4. **Care of the Property:** Seller will protect the property from damage while providing services. While the property being serviced is on Seller's premises or in Seller's custody, Seller assumes all risk of damage to or loss of the property (or of any machinery, equipment, or materials obtained or intended for the property) from any cause whatsoever except acts of God or Shaver's sole negligence.

5. **Insurance:** While fulfilling this Order, Seller must, at its sole cost and expense (including the cost of all deductibles), procure and maintain the following insurance:

5.1. Workers' compensation insurance as the law requires for all of Seller's employees, agents, and subcontractors, and employer's liability insurance in an amount not less than \$1,000,000 per accident. Such insurance must provide coverage in the location in which Seller performs the work and in Seller's domicile. If there is an exposure to injury or illness under the U.S. Longshore and Harbor Workers' Compensation Act, the Jones Act, or other statutes applicable to maritime employees, Seller must maintain insurance for such injuries or illnesses, and provide evidence of such insurance.

5.2. Commercial general liability insurance, on a per occurrence basis, endorsed to cover premises, operations, products/completed operations, personal injury and contractual liability, with watercraft exclusions deleted and "in rem" coverage as may be applicable, at a minimum limit of \$1,000,000 per accident or occurrence.

5.3. Automobile liability insurance, covering Seller's owned, rented, leased, and hired vehicles, with limits of liability not less than \$1,000,000 per occurrence.

5.4. As applicable: a. If consulting services are being performed: professional liability/errors & omissions liability insurance with limits not less than \$1,000,000 per occurrence.

b. For delivery of fuel or other hazardous products, or waste disposal operations Seller performs: pollution insurance or environmental impairment insurance with limits of liability not less than \$5,000,000 per occurrence, and any other public liability or environmental impairment coverage that federal, state or local regulatory authorities require.

c. Should the services include use of Seller's vessels, protection & indemnity/marine liability insurance (on SP-23 form or equivalent) covering Seller's vessels, with extensions for marine contractual liability, wreck removal, etc., and either included or separate pollution liability coverage, all with limits of liability not less than \$5,000,000 per occurrence.

5.5. All policies (except Workers Comp/USL&HW) must be endorsed to name Shaver (and the Shaver vessel being serviced, if applicable) as additional insureds with a waiver of subrogation. Workers Comp/USL&HW policies must be endorsed to waive subrogation against Shaver. The amount or scope of insurance required does not place any limitation on the liability Seller assumes. Shaver will benefit from any higher insurance limits Seller may maintain. Seller must require any subcontractor used in providing services to maintain insurance of the types and amounts this Order requires of Seller. Policies of Seller are primary to any insurance Shaver carries, and Seller must amend any "other insurance" clauses under its policies accordingly. Should Seller fail to procure or maintain any of the required insurance or by any act or omission invalidate any of the required insurance, Seller must pay to Shaver all losses and indemnify Shaver against all claims and demands that insurance otherwise would have covered. Insolvency, bankruptcy or failure of any insurance company to pay all claims accruing does not relieve Seller of any of its obligations. Seller's insurance must be written with insurers carrying no less than a "B" rating from A.M. Best's. Seller must provide Shaver with certificates of insurance on request. Commencement of services without request for or without providing certificates of insurance does not constitute a waiver of Seller's obligation to maintain required insurance.

**6. Independent Contractor:** Seller will determine the manner and method of performing the services and will operate as an independent contractor and not as an agent or employee of Shaver.

**7. Nature of Work:** Time is of the essence for this Order. Seller has carefully inspected and considered the nature and location of the services and all conditions that may affect completion. Seller assumes all risk of loss and unanticipated expense, however caused and whether or not foreseeable.

**8. Changes:** Shaver has the right to order changes to the services. In the event of Shaver requested changes, Seller may adjust prices or times of performance within reasonable limits. Shaver has no obligation to pay or allow any increase in price or time of performance that Seller does not provide to Shaver in writing within 5 days after Shaver orders the change. Seller may not make any change unless it specifies the change in writing and an authorized representative of Shaver signs the change.

**9. Inspection:** All services are subject to Shaver's inspection. Shaver may reject services if they are not strictly in accordance with this Order. Progress payments do not constitute acceptance of work in progress. Seller must immediately refund any prior payment Shaver made on services that it rejects. Seller may not re-perform rejected services without an additional order from Shaver. The services this Order covers are subject to rejection upon final inspection.

**10. Permits and Approvals:** Where applicable to the services, Seller is to provide and arrange, at no additional cost to Shaver unless this Order authorizes, all necessary permits, bonds, testing, inspection, and approval of materials or workmanship by proper authorities.

11. **Performance and Waivers:** Any waiver of strict performance or breach with regard to any of this Order's terms, conditions, or provisions must be in writing to be effective. Such waiver will not waive Shaver's rights to insist upon Seller's strict performance of all portions of this Order not waived, and strict performance thereafter of the provision or breach Shaver presently waives.

12. **Default:** Shaver may cancel this Order in its entirety, or in part, due to defects in materials, workmanship, or quality, or if Seller fails to comply with or perform any of the terms or provisions of this Order. Seller will also be liable for Shaver's damages and costs resulting from such default, regardless of any action Shaver takes or does not take to cancel this Order entirely or in part.

13. **Compliance with Laws, Safety Compliance:** Seller must comply with all applicable laws and regulations. Seller is responsible for workplace safety and safety regulation compliance for its employees and those of its subcontractors when working on Shaver's vessels or facilities. Seller agrees to indemnify and hold harmless Shaver for any loss, liability, suit, damage, fine, penalty, or expense whatsoever because of Seller's failure to comply with such laws and regulations.

14. **Drawings:** Where applicable, Seller must furnish for approval all shop drawings as Shaver may require, and all workmanship and materials must be in strict accordance with the approved drawings. All plans, specifications and drawings Shaver provides to Seller in connection with this Order or that Seller provides especially for performance hereunder will be the property of Shaver, and Seller may not use them at any time for any other purpose.

15. **Assignment and Subcontracting:** Seller may not assign or subcontract any portion of its obligations under this Order without Shaver's prior written consent.

16. **Indemnity:** To the extent permitted under law, Seller must indemnify, save harmless, and defend Shaver from and against any legal proceedings, claims, demands, damages, costs, and expenses of whatsoever kind or character (including reasonable attorney's fees and expenses) arising out of any injury (including death) or damage to any persons or property in any manner, caused or occasioned in any proportion or degree by any defect in provided goods or services or by any act, omission, negligence, or default of any person, firm, corporation, or other entity (including Seller, Shaver, or anyone acting on their respective behalf), in connection with or incident to this Order or the services, even if the same is, or is alleged to be, due to the sole active negligence of Shaver or anyone acting on its behalf. Seller hereby waives immunity and exclusive remedy provisions under applicable worker's compensation laws.

17. **Termination:** Shaver may terminate this Order, in whole or in part, at any time by written notice stating the extent and effective date of such termination. Upon receipt of notice, Seller will, as and to the extent Shaver directs, stop work under this Order. Shaver's sole liability to Seller in case of termination is reimbursement of Seller's expenses incurred up to and including the date and time of termination.

18. **Consequential Damages:** Shaver is not responsible for indirect or special damages, including extra expense, loss of use of property, delay, or damages consequential upon loss of use, whether resulting from negligence or breach or otherwise.

19. **Taxes:** Unless this Order states otherwise, the purchase price includes all taxes, fees, import charges, or other government charges, and Shaver has no liability to pay Seller any amount in excess of the purchase price this Order specifies.

20. **Miscellaneous:**

(a) If a court or other competent authority holds any provision of these Terms to be invalid or unenforceable in whole or in part, the other provisions of these Terms and the remainder of the provision in question will remain valid.

(b) This Order is governed by and must be construed in accordance with the federal maritime law of the United States, or if there is no applicable rule of maritime law, the laws of the State of Oregon. Seller submits to the jurisdiction of state and federal courts located in Portland, Oregon.

(c) This Order and any attachments constitute the entire agreement between the parties with respect to the services. Any proposals or terms additional to or different from those in this Order are not binding unless Shaver expressly agrees in writing.