

1 General

- 1.1 Every contract of sale between ChartCo Limited whose principal place of business is located at Unit 4, Voltage, Mollison Avenue, Enfield EN3 7XQ ("the Seller") and persons contracting with the Seller ("the Buyer"), whether by direct order or by acceptance of a quotation, is subject to these terms and conditions.
- 1.2 All other conditions and terms whether implied by statute, common law or trade usage or expressed by the Buyer are hereby excluded with the exception of conditions expressly accepted by the Seller in writing and conditions and other terms the exclusion of which is prohibited by law.
- 1.3 Any variation of these terms and conditions shall not be binding on the parties unless set out in writing, expressed to vary these terms and conditions, and signed by authorised representatives of each of the parties.
- 1.4 The provisions contained in each clause and sub-clause of these terms and conditions shall be enforceable independently of each of the others and their validity shall not be affected if any of the others are invalid.
- 1.5 These terms and conditions prevail should they conflict with any INCOTERMS or similar terms. Subject thereto, references to 'EX WORKS' are to the corresponding INCOTERM 2010 for domestic trade, or "FCA" INCOTERM 2010, for international trade.

in trademarks, designs, know-how and confidential information (whether registered or unregistered);

- ii) applications for registration, and the right to apply for registration, for any of these rights; and
- iii) all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world;

Proprietary Items include, but are not limited to, any display system, batteries or similar item included in the Supplies supplied by the Seller but not manufactured or produced by the Seller;

Proprietary Software Materials means the software, if any, that constitutes or accompanies the Supplies supplied under these terms and conditions and licensed under a separate licence agreement;

VAT means value-added tax chargeable under or pursuant to VATA 1994 or the EC Sixth Directive (77/388/EEC) or any similar sales, purchase or turnover tax chargeable outside the European Union;

VATA 1994 means the Value Added Tax Act 1994

2 Definitions

In these Terms and Conditions, the following words shall have the following meanings:

- Chart Supplies or Supplies means:
 - i) the provision of navigational data, ship management information and other related publications to the Buyer in physical format, which may include, but not be limited to, charts, pilots, books, corrections, tracings, guides and handbooks, together with associated tools, equipment and other aids for their practical use;
 - ii) the provision of navigational data, ship management information and other related publications to the Buyer, in electronic format(s), which may include, but not be limited to, charts, pilots, books, corrections, tracings, guides and handbooks, together with associated licences, software tools, equipment and other aids for their practical use.
- Defective means, in relation to Supplies supplied by the Seller, that they do not function materially in accordance with their specification due to a fault in design, material or workmanship or due to a material discrepancy from the contract description, but Supplies are not defective if a malfunction is due to anomalies or changes in transmissions from land or satellite stations however caused;
- ChartCo means the business unit of ChartCo Limited pertaining to the provision of Chart Supplies
- Intellectual Property Rights means:
 - i) copyright, patents, database rights and rights

3 Warranty

- 3.1 Save as provided by law, the only warranties and representations relating to the Supplies provided by the Seller are those set out in the written documentation (if any) supplied with the Supplies in question.

4 Patent Indemnity

- 4.1 Subject to clause 4.2 the Seller shall indemnify the Buyer in respect of the losses, damages, costs, expenses and other liabilities (including, without limitation, reasonable legal fees) incurred by or finally awarded against the Buyer in connection with a claim by a third party that the use or possession by the Buyer of the Supplies supplied under these terms and conditions by the Buyer infringes any valid United Kingdom patent of that third party ("IPR Claim").
- 4.2 The Buyer agrees that this indemnity shall not apply:
 - (i) if the infringement is caused by the Seller following a design furnished by the Buyer or on its behalf; or
 - (ii) if the infringement is caused by the use or sale of the Supplies in combination with other Supplies; or
 - (iii) if the relevant use or sale of the Supplies would not have constituted infringement at the date of their delivery by the Seller; or
 - (iv) if the Buyer is under an obligation which prevents it from contesting the validity or scope of any relevant patent; or
 - (v) if the Buyer has used the Supplies other than in accordance with these terms and conditions; or
 - (vi) if the Buyer has used the Supplies other than in accordance with their specification.

- 4.3 The Buyer agrees that:
- (i) it shall notify the Seller in writing as soon as reasonably practicable of any IPR Claim;
 - (ii) the Seller shall, at its request and own expense, be entitled to have the conduct of and/or settle all negotiations and litigation arising from any IPR Claim and the Buyer shall, at the Seller's request and expense, give the Seller all reasonable assistance in connection with those negotiations and litigation; and
 - (iii) once the Seller has assumed conduct of the IPR Claim, the Buyer shall not admit any liability or agree to any settlement or compromise of an IPR Claim without the prior written consent of the Seller, which shall not be unreasonably withheld or delayed.
- 5 **Delivery Time**
- 5.1 Dates given for delivery are approximate only and the Seller shall not be liable for any loss or damage resulting from delay unless the delay:
- (i) is of an unreasonable length; and
 - (ii) is caused by circumstances other than those mentioned in clause 12.
- 5.2 Subject to clause 11.3, the Seller's liability under this clause 5 shall be limited to the value of the Supplies that are delivered late.
- 6 **Ownership and Risk**
- 6.1 Unless otherwise expressly agreed by the Seller in writing, delivery is deemed to take place and the risk thereupon passes to the Buyer upon exiting the Seller's works, notwithstanding that the Seller may undertake to install the Supplies.
- 6.2 Ownership of the Supplies shall not pass to the Buyer until the Seller has received in full (in cash or cleared funds) all sums due to it in respect of:
- (i) the Supplies; and
 - (ii) all other sums which are or which become due to the Seller from the Buyer on any account.
- 6.3 Until ownership of the Supplies has passed to the Buyer, the Buyer shall:
- (i) hold the Supplies on a fiduciary basis as the Seller's bailee;
 - (ii) store the Supplies (at no cost to the Seller) separately from all other Supplies of the Buyer or any third party in such a way that they remain readily identifiable as the Seller's property;
 - (iii) not destroy, deface or obscure any identifying mark or packaging on or relating to the Supplies; and
 - (iv) maintain the Supplies in satisfactory condition and keep them insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller. On request the Buyer shall produce the policy of insurance to the Seller.
- 6.4 The Buyer may resell the Supplies before ownership has passed to it solely on the following conditions:
- (i) any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
 - (ii) any such sale shall be a sale of the Seller's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 6.5 The Buyer's right to possession of the Supplies shall terminate immediately if:
- (i) the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
 - (ii) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Seller and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
 - (iii) the Buyer encumbers or in any way charges any of the Supplies.
- 6.6 The Seller shall be entitled to recover payment for the Supplies notwithstanding that ownership of any of the Supplies has not passed from the Seller.
- 6.7 The Buyer grants the Seller, its agents and employees an irrevocable licence at any time to enter any premises where the Supplies are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- 6.8 Where the Seller is unable to determine whether any Supplies are the Supplies in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all Supplies of the kind sold by the Seller to the Buyer in the order in which they were invoiced to the Buyer.
- 6.9 On termination of the Contract, howsoever caused, the Seller's (but not the Buyer's) rights contained in this clause 6 shall remain in effect.
- 6.10 Without prejudice to clause 6.1, by separate agreement not being part of these terms and conditions, the Seller shall on request procure carriage or freight and insurance on the Buyer's behalf at the Buyer's expense.

7 Loss or Damage in Transit

7.1 Without prejudice to the provisions of clause 6 and subject to clause 11, the Seller shall not in any case be liable for loss or damage to Supplies in transit unless:

- (i) such loss or damage is caused by the Seller's negligence; and
- (ii) the carriers and the Seller are notified thereof in writing, in the case of damage or shortage, within three days of delivery or, in the case of non-delivery, within a reasonable time after the date upon which the Supplies would have been delivered in the normal course of events; and
- (iii) in the case of damage to Supplies, those Supplies are returned to the Seller, carriage paid, for inspection within seven days of delivery.

8 Intellectual Property Rights

8.1 The Buyer acknowledges that all Intellectual Property Rights in the Supplies sold under these terms and conditions and any associated documentation (and any modifications thereof) are, as between the Buyer and the Seller, vested, and shall remain vested, in the Seller. The Buyer undertakes to execute any deeds and documents and do anything the Seller may require to vest all such Intellectual Property Rights in the Seller or its nominees.

8.2 The Buyer may not use the Intellectual Property Rights in the Supplies supplied for any purpose other than that which is contemplated under these terms and conditions.

8.3 Any licence that the Seller may grant to the Buyer to use any Proprietary Software Materials shall not be governed by these terms and conditions.

8.4 The Buyer shall not any time without the Seller's previous written consent:

- (i) exhibit any Supplies sold by the Seller at any exhibition
- (ii) take part in or assist at or support or be concerned in any such exhibition of such Supplies or any competition, or competitive trials of or relating to such Supplies; or
- (iii) publish or distribute or cause or assist in the publication or distribution of any literature relating to any such exhibition of such Supplies or competitive trials or the result thereof.

9 Changes

9.1 If, after the receipt of an order for Supplies and before their delivery, improvements are made in their design, the Seller may, on giving notice to the Buyer, incorporate such improvements in those Supplies sold, provided that:

- (i) the performance and quality of the altered Supplies are at least as high as those of the Supplies ordered; and
- (ii) no price variation is made except with the Buyer's consent; and
- (iii) delivery is not unreasonably delayed.

9.2 If, after the receipt of an order for Supplies and/or Service Work and before their delivery, the Buyer gives notice to the Seller of a change in the scope of the order, the Seller may accommodate such changes, subject to the following:

- (i) where the changes affect the specification of the Supplies or Service Work ordered, and are not deemed material by the Seller, it shall accept the changes and notify the Buyer of any consequential changes to the price and delivery dates as soon as practicable after receipt of the Buyer's notification;
- (ii) where the changes delay the delivery schedule set out in the order, the Seller shall accept, without charge, one variation of up to one month's duration. If the delay extends beyond one month from the originally agreed date, the Seller shall reserve the right to invoice and deliver, either to the notified consignee address or on a self-to-self basis, one month after the originally agreed date. Where delivery is made self-to-self, the Seller shall store the Supplies, at the Buyer's risk, for up to one month, free of charge. Thereafter, storage fees will be charged and must be settled before release of the subject Supplies. The provisions of clause 10 below will apply to any invoice issued pursuant to this clause;
- (iii) where the Buyer is required to obtain/provide any necessary paperwork or authorisation, including but not limited to: letters of credit, bills of exchange, end user certification, drawing approval, consignee details, in accordance with an agreed schedule, any failure to meet such agreed dates shall:
 - a. automatically extend the scheduled delivery date, by at least a corresponding period (the actual delay to be notified to the Buyer as soon as practicable after the deficiency has been rectified); and
 - b. if the delay extends beyond one month from the originally agreed delivery date, the relevant provisions of sub-clause 9.2(ii) above will be applied; and
- (iv) where any changes are deemed material, the Seller reserves the right to apply a cancellation charge, which will be calculated on a case-by-case basis. Such a cancellation charge will be calculated on the basis of an assessment of:
 - a. the work done, up to the point of cancellation, by the Seller, its suppliers and contractors;
 - b. the costs of materials purchased for the contract; and
 - c. the cancellation costs charged to the Seller by its suppliers and contractors and any administrative costs in closing and cancelling the contract, including any associated financing costs.

10 Prices and Payment

10.1 Any quotation or offer made by the Seller in respect of the Seller's Supplies will remain valid for a period of 30 days only, unless otherwise expressly agreed in writing. Seller reserves the right to withdraw or amend the quotation or offer until receipt of the Buyer's acceptance. Any order from the Buyer shall constitute the Buyer's acceptance of the Seller's quotation and may not be withdrawn by the Buyer.

- 10.2 Prices quoted will be based upon the exchange rates prevailing, at the date of quotation. The Seller reserves the right to adjust prices, to reflect any adverse currency movements between the date of quotation and the date of shipment.
- 10.3 If, after the date of contract and before the date of delivery or installation, the Seller's input costs are increased, then the prices payable by the Buyer may also be increased.
- 10.4 Unless otherwise indicated the prices quoted are EX WORKS the Seller's premises, exclusive of VAT (if any), transit packing materials, installation, carriage, insurance and additional labour. Any VAT due will be paid by the Buyer in addition to the price quoted.
- 10.5 The Buyer shall make all payments in Pound Sterling, or such other currency as the parties may agree in writing, on or before the due date in immediately available funds without set-off or counterclaim and free and clear of all taxes, deductions, withholdings and other charges of whatever nature.
- 10.6 Unless subject to prior written agreement on credit terms, payment will be made within 30 days from the date of invoice.
- 10.7 The Seller reserves the right to levy an interest charge in the event of failure to pay by the due date. Such charge will be at the rate of one percentage point per month (or any part thereof) on the overdue amount from the date that payment is payable until the date payment is made (both dates inclusive).

11 Liability

- 11.1 Except as expressly provided in clauses 3 and 4 and subject to the provisions of clauses 5 and 11.3, the Seller shall not be liable to the Buyer for direct or indirect loss (including, but not limited to, any loss of profits for whatever reason) or damage to persons or property, howsoever arising from the sale, use, installation or servicing of the Supplies or any defect therein.
- 11.2 Any software and/or digital data supplied by the Seller is done so 'as is' and shall be used by the Buyer at its own risk. The Buyer shall be responsible for the proper installation, use and update of the software and/or digital data and the Seller accepts no liability resulting from the incorrect installation, use, update and protection thereof; this includes, but is not limited to any issues arising as a result of the following:
- (i) Software or hardware viruses, worms, Trojan horses, spyware, malware and adware
 - (ii) Data corruption
 - (iii) Third party software that may cause Seller supplied software and/or digital data not to function correctly
 - (iv) Maintenance of any necessary licenses
- 11.3 Nothing in these terms and conditions limits the Seller's liability for death or personal injury resulting from negligence where the Seller is prevented by statute from excluding or restricting its liability.

12 Force Majeure

- 12.1 Subject to clause 12.3, neither of the parties shall be liable to the other for any delay or non-performance of its obligations under these terms and conditions arising from any cause or causes beyond its reasonable control including any of the following: act of God, governmental act, war, fire, flood, explosion, civil commotion or industrial dispute of a third party, armed hostilities, act of terrorism, revolution, blockade, embargo, strike, lock-out, sit-in, industrial or trade dispute, adverse weather, accident to (or breakdown of) plant or machinery, shortage of any material, labour, transport, electricity or other supply, or regulatory intervention.
- 12.2 Subject to the party so delaying promptly notifying the other party in writing of the cause and the likely duration of the delay and provided that the party shall use reasonable endeavours to limit the effect of such event on the other party, the performance of the delaying party's obligations to the extent affected by the delay shall be suspended during the period that the cause persists, provided that if an agreement is not reached to extend the term for performance of the delaying party's obligations the non-delaying party may by written notice terminate any contract of sale to which these terms and conditions relate.
- 12.3 Nothing in this clause shall affect the Buyer's obligation to make payments under clause 10.

13 Supplies Stored

- 13.1 Where, at the Buyer's request, Supplies are held in storage, the amount due for those Supplies shall be invoiced on the date when they would otherwise have been delivered and the Seller accepts no liability for such Supplies after the date of invoice. Storage fees will be charged for Supplies held for more than one calendar month after such date.

14 Returns

- 14.1 The Seller will not accept, or take responsibility for, Supplies returned by the Buyer which have not been returned in accordance with the Returns Policy operated by the supplying operation, within the Seller's business, details of which have been separately notified, and are available on the Seller's website, or by request.

15 Licences, Permits and Permissions

- 15.1 To the extent that delivery of the Supplies and services may be subject to requirements to obtain licences, permits and permissions, the Buyer undertakes to obtain any such licences, permits and permissions, applicable to the import, installation and operation of the supplies, and to provide all necessary assistance, at his own cost and expense, to the Seller, in respect of any export or transit licence, permits and permissions.
- 15.2 The Seller shall not be liable for any delay or failure to obtain any such necessary licences, permits or permissions as a result of any act or omission of the Buyer.

16 Consumer Sales

16.1 If the sale of the Supplies to the Buyer is a consumer transaction then nothing in these terms and conditions shall affect the Buyer's statutory rights.

17 Third Party Rights

17.1 Except as expressly stated in these terms and conditions, a person who is not a party to these terms and conditions may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

18 Law and Jurisdiction

18.1 The construction, validity and performance of these terms and conditions and matters pertaining thereto shall be governed in all respects by English law.

18.2 The English courts shall have exclusive jurisdiction to settle any action brought in connection with these terms and conditions or matters pertaining thereto and the parties submit to the exclusive jurisdiction of the English courts.

19 Returns Policy and Procedure

19.1 As clause 6 above, risk and title in the Chart Supplies passes to the Buyer upon full payment for the Supplies. ChartCo will not accept the return of any Supplies unless the Buyer accepts and complies with the policy and procedure set out herein.

19.2 The Buyer hereby agrees to the following returns policy conditions:

- (i) No Chart Supplies may be returned prior to ChartCo written acceptance of a proposed return.
- (ii) Requests for the return of Chart Supplies shall be accepted at the sole discretion of ChartCo.
- (iii) ChartCo reserves the right to refuse any request for return that does not comply with this policy and procedure or any other relevant return authorisation.
- (iv) Digital/Electronic products (including but not limited to software, data delivered electronically or otherwise and/or licences) and non-stock items are excluded from this policy and as such may not be returned nor may credit for the same be claimed.
- (v) Print on Demand (POD) charts and any other bespoke products are excluded from this policy and as such may not be returned nor may credit for the same be claimed.

19.3 The Buyer hereby agrees to abide by the following procedure relating to the return of Chart Supplies:

- (i) A request to return any Chart Supplies must be made in writing via email to returns@chartco.com within 7 (seven) days of original receipt of said Supplies. The request must include full details of the Supplies, original order number, Buyer account number, relevant

despatch number, invoice number and reason for request to Return.

- (ii) If ChartCo accepts a request for return of Chart Supplies, the Buyer will be issued with a Return Merchandise Authorisation (RMA) number that must be used on all resultant correspondence.
- (iii) The Chart Supplies must be returned to us DDP (Incoterms 2010) at cost to the Buyer via a recognised courier, within 28 days of the RMA number being issued. The Chart Supplies must be returned complete, unused and in their original condition and on the current ChartCo stock list.
- (iv) Upon inspection and authorised acceptance of the return of Chart Supplies, ChartCo shall issue a credit note less an administrative charge of 20% of the invoiced value or GBP £30.00 (thirty pounds), whichever is the greater.
- (v) Upon such acceptance, title in the Chart Supplies shall pass immediately to ChartCo.