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# Standard Terms and Conditions for Moving Vessel Profiler Systems, Deployment Systems, Custom Goods and Related Services

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## **AML OCEANOGRAPHIC LTD.**

A300-2261 Keating Cross Road, Victoria, BC V8M 2A5 CANADA  
(referred to as “AML”)

- 1. GENERAL** The following are the terms and conditions (referred to as the “Terms and Conditions”) attaching to the acceptance by AML Oceanographic Ltd. (“AML”) of an order related to the Document, placed by any person or entity (the “Purchaser”) for sales by AML all non-standard goods, products or services (the “Goods”) which AML lists on the Document. The Terms and Conditions apply to all purchases and sales of all items on the Document, whether by accepted purchase order, accepted AML quote or estimate, or other written record. The Terms and Conditions may be varied or amended only by written agreement of the Purchaser and AML. Where an appointed agent of AML is buying on his own account he shall be deemed to be the Purchaser.
- 2. PRICES** All prices accepted are firm and shall be denominated in the currency of the Document or as otherwise agreed. Unless otherwise agreed, prices are Ex-Works AML’s facility, and do not include local taxes, import duties, insurance or shipping. Unless otherwise stated, prices only include standard commercial packaging.
- 3. PAYMENT TERMS** 60% of contract price shall be paid at time of order; 40% balance due upon shipment and shall be paid prior to dispatch of goods.
- 4. DELIVERY** Delivery dates at time of acceptance of order are not guaranteed. All Goods shall be shipped Ex-Works AML’s Dartmouth NS Canada facility. Charges incurred by AML for freight, documentation, export (or other special) packing, insurance and any other related services will be billed to the Purchaser. AML is not responsible for loss or damage to goods in transit and risk of loss passes to the Purchaser upon the goods departing the AML facility. The Purchaser is responsible to arrange insurance at its discretion for loss or damage to goods in transit. Partial deliveries are permitted.
- 5. PAYMENT** Payment for Goods shall be made by the Purchaser to AML strictly according to the terms of payment specified on AML’s acceptance of order. Payments when due from the Purchaser shall be made to AML at its address as indicated on the invoice or order acceptance. No holdback, deduction or delay in payment is permitted for late delivery or shipping loss unless agreed in writing by AML, and in no event where delivery is lost or delayed due to circumstances not in AML’s control. Purchaser agrees to pay interest on overdue payments at the rate of 18% per annum (1.5% per month).
- 6. FACTORY ACCEPTANCE TEST** AML, as part of its internal quality assurance procedures, will perform a Factory Acceptance Test of the Goods. The Purchaser shall be entitled, at its own cost, to be present during the FAT.
- 7. ACCEPTANCE OF GOODS** The Purchaser has thirty (30) days from receipt to notify AML of deficiencies in the Goods. Should the Purchaser fail to notify AML in writing of deficiencies within this time period, the Goods will be deemed to be accepted by the Purchaser.

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8. **RETURNS NOT ALLOWED** Because this order is for non-standard goods, no returns are allowed.
9. **MODIFICATION OF GOODS** Where the Purchaser intends to integrate AML Goods for use or resale, the Purchaser agrees not to modify AML Goods except strictly in accordance with any manual, directions or specifications provided, or with the express permission of AML to each proposed modification.
10. **INSTALLATION, COMMISSIONING SUPERVISION, SEA TRIALS, AND OTHER SERVICE WORK (“ON-SITE SERVICES”)** If Installation, Commissioning Supervision, Sea Trials or Other Service Work is included in the contract or sale, the following shall apply:
- A. It is the Purchaser’s responsibility to ensure that On-Site Services are completed in accordance with all applicable laws, rules, and regulations of the jurisdiction where the work is being completed. It is the Purchaser’s responsibility to furnish AML with all relevant information on such laws, rules and regulations;
  - B. Any extra costs reasonably incurred by AML to comply with unexpected changes in applicable laws, rules or regulations shall be borne by the Purchaser;
  - C. If the performance of On-Site Services is subject to an export license from any government, AML shall use reasonable endeavours to obtain such license but will have no liability to the Purchaser in relation to any delay or failure in obtaining such export license;
  - D. The Purchaser will give more than four (4) weeks’ notice, in writing, to AML of the time and the place (Installation Site) of the On-Site Services. If the Purchaser requests On-Site Services at a time that does not fit with AML’s schedule, AML has the right to request a schedule change with no liability;
  - E. AML will send to the Installation Site one or more representatives to act on behalf of AML and to supervise the installation and commissioning and to participate in sea trials, if applicable. Such access includes but is not limited to necessary security clearances. The Purchaser will ensure that AML’s personnel are allowed to perform the On-Site Services in a continuous manner without interruption. The Purchaser will ensure that AML’s representatives have full access to the Installation Site for the duration of the On-Site Services;
  - F. Before AML’s representatives enter the Installation Site, the Purchaser will ensure that the installation site complies with all applicable health and safety laws and regulations. AML’s personnel will be entitled to refuse to perform the On-Site Services if the working environment at the Installation Site is deemed unsafe or dangerous according to standard industry practice in Western Europe;
  - G. Unless otherwise stated in the Document, the Purchaser shall ensure that AML’s representative(s) obtain suitable and convenient board and lodging in the neighborhood of the Installation site at the Purchaser’s expense;
  - H. AML’s representative will have no general authority to change the terms and conditions of the “Document” or to accept requests for variations to the work;

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- I. The Purchaser may, by giving notice in writing, request variations (“Variations”) to the originally agreed upon On-Site Services at any time prior to shipment of the Goods. AML has the right to accept or refuse such Variations;
  - J. Within a reasonable time after receipt of a request for a Variation, AML will notify the Purchaser in writing of its proposal to implement the Variation, as well as corresponding adjustments to Contract Price, Schedule, and delivery date. AML has no obligation to implement Variations until the parties have agreed in writing to the aforementioned adjustments; and
  - K. AML and AML’s representative will be entitled to an extension of the time for completion of the On-Site services if delay occurs due to Force Majeure, Variations, or an act of omission on the part of the Purchaser.
- 11. USE OF INTELLECTUAL PROPERTY PROHIBITED** Purchaser is strictly prohibited from making reproducing, reverse engineering, disassembling or modifying any AML Goods or any part or component of any AML Goods, for its own use or for third party use or resale, including software programs shipped with the Goods. Software, unless otherwise agreed in writing, may only be used or distributed with the Goods. Except where expressly agreed in writing, Purchaser is not granted any rights in or to any patents, trademarks, trade names, logos, copyrights or trade secrets of AML or its suppliers in connection with the Goods.
- 12. RESALE** These terms and conditions shall not be affected by or varied by any terms and conditions of sale accepted by the Purchaser from its customer(s). The Purchaser is responsible for compliance by its customers with these terms and conditions, as applicable.
- 13. CANCELLATION** The Purchaser may not cancel an order without the written consent of AML. Should AML approve a cancellation, all deposits and other monies paid to AML will be forfeit.
- 14. DELAY** If contract dates or shipment is delayed at the request of the Purchaser, or because of incomplete shipping information/documentation, the timing and schedule of the original agreed upon payments will apply. Any additional costs incurred such as storage and other fees shall be borne by the Purchaser.
- 15. WARRANTY** Warranties shall apply to systems that has been installed and/or commissioned by AML staff or authorized technician, or by an alternative method as agreed in writing by AML. AML warranties the Goods to be free from defects in materials, workmanship and function (as set out in the acceptance of Purchaser’s order) for a period of TWELVE (12) months from date of shipment (the “AML Warranty”). AML will replace or repair to its standards any Goods which are proved to be defective, subject to the conditions and limitations herein. Any repair or replacement by AML under the AML Warranty will be completed at AML’s Dartmouth Nova Scotia Canada facility or on site, at AML’s discretion. Related travel costs and /or transport or delivery to AML’s facility are at the Purchaser’s expense. Where a valid claim has been made and Goods are to be re-delivered to the Purchaser, AML will pay costs of re-delivery by usual commercial means (up-charges for express or expedited delivery will be paid by the Purchaser).

See AML Warranty Policy for further details.

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- 16. LIMITATIONS TO WARRANTY** For a Purchaser's claim under the AML Warranty to be accepted by AML, it must be the case that the Goods in question have been installed, powered, and operated in compliance with all instructions, manuals or specifications supplied by AML or otherwise in effect. Damage incurred in shipping is not covered. Damage or default resulting from contact with corrosive materials or atmosphere is not covered. Damage or default from deployment inconsistent with instructions or guidelines in the user manual or documentation is not covered. Damage or default caused by modification of the AML Goods without consent is not covered.
- 17. LIMITATIONS TO LIABILITY** Except as to its obligations under the AML Warranty, AML is not responsible for any costs, losses, damages or claims whatsoever, whether direct, indirect, or consequential, and howsoever incurred, by the Purchaser or by any third party claiming through or in relation in any way to the Purchaser, due to or related to any alleged or demonstrated fault or defect or unsuitability for purpose in AML Goods, or the period of time during which the Purchaser or any claiming party may be deprived of the use of the Goods as a consequence thereof.
- 18. SPECIAL CONDITIONS** Special or supplemental terms or conditions may be attached to or apply in respect of certain AML Goods (including OEM terms and conditions). Where contained in product documentation or otherwise set out in writing in the order, acceptance of order, invoice or elsewhere, these will apply and are binding on the Purchaser, to the extent they are not inconsistent with these terms and conditions. Unless expressly set out in writing, or otherwise by agreement of AML and the Purchaser, no term or condition other than those set out herein will apply or be enforceable.
- 19. CONFIDENTIAL INFORMATION** Any specifications, samples, designs, formulations or other information of AML disclosed to the Purchaser in connection with an order or along with any AML Goods is acknowledged by the Purchaser to be confidential and proprietary to AML (the "Confidential Information"). Confidential Information shall remain the exclusive property of AML and shall, along with any information derived from the same, be kept confidential by the Purchaser and its employees and agents and shall not, without AML's prior written consent, be disclosed to any third party or used except for authorized purposes connected with or ancillary to the Purchaser's use of the AML Goods. The Purchaser agrees not to analyze or reverse engineer any Good or sample or to assist and/or allow any third party to do so without the express written consent of AML. The Purchaser agrees that the covenant of confidentiality and nondisclosure set forth above shall survive and remain in effect for so long as the Confidential Information remains confidential.
- 20. LANGUAGE** The language of the contract between AML and a Purchaser is agreed to be English. Where the laws of a country of sale require goods to be marked in any particular manner or language(s), it is the Purchaser's responsibility to fulfill these obligations. AML will provide assistance as is reasonably required.
- 21. ARBITRATION** Any disagreements that cannot be resolved by the parties shall be exclusively resolved by binding arbitration in Vancouver, British Columbia, under the Arbitration Act (British Columbia), before a single arbitrator. Purchaser hereby consents to the venue and jurisdiction of such arbitration, whose costs shall be borne equally by the parties.

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- 22. APPLICABLE LAW** This Agreement shall be governed and construed in all respects in accordance with the laws of the Province of British Columbia, Canada, without regard to provisions relating to choice of law. The parties agree to exclude entirely the application of the United Nations Convention on Contracts for the International Sale of Goods from this Agreement and from any agreement or transaction that may be executed or carried out pursuant to this Agreement. Nevertheless, if any of the provisions of this Agreement or the application of any such provisions to the parties is held by a tribunal of competent jurisdiction to be governed other than by British Columbia law, then any relevant reference, waiver or incorporation of a British Columbia rule or statute contained in this Agreement shall be interpreted to the maximum extent practical to refer to comparable laws of the applicable jurisdiction than by British Columbia law, then any relevant reference, waiver or incorporation of a British Columbia rule or statute contained in this Agreement shall be interpreted to the maximum extent practical to refer to comparable laws of the applicable jurisdiction.