

## **WINDSTAR CRUISES**

### **INVENTORY OF HAZARDOUS MATERIAL MANAGEMENT**

In accordance with the Guidelines For The Development Of The Inventory Of Hazardous Materials and the EU Regulations on Ship Recycling, Windstar Cruises requests that the forms contained in Appendix 6 and 7, and Annex D (detailed below and contained on the following pages), be completed and returned to the Windstar Cruises' buyer of record, prior to fulfilment of the Purchase Order.

APPENDIX 6: Form of Material Declaration

APPENDIX 7: Form of Supplier's Declaration of Conformity

ANNEX D: Supplement to the IMO Form of Material Declaration

APPENDIX 6

FORM OF MATERIAL DECLARATION

<Date of declaration>

Date	
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<MD ID number>

MD- ID-No.	
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<Supplier (respondent) information>

Company name	
Division name	
Address	
Contact person	
Telephone number	
Fax number	
Email address	
SDoC ID no.	

<Other information>

Remark 1	
Remark 2	
Remark 3	

<Product information>

Product name	Product number	Delivered unit		Product information
		Amount	Unit	

<Materials information>

This materials information shows the amount of hazardous materials contained in 

1	Unit
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 (unit: piece, kg, m, m<sup>2</sup>, m<sup>3</sup>, etc.) of the product.

Table	Material name		Threshold value	Present above threshold value	If yes, material mass		If yes, information on where it is used
				Yes / No	Mass	Unit	
Table A (materials listed in appendix 1 of the Convention)	Asbestos	Asbestos	0.1% <sup>18</sup>				
	Polychlorinated biphenyls (PCBs)	Polychlorinated biphenyls (PCBs)	50 mg/kg				
	Ozone depleting substance	Chlorofluorocarbons (CFCs)	no threshold value				
		Halons					
		Other fully halogenated CFCs					
		Carbon tetrachloride					
		1,1,1-Trichloroethane					
		Hydrochlorofluorocarbons					
		Hydrobromofluorocarbons					
	Anti-fouling systems containing organotin compounds as a biocide		2,500 mg total tin/kg				

<sup>18</sup> In accordance with regulation 4 of the Convention, for all ships, new installation of materials which contain asbestos shall be prohibited. According to the UN recommendation "Globally Harmonized System of Classification and Labelling of Chemicals (GHS)" adopted by the United Nations Economic and Social Council's Sub-Committee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals (UNSCCEGHS), the UN'S Sub-Committee of Experts, in 2002 (published in 2003), carcinogenic mixtures classified as Category 1A (including asbestos mixtures) under the GHS are required to be labelled as carcinogenic if the ratio is more than 0.1%. However, if 1% is applied, this threshold value should be recorded in the Inventory and, if available, the Material Declaration and can be applied not later than five years after the entry into force of the Convention. The threshold value of 0.1% need not be retroactively applied to those Inventories and Material Declarations.

Table	Material name	Threshold value	Present above threshold value	If yes, material mass		If yes, information on where it is used
			Yes / No	Mass	Unit	
Table B (materials listed in appendix 2 of the Convention)	Cadmium and cadmium compounds	100 mg/kg				
	Hexavalent chromium and hexavalent chromium compounds	1,000 mg/kg				
	Lead and lead compounds	1,000 mg/kg				
	Mercury and mercury compounds	1,000 mg/kg				
	Polybrominated biphenyl (PBBs)	50 mg/kg				
	Polybrominated dephenyl ethers (PBDEs)	1,000 mg/kg				
	Polychloronaphthalenes (Cl >= 3)	50 mg/kg				
	Radioactive substances	no threshold value				
Certain shortchain chlorinated paraffins	1%					

APPENDIX 7

FORM OF SUPPLIER'S DECLARATION OF CONFORMITY

**SUPPLIER'S DECLARATION OF CONFORMITY FOR MATERIAL DECLARATION MANAGEMENT**

1 Identification number \_\_\_\_\_

2 Issuer's name \_\_\_\_\_

Issuer's address \_\_\_\_\_

3 Object(s) of the declaration \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

4 The object(s) of the declaration described above is in conformity with the following documents :

Document No.	Title	Edition/date of issue
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5 _____	_____	_____
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_____	_____	_____
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_____	_____	_____
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6 Additional information \_\_\_\_\_

\_\_\_\_\_

Signed for and on behalf of

\_\_\_\_\_

\_\_\_\_\_

*(place and date of issue)*

7 \_\_\_\_\_

*(name, function)*

*(signature)*

## ANNEX D

## SUPPLEMENT TO THE IMO FORM OF MATERIAL DECLARATION

&lt;SUPPLEMENT attached to MD-ID-No:&gt;

MD-ID-No.	
Date	

&lt;Materials information&gt;w

This materials information shows the amount of hazardous materials contained in

	Unit
1	

(unit: piece, kg, m, m<sup>2</sup>, m<sup>3</sup>, etc.) of the product.

Annex of EU SRR	Material name	Threshold value	Present above threshold value	If yes, material mass		If yes, information on where it is used
			Yes / No	Mass	Unit	
Annex I  (materials listed in annex I of the EU SRR)	Perfluorooctane sulfonic acid (PFOS) and its derivatives	10 mg/kg (0.001% by weight*)				
Annex II  (materials listed in annex II of the EU SRR)	Brominated Flame Retardant (HBCDD)	100 mg/kg (0.01% by weight)				

\*Concentrations of PFOS above 10 mg/kg (**0.001% by weight**) when it occurs in substances or in preparations or concentrations of PFOS in semi-finished products or articles, or parts thereof equal to or above than **0.1% by weight** calculated with reference to the mass of structurally or micro-structurally distinct parts that contain PFOS or for textiles or other coated materials, if the amount of PFOS is equal to or above than **1 µg/m<sup>2</sup>** of the coated material.

# WINDSTAR CRUISES

## PURCHASE ORDER TERMS AND CONDITIONS

Effective May 1, 2019

These Terms and Conditions (“Terms and Conditions”) shall govern all transactions between Windstar Cruises Marshall Islands, LLC (“Windstar”) and you (“Supplier”), subject to any terms and conditions appearing on the face of the purchase order (“Purchase Order”) issued by an authorized representative of Windstar. By performing under this Purchase Order, Supplier agrees to be bound by the Terms and Conditions set forth below.

**1. Acceptance.** Acceptance of Windstar’s Purchase Order is limited to the terms contained in the Purchase Order as supplemented by these Terms and Conditions. Additional terms appearing on Supplier’s own form purchase order or other documents are hereby objected to and rejected and shall be deemed null and void, unless expressly agreed to in writing by authorized representatives of Windstar and Supplier. Performance by Supplier shall constitute acceptance of Windstar’s Purchase Order, including all Terms and Conditions contained herein.

### **2. Products and Services**

**A. Prices:** The products and/or services to be provided (collectively the “Products and/or Services”) and prices for such Products and/or Services are set forth in the Purchase Order.

**B. Price Warranty:** Supplier warrants that the prices for the Products and/or Services sold hereunder are no less favorable than those currently extended to any other customer purchasing the same or similar Products and/or Services in similar quantities and/or conditions. Supplier warrants that the prices shown in the Purchase Order shall be complete and no additional charges shall be added without Windstar’s express written consent.

**C. Changes:** Windstar shall have the right at any time to make changes in drawings, designs, specifications, materials, packaging, time and place of delivery, and method of transportation. If any such changes cause an increase or decrease in the cost of the item required for the Products and/or Services, an equitable adjustment shall be made and the Purchase Order shall be modified in writing accordingly; provided, however, that Supplier shall not be allowed any adjustment based on its loss of anticipated profits. Supplier agrees to accept any changes subject to this paragraph. Changes shall not be binding upon Windstar except when confirmed in writing by an authorized representative of Windstar’s Procurement Department.

**D. “Deliverables”** means all work product and delivered items, including but not limited to, reports, manuals, guides, and instructions provided by the Supplier in the provision of the Products and/or Services as set forth in the Purchase Order.

**3. Delivery.** Time is of the essence in regard to the Purchaser Order and Supplier agrees to deliver the Products and/or Services on the date(s) and per the instructions as listed on the front page of the Purchase Order. Supplier is responsible for all charges relating to handling, packaging, wrapping, bags, insurance, containers and similar matters unless otherwise specified in the

Purchase Order. Windstar reserves the right to reject C.O.D. shipments. Title and risk of loss shall pass to Windstar upon delivery to Windstar's facility or vessel, or other destination designated by Windstar, or upon final acceptance by Windstar, whichever is later. Windstar reserves the right to refuse shipments made before or after the date set forth in the Purchase Order. If the delivery of the Products and/or Services is not completed on time, Windstar reserves the right, in addition to its other rights and remedies, and without liability, to terminate the Purchase Order as to items not yet shipped or services not yet rendered and to purchase substitute Products and/or Services elsewhere at the expense of Supplier or to direct Supplier to ship by the most expeditious means available at Supplier's risk and expense. Acceptance of Products and/or Services not in conformance with the Terms and Conditions contained herein shall not be deemed a waiver of Windstar's right to hold Supplier liable for any loss or damage to Windstar or modify Supplier's obligation to make future deliveries in conformance with the terms herein. Shipments which do not conform to these Terms and Conditions may be returned to Supplier and Supplier shall reimburse Windstar for all handling and transportation costs incurred in connection therewith. Supplier shall bear all costs of shipping, transportation and packing unless otherwise agreed to in writing by an authorized representative of Windstar.

**4. Inspection and Acceptance.** Products and/or Services shall conform to the descriptions and specifications contained in the Purchase Order and any applicable appendix thereto. Acceptance by Windstar will occur: (i) for Products and/or Services installed by Supplier, upon completion to the satisfaction of Windstar of any acceptance tests or programs described in the Purchase Order or attachments thereto, as evidenced by any acceptance certificate signed by Windstar; or (ii) for Products and/or Services not installed by the Supplier, on the thirtieth (30<sup>th</sup>) day following receipt of the Products and/or Services by Windstar, unless Supplier is notified in writing within this period that, in Windstar's sole judgment, the Products and/or Services do not conform to Supplier's specifications, in which event Windstar may, if applicable, return the Products to Supplier, freight collect, and be refunded all advance payment made therefore.

**5. Packaging and Shipping Requirements.** Supplier shall comply with all Windstar location-specific packaging, routing and shipping instructions as set forth in the Purchase Order. If such instructions are not included in the Purchase Order or have not been previously received, Supplier shall promptly request instructions from Windstar. All materials for export from or import to all the countries where Windstar operates must be shipped on pallets/crates/boxes that contain no wood packaging material, except wood that has been specifically treated and labeled to indicate compliance with the ISPM-15 treatment specifications, and contain no asbestos-containing materials. Seller must include a commercial invoice inserted in a plastic envelope that is attached to the outside of the carton for use with all customs clearance offices. Deliveries must be accompanied by all certifications, test results, Material Safety Data Sheets and other documentation of the type and in the form specified, together with a copy of any drawings and specifications prepared by Seller in the course of filling the Purchase Order. This must include a certification that the packaging materials contain no asbestos-containing materials.

#### **6. Payment Terms/Invoicing/Expenses**

A. Windstar shall pay the prices as specified in the Purchase Order and, unless otherwise expressly set forth therein, Windstar shall have no obligation with respect to reimbursement of any expenses

or costs of any nature whatsoever incurred by Supplier in the performance of, or in any way relating to, the Products and/or Services. The prices agreed upon in the Purchase Order include all expenses related to the Products and/or Services, including materials, tools, equipment, freight, labor, and all taxes, including sales, use and GST.

B. All invoicing will be addressed to Windstar Cruises, LLC, in its capacity as agent for Windstar. To ensure timely payment, all invoices submitted should include: (i) the Purchase Order number; (ii) a signed delivery receipt (note that proof of deliveries to vessels must also include the vessel-unique stamp); (iii) detailed entries describing the Services provided; and (iv) back-up documentation to the degree necessary to support payment made to other parties in support of the Purchase Order requirements. Absence of any of the above may result in the invoice either being returned or payment delayed. Payments will be made by Windstar Cruises, LLC via direct deposit delivery to Supplier's designated bank account or by such other electronic payment means as agreed upon by the parties. Payment may also be made by Windstar via check. If Windstar has pre-approved any expenses, Supplier shall provide Windstar at the time of invoicing with receipts and any other customarily required supporting documentation for any such expenses.

C. Payment terms are net thirty (30) days from the date of an undisputed, properly submitted invoice, unless otherwise set forth in this Purchase Order. Supplier will submit invoices on a monthly basis.

D. Unless otherwise agreed to in writing by the parties, an invoice shall not be issued prior to shipment of Products. Credit and discount periods will be computed from the date of receipt of the correct invoice or the date the Products are received, whichever is later, to the date Windstar remits payment. Unless freight and other charges are itemized, the discount will be taken on the full amount of the invoice.

E. Supplier shall attach to the invoice the original Bill of Lading and, if Windstar has agreed in advance to reimburse Supplier for transportation charges, the receipted freight bill.

F. If Windstar has been over-invoiced, at the end of each quarter, any discrepancy in invoicing will be rectified with a credit note to Windstar for the full value of any over-invoiced amount which can be used against the invoice for the following month. In the event of termination, the Supplier shall pay any such over invoiced amount to Windstar within fourteen (14) days of termination.

G. Supplier acknowledges and agrees that Supplier will be solely liable for all taxes on its income and franchise taxes, including any interest or penalties thereon. Windstar acknowledges and agrees that it shall be responsible for payment of any applicable sales taxes properly levied by the appropriate governmental authorities on the fees payable hereunder by Windstar for the Products and/or Services; provided, however, that there is not an available exemption for such taxes and Supplier includes such taxes on its invoice for the Products and/or Services as a separate line item. Supplier shall pay all taxes that may arise out of its provision of the Products and/or Services and Supplier shall indemnify Windstar against any liability and expense by reason of Supplier's failure to pay the same. In no event will Windstar be responsible for paying any interest, late payment charge or penalties incurred as a result of any failure by Supplier to properly bill and remit such sales taxes to the appropriate governmental authorities.



H. Windstar's obligations to pay for any Products and/or Services under a Purchase Order terminated in accordance with these Terms and Conditions shall be limited to the Products and/or Services accepted prior to the date of termination and any associated fees shall be reduced on a pro rata basis determined by the percentage of the Products and/or Services delivered and/or accepted by Windstar prior to such termination.

I. IF INVOICES ARE RECEIVED BY WINDSTAR 180 DAYS OR MORE AFTER WINDSTAR'S RECEIPT OF THE PRODUCTS AND/OR SERVICES, THE INVOICE AMOUNT WILL BE SUBJECT TO AUTOMATIC REDUCTION AS FOLLOWS:

180-365 DAYS:                    15 % REDUCTION  
MORE THAN 365 DAYS:    100 % REDUCTION

## **7. Representations and Warranties**

A. Supplier represents and warrants that the Products and/or Services and any Deliverables will be created by and be the original work of the Supplier, free and clear from any and all encumbrances whatsoever, and that the manufacture, production, installation and sale or license to, and use by, Windstar of the Products and/or Services are in compliance with any and all international, federal, state and local laws, rules and regulations. Supplier further warrants and represents that the Products and/or Services and any Deliverables do not and will not infringe any intellectual property or other proprietary rights of any third party.

B. Supplier represents and warrants that it will provide the Products and/or Services and any Deliverables in accordance with best industry practices, in a diligent, workmanlike and professional manner using appropriately skilled, educated, experienced and trained resources and with all due care and skill.

C. Supplier represents and warrants that it has not previously granted and will not grant any rights in any Deliverables to any third party that are inconsistent with the rights granted to Windstar under the Purchase Order.

D. Supplier represents and warrants: (i) that the Products and/or Services fully conform to and operate in accordance with Supplier's specifications and descriptions contained in the Purchase Order and any attachment thereto; (ii) that the Products and/or Services shall be merchantable and free from defects in workmanship and materials; and (iii) that the Products contain no asbestos-containing materials.

E. If Supplier has been advised of the particular use of the Products and or Services, Supplier warrants that the Products and/or Services furnished hereunder are suited and appropriate for such use.

F. These warranties shall remain in effect for a period of ninety (90) days from acceptance of the Products and/or Services by Windstar as defined above. During this warranty period, Supplier shall promptly and without additional charge repair or replace the Products and/or Services or any

part thereof which fails to conform to or operate in accordance with Supplier's specifications. If Supplier is not able to repair such deficiencies within a reasonable period of time, as Windstar determines in its sole discretion, Supplier will promptly provide to Windstar a refund of all amounts paid by Windstar for the nonconforming Products and/or Services.

G. The warranties expressed herein shall be construed as consistent and cumulative with each other and with all warranties implied by law. It is the intent of Windstar and Supplier that if any warranties are held to be inconsistent, Windstar may, at any time, including in the course of a suit for breach, select which of them shall be excluded from the Purchase Order.

H. THE REPRESENTATIONS AND WARRANTIES CONTAINED HEREIN SHALL BE IN ADDITION TO ANY OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY AND THERE ARE NO EXCLUSIONS, LIMITATIONS OR DISCLAIMERS OF REPRESENTATIONS OR WARRANTIES, OTHER THAN THOSE THAT MAY BE EXPRESSLY PROVIDED HEREIN OR IN THE PURCHASE ORDER.

## **8. Limitation of Liability**

A. EACH PARTY ACCEPTS UNLIMITED LIABILITY FOR DEATH, PERSONAL INJURY OR PROPERTY DAMAGE RESULTING FROM ITS NEGLIGENCE OR WILLFUL MISCONDUCT OR THAT OF ITS EMPLOYEES, AGENTS OR CONTRACTORS.

B. WINDSTAR SHALL NOT BE LIABLE TO THE SUPPLIER OR ANYONE CLAIMING BY RIGHT OF SUPPLIER, EITHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, FOR ANY: DIRECT OR INDIRECT LOSS OF PROFITS, BUSINESS OR ANTICIPATED SAVINGS; LOSS OR DESTRUCTION OF DATA; OR SPECIAL, PUNITIVE, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR EXEMPLARY LOSS OR DAMAGE.

C. WINDSTAR'S LIABILITY TO THE SUPPLIER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE IN RELATION TO THE PURCHASE ORDER IS LIMITED TO THE CHARGES PAID UNDER THE PURCHASE ORDER.

D. Any action resulting from any breach on the part of Windstar must be commenced within one (1) year of the date the cause of action has accrued.

## **9. Indemnification**

A. Supplier will indemnify, hold harmless and defend Windstar, its affiliates, subsidiaries, agents, owners and parent companies and their respective directors, officers, employees, representatives, contractors and agents from and against all claims, losses, liabilities, damages, settlement costs and expenses (including but not limited to reasonable attorney's fees and court costs), whether or not related to a third party claim, that result from: (i) an alleged or actual infringement of any intellectual property rights through the Supplier's provision of the Products and/or Services licensed or purchased by Windstar under the Purchase Order; (ii) any defect in the Products, including the workmanship and materials thereof; (iii) any negligent or willful act or omission of Supplier or Supplier's employees, agents or contractors, including but not limited to the extent such

act or omission causes or contributes to (a) any bodily injury, sickness, disease or death, or (b) any injury to or destruction of tangible, real or personal, or intangible property (including computer programs and data or any loss of use resulting therefrom); (iv) any breach of the representations, warranties and other terms and conditions of these Terms and Conditions or the Purchase Order; and (v) any violation of any law, rule, statute, ordinance or regulation.

B. Supplier's obligation to indemnify Windstar shall survive the expiration or termination of the Purchase Order by either party for any reason. Supplier may, at its option, conduct the defense of any third party action and Windstar will cooperate with Supplier's defense. If the use or sale of any Product and/or Service is enjoined as a result of any action or proceeding, in addition to such other rights or remedies that Windstar may have hereunder or by law, Supplier, at no expense to Windstar, shall obtain for Windstar and its customers the right to use and sell said item, or shall substitute an equivalent item, acceptable to Windstar, and extend this indemnity with respect to such item. In the event that Supplier is unable to secure such rights of use or to secure an equivalent item as a substitute for Windstar or its customers, Supplier will indemnify Windstar and its customer for any and all losses or damages sustained by reason of any injunction arising hereunder.

## **10. Intellectual Property Rights**

A. All intellectual property rights developed specifically for Windstar in the performance of the Services and/or the development of the Products and Deliverables shall vest and remain vested in Windstar upon its creation. Supplier agrees to take all such necessary further action (whether or not requested by Windstar) as Windstar may from time to time reasonably request to more completely convey to, and vest in, Windstar, title to or ownership of any Deliverable or Product. For the avoidance of doubt, nothing in these Terms and Conditions shall give either party rights to any pre-existing intellectual property rights of the other unless expressly provided for in the Purchase Order.

B. Any Deliverable or Product that includes copyrighted and/or copyrightable material shall be considered a "Work Made for Hire" under copyright laws and Windstar shall be deemed the "author" of such Deliverable for purposes of the US Copyright Act (17 U.S.C. Clause 101, et. seq.). If such Deliverable is not considered a "Work Made for Hire" and/or ownership of such intellectual property does not vest in Windstar for any reason, Supplier agrees to assign and hereby assigns and transfers, outright and forever, to Windstar such proprietary rights of every kind and nature described above for good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by Supplier).

## **11. Compliance with Laws and Regulations**

A. "Compliance Rules" means collectively the following: the U.S. Foreign Corrupt Practices Act; the federal Hazardous Substance Labeling Act; applicable local laws and regulations of any flag state prohibiting bribery, corruption, slavery, forced and compulsory labor and human trafficking; the OECD Convention on Combating Bribery of Foreign Public Official in International Business Transactions; rules and regulations of any Classification Society; generally accepted international standards relating to environmental protection; and international accounting standards.

B. Supplier shall, at its own expense, comply with all statutes, regulations, rules, ordinances, and orders of any governmental body, department or agency which apply to or result from its obligations under these Terms and Conditions, including but not limited to the Compliance Rules.

C. Supplier shall, at all times, conduct business ethically and in compliance with the law and the Compliance Rules. Supplier represents and warrants on a continuing basis that: (i) neither it nor anyone acting on its behalf has made or shall make any payments (or promises of payments) or otherwise give anything of value (directly or indirectly) to any entity with whom it is conducting business on behalf of Windstar in an attempt to obtain or retain business or otherwise obtain an improper advantage; and, (ii) neither it nor anyone acting on its behalf is a government official (as defined by anti-corruption laws) who may be in a position in his/her role to influence the business of Supplier as it relates to that government. Supplier, as it relates to this section, also includes Supplier's owners, directors, officers, employees and agents.

D. Supplier shall immediately promptly notify Windstar in writing if it learns that:

- (i) it or its officers and/or directors are being investigated for, or have been convicted of, any violation of the Compliance Rules; or
- (ii) if it learns that it has been named in a judicial or administrative proceeding alleging that it has violated the Compliance Rules; or,
- (iii) if it has a reasonable belief that it has violated the Compliance Rules in relation to any issue or transaction that involves Windstar or Windstar's business.

E. Any violation, non-compliance or other failure by the Supplier to fully comply with this section shall be considered a non-remediable material breach of these Terms and Conditions for which Windstar may terminate the Purchase Order immediately.

## **12. Insurance**

A. Supplier agrees to provide and to maintain in effect at all times, at Supplier's sole expense, the following minimum insurance coverage to protect the parties from any liability which may arise out of or result from Supplier's performance under these Terms and Conditions:

- (i) Commercial General Liability insurance written on an occurrence basis including coverage for contractual liability, bodily injury, death, "broad form" property damage, advertising injury, and personal injury, with coverage limits of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate. The policy shall name Windstar, its subsidiaries, affiliates, agents, parent companies and owners and their respective directors, officers, employees and agents as additional insureds;
- (ii) Commercial Automobile Liability insurance, including coverage for all owned, non-owned and hired vehicles, with coverage limits of not less than \$1,000,000 per occurrence for bodily injury and property damage applicable, to the extent Supplier, its employees, agents or contractors will be onsite at Windstar locations (including vessels) that are owned by Windstar. The policy shall name Windstar,

- its subsidiaries, affiliates, agents, parent companies and owners and their respective directors, officers, employees and agents as additional insureds;
- (iii) Professional Liability/Errors and Omissions insurance with coverage of not less than \$1,000,000 per claim, if applicable;
- (v) Worker's Compensation covering all Supplier employees in accordance with applicable statutory, federal or other legal requirements; and
- (vi) Umbrella/excess liability with policy limits of not less than \$2,000,000 per occurrence and \$4,000,000 aggregate.

B. Supplier's insurance coverage shall be considered primary without right of contribution of Windstar's insurance policies. At the time of issuance of the Purchase Order, Supplier must provide Windstar with a certificate of insurance evidencing the insurance coverage required under this Section and thereafter, Supplier shall provide such certificate upon request and at least ten (10) days' prior to any expiration of any then current policies to evidence renewal and/or replacement policies. The insurance companies now or hereafter issuing the foregoing insurance policies shall be insurance carriers having an A.M. Best's rating of A- or better, and an A.M. Best's financial size category of VIII or better, in the current edition of Best Key Insurance Rating Guide. Any material modification, renewal, replacement or cancellation of such insurance coverage shall require at least thirty (30) days' prior written notice to Windstar with the exception of non-payment, in which case, such policy shall require ten (10) days' prior written notice to Windstar. In no event shall the foregoing coverage limits affect or limit in any manner Supplier's contractual liability for indemnification under Section 9 of these Terms and Conditions. The Supplier hereby waives all rights of subrogation against Windstar and its directors, officers and employees. If Supplier fails to effect or maintain the required insurance, Windstar may, but is not obligated to, procure the same or pay the premium, in which case the cost shall be charged to Supplier or deducted from payments due to Supplier. Supplier shall not allow any contractor to provide any services until such contractor has obtained the same insurance coverages as required of Supplier herein.

### **13. Termination**

**A. Default.** Windstar may terminate the Purchase Order without liability, in whole or in part, if:

- (i) Supplier fails to provide the Products and/or Services as set forth in the Purchase Order or herein, or any extensions thereto; or
- (ii) Supplier fails to perform any of its other obligations under the Purchase Order or fails to make progress so as to endanger its performance under the Purchase Order in accordance with its terms; or
- (iii) in the sole judgment of Windstar, Supplier's financial condition shall become such as to endanger performance of the Purchase Order; provided that, with respect to (ii) and (iii) Supplier shall have seven (7) days from notice of concern of Windstar to remedy the situation.

**B. Acts of Insolvency.** Windstar may terminate the Purchase Order by written notice to the Supplier, if the Supplier becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, becomes

subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or has sold a substantial part of its assets or wound up or liquidated, voluntarily or otherwise.

**C. Force Majeure Event:** In the event that either party is unable to perform any of its obligations under the Purchase Order, or to enjoy any of its benefits because of (or if loss of the Products and/or Services is caused by) natural disaster, actions or decrees of governmental bodies or communications line failure not the fault of, or that could not reasonably have been prevented or avoided by, the affected party (hereinafter referred to as a “Force Majeure Event” or “Event”), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under the Purchase Order shall be immediately suspended. If the period of nonperformance exceeds fifteen (15) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may give written notice to terminate the Purchase Order. Except as provided herein, delays in delivery due to Force Majeure Events shall automatically extend the delivery date for a period equal to the duration of such Force Majeure Events; any warranty period affected by a Force Majeure Event shall likewise be extended for a period equal to the duration of such Force Majeure Event.

**D. Cover.** In the event of Windstar’s termination pursuant to paragraphs (A) or (B) of this Section 13, in whole or in part, Windstar may procure, upon such terms and conditions as Windstar deems appropriate, Products and/or Services similar to those terminated, and Supplier shall be liable for the excess costs incurred by Windstar. Notwithstanding the foregoing, Supplier shall continue performance of its obligations under the Purchase Order to the extent not canceled by Windstar.

**E. Termination for Convenience.** Windstar reserves the right, at any time, to terminate the Purchase Order, or any part thereof, for its sole convenience. In the event of such termination, Supplier shall immediately stop all work thereunder and shall immediately cause any of its subcontractors to stop work. Supplier shall be paid a reasonable termination charge consisting of a percentage of the order price reflecting the percentage of work performed prior to the notice of termination plus the actual direct costs resulting from termination. Supplier shall not be paid for any work done after receipt of the notice of termination or any costs incurred by Supplier or subcontractors, which Supplier could reasonably have avoided. If it should be determined that Windstar improperly terminated the Purchase Order under paragraphs (A)-(D) of this Section 13, such termination shall be deemed to be for Windstar’s convenience.

**F. Remedies Non-Exclusive.** The rights and remedies of Windstar provided in this Section 13 shall not be exclusive and are in addition to any other rights or remedies provided for under the Purchase Order, these Terms and Conditions, or under law.

**14. Supplier Support to Windstar.** Supplier agrees to provide Windstar with all assistance, advice and training reasonably required to permit Windstar to use and operate the Products and/or Services. Supplier warrants that the Products and/or Services purchased under the Purchase Order, including any subassemblies and spare parts, shall be available to Windstar and its customers during the operational life of the Products and/or Services purchased. In the event Supplier discontinues manufacture of the aforementioned Products and/or Services, subassemblies or spare parts and does not provide for another qualified source, Supplier shall make available to Windstar

all drawings, specifications, data and know-how which will enable Windstar or its customers to manufacture or procure said Products and/or Services under a royalty-free license which is hereby granted. Supplier shall support the Products and/or Services purchased hereunder during the operational life of the Products and/or Services. Said support includes, but is not limited to, technical service and maintenance of Supplier's stock of subassemblies and spare parts as may be required to be purchased by Windstar to support the operation of the Products and/or Services.

**15. Work on Property or at Facilities.** In the event the Products and/or Services ordered by Windstar requires the performance by Supplier of work on any Windstar property or vessel or the property of a third party where a Windstar vessel is located, Supplier shall, at its expense: (i) take necessary precautions to protect property and persons from damage or injury; (ii) comply with applicable rules and regulations of Windstar and/or the third party property owner; (iii) upon completion of the work, remove all equipment, debris and unused materials and leave the property/vessel in a good and orderly condition; (iv) keep the property/vessel free and clear of liens or claims arising from or in connection with the work and if any such liens shall be filed or shall attach, immediately cause same to be discharged; and (v) perform the work in accordance with schedules and work programs reasonably established by the property/vessel owner.

**16. Documentation Reproduction.** Windstar shall have the right to reproduce all instructions, manuals or other materials provided by Supplier in connection with the Products and/or Services, provided that the reproduction is solely for its internal use.

**17. Confidential Information.** Supplier agrees that any and all information related to Windstar's business (including that of all corporate affiliates and agents) is "Confidential Information," and Supplier agrees to limit access and use of such Confidential Information to those individuals who (i) need to know it and (ii) shall use reasonable care to protect all Confidential Information. Supplier will not permit the duplication or disclosure of any such Confidential Information to any person (other than an employee of the Supplier who must have such information for the performance of its obligations hereunder), unless such duplication, use or disclosure is specifically authorized by the Windstar in writing. Supplier shall not advertise or release any statement mentioning Windstar or the fact that Supplier has contracted to furnish Products and/or Services to Windstar without the prior written consent of Windstar. Upon completion or termination, Supplier shall destroy or return to Windstar all Confidential Information, which shall be at Windstar's sole discretion. Notwithstanding the foregoing, Windstar shall have the right to use any information concerning Supplier's Products and/or Services, manufacturing methods, or processes which Supplier shall disclose to Windstar without restriction during the performance of the Purchase Order.

**18. Assignment.** Supplier shall not assign or subcontract its obligations under the Purchase Order, in whole or in part, or any interest therein, without Windstar's prior written consent. If Windstar consents to any assignment or subcontract, Supplier shall remain liable and responsible for all of its obligations hereunder, and shall guarantee performance by its assignee or subcontractor.

**19. Use of Windstar Intellectual Property.** Supplier shall not use the name, trade name, service marks, trademarks, trade dress or logos of Windstar in press releases, advertising or any similar activity without Windstar's prior written consent in each instance.

**20. Relationship of the Parties.** In performing under the Purchase Order, Supplier shall be an independent contractor, and nothing in the Purchase Order shall be construed as creating or establishing any other relationship between the parties. Supplier shall, at its own expense, comply with all laws and regulations and assume all liabilities or obligations imposed by any laws or regulations with respect to its employees and the Products and/or Services furnished pursuant to the Purchase Order.

**21. Amendment or Modification.** These Terms and Conditions, together with any terms and conditions contained in the Purchase Order, may not be added to, modified, superseded or otherwise altered except by a written instrument signed by the parties. Each Product and/or Service received by Windstar shall be deemed to be received only upon the Terms and Conditions contained herein, notwithstanding any terms and conditions contained in any order, acknowledgement, invoice or other writing received from Supplier and notwithstanding Windstar's acceptance or payment for any Product and/or Service. No course of dealing or usage of trade shall be applicable unless expressly stated and agreed to on the face of the Purchase Order by an authorized representative of Windstar.

**22. Records; Audit.** Supplier shall maintain for the period required by applicable law but for no less than five (5) years after the term of the Purchase Order, all records, data, information and/or documentation of Supplier (and as applicable its subcontractors) for the purposes of determining Supplier's compliance with its obligations related to confidentiality, data protection, Compliance with Laws, fees, and payment terms. Supplier shall ensure that records, data, information and/or documentation is stored in electronic format, is in accordance with generally accepted accounting principles, and is provided in an accessible and readable format. If it is determined in the course of an audit by Windstar that Supplier owes any amounts to Windstar, Supplier shall refund such amounts to Windstar within fifteen (15) days of an invoice submitted by Windstar to Supplier.

**23. Miscellaneous**

A. **Applicable Law:** These Terms and Conditions and all Purchase Orders shall be governed by the laws of (and all actions hereunder shall be brought in) the State of Washington (excluding conflict of laws principles) and the parties consent to the jurisdiction of the United States District Court for the Southern District of Florida at Miami, or the courts of Miami-Dade County, State of Florida, U.S.A, including such state's Uniform Commercial Code, except that, to the extent any provision of these Terms and Conditions shall be inconsistent therewith, the terms of these Terms and Conditions shall be controlling. Supplier agrees that any dispute or cause of action which arises in connection with these Terms and Conditions or any Purchase Order shall be brought before a court of competent jurisdiction in the State of Florida and hereby consents to the personal jurisdiction of such court and waives any argument with respect to venue or convenience of forum. Pending resolution of such dispute, Supplier shall proceed with performance of its obligations under the Purchase Order, and with any written directions of Windstar.



**B. Severability:** Any invalidity, in whole or in part, of any provision of the Purchase Order shall not affect the validity of any other of its provisions.

**C. Notices:** Legal notices to Windstar shall be deemed given when delivered by certified mail to Windstar Cruises Marshall Islands, LLC, 8400 NW 36th Street, Suite 520, Miami, Florida 33166 Attention: Legal. Any other notice of a general business nature shall be deemed given when sent by U.S. mail, recognized overnight courier service or electronically, to the same address, marked: Attention: Procurement Department. Unless otherwise agreed to by the parties in writing, all notices to Supplier shall be deemed given when sent by U.S. mail, recognized overnight courier service or electronically to the Supplier's address which appears on the face of the Purchase Order.

**D. Waiver:** If a party delays in acting upon a breach of any part of the Terms and Conditions and/or the Purchase Order, that delay will not be regarded as a waiver of that breach. If a party waives a breach of any part of the Terms and Conditions and/or the Purchase Order that waiver is limited to that particular breach.

**E. Duration:** The provisions of these Terms and Conditions shall continue to be applicable notwithstanding the transfer of title to the Products and/or Services.

**F. Entire Agreement:** The Purchase Order, as supplemented by these Terms and Conditions, constitutes the entire agreement between the parties relating to the purchase of the Products and/or Services, regardless of any inconsistent or additional terms in any other document, and supersedes all previous understandings, negotiations and proposals.

*End of Terms and Conditions.*