

# GENERAL TERMS AND CONDITIONS FOR SALE OF GOODS AND SERVICES

Version 01 September 2017

## 1. Parties

The Supplier entity ("**Supplier**") identified in the quotation ("**Quotation**") will provide to the purchaser identified in the Quotation ("**Purchaser**") the product(s) ("**Goods**") and service(s) ("**Services**") specified in the Quotation and, if applicable, the related technical specification attached to the Quotation ("**Technical Specification**").

## 2. Condition to A Binding Contract

The **Contract** shall consist of the purchase order issued by the Purchaser ("**Purchase Order**"), these General Terms and Conditions ("**T&Cs**"), the latest revision of Supplier's Quotation and the Technical Specification and any other attachments specifically agreed by the parties. Any Purchase Order issued by the Purchaser for Goods and Services is a contractual offer, subject to these T&Cs. Acceptance of delivery without prior express objection to these T&Cs will constitute Purchaser's assent.

## 3. Delivery and Price

Unless stated otherwise in the Contract, the Goods will be delivered, and priced Ex Works (interpreted according to Incoterms 2010) at the site as specified in the Contract ("**Delivery**"), provided however, that Supplier retains the title to Goods and the title will not be transferred to Purchaser until Purchaser's full payment to the Supplier of the Goods and Services in accordance with the Contract. Where applicable, Services (excluding the Goods) will be provided at the location set out in the Contract ("**Work Site**"). Purchaser shall, without delay, provide access to the Work Site and such information as may be necessary for Supplier to provide the Goods and/or Services in accordance with this Contract. The rates and prices in the Contract are subject to change in the event of Purchaser delays. The rates and prices in the Contract are exclusive of all taxes, surcharges, fees and other charges, which will be borne by Purchaser, unless otherwise expressly specified in the Contract.

## 4. Payment

- (a) All payments will be made by Purchaser without set-off within thirty (30) days from the date of Supplier's invoice unless otherwise expressly provided in the Contract. Purchaser will pay to Supplier a default interest at the rate of 1.5% of the overdue payment for each day of delay plus any debt collection costs incurred by the Supplier in the process of obtaining overdue payments from Purchaser.
- (b) Where payment shall be made by a Letter of Credit, Purchaser shall provide Supplier with an irrevocable opened Letter of Credit from an international reputable bank within the time period specified in the Quotation and where such period is not specified, within ten (10) working days from the date of the Purchase Order. Supplier shall not be obliged to order any materials or commence any Services until the opened Letter of Credit is received. Purchaser acknowledges that any delay to the issue of the Letter of Credit may delay the delivery schedule and all additional costs arising from such delay shall be borne by the Purchaser.

## 5. Warranty

Goods will be materially free from defects in design, materials and workmanship for a period of twelve (12) months from Delivery unless otherwise expressly specified in the Contract; and Services will be materially free from defects in workmanship for a period of twelve (12) months from completion of the Services unless otherwise expressly specified in the Contract, in each case the twelve (12) months' time period being referred to as the "**Warranty Period**". Subject to the provisions below of this Clause 5, Supplier will remedy defect(s) or non-conformity to the Technical Specification ("**Defect(s)**") in Goods and Services resulting from faulty design, materials or workmanship provided by Supplier which appears within the Warranty Period:

- (a) Supplier will not be liable for Defects arising out of (i) materials provided or a design stipulated or specified by Purchaser, (ii) Purchaser's failure to comply with Supplier's reasonable instruction(s) or the requirements under applicable laws on use,

maintenance or repair of Goods and/or Services; (iii) in relation to Services, installation or commissioning that was conducted by anyone other than the Supplier or its subcontractor, (iv) the Goods have not been appropriately stored or transported by any party other than Supplier, (v) circumstances which arise after the handover of Goods or Services to Purchaser, e.g. Defects due to alterations carried out without Supplier's written consent or (vi) normal wear and tear or deterioration of the Goods;

- (b) Supplier will only be liable for Defects which appear under the conditions of operation provided for in the Contract or Technical Specification and under proper use;
- (c) To the extent permitted under applicable laws, Supplier's liability will be limited to Defects in Goods and Services which appear within the Warranty Period;
- (d) Notwithstanding anything to the contrary in the Contract, the remedies under this Clause 5 will be available only if Purchaser gives Supplier written notice of the Defect(s) no later than seven (7) days after expiry of the relevant Warranty Period. If no Defect is found for which Supplier is liable, Supplier will be entitled to compensation for the costs it incurs as a result of the Defects notice;
- (e) Where a valid warranty claim is made by Purchaser, the Supplier will, in its sole discretion, decide whether to repair or replace the relevant component or part of the Goods and the location where such repair or replacement is to take place. Supplier may require that the defective part is sent to a destination specified by Supplier. Alternative locations for remedial work may be mutually agreed between Purchaser and Supplier, including the associated cost and schedule impact;
- (f) Purchaser will at its own cost arrange for any dismantling and reassembly of equipment other than Goods, to the extent necessary to repair any Defect. In cases where the Supplier agrees to a warranty repair or replacement at an offshore location, the Purchaser shall arrange and pay for the transportation of personnel and equipment from a mutually agreed land based location to the repair site and return, accommodation and unhindered access at the repair site and all costs associated with any heavy lifting operations or any work to be performed below the waterline.;
- (g) Defective parts which have been replaced will be made available to Supplier should the Supplier request their return;
- (h) When a Defect in a part of the Goods is remedied, Supplier will be liable for Defects in the repaired or replaced part under the same terms and conditions as those applicable to the original Goods for an additional period of three (3) months. For the remaining parts of the Goods the Warranty Period will remain unchanged;
- (i) The provisions of this Clause 5 will not apply to any nonproprietary software of Supplier. Supplier will use its reasonable endeavors to pass on to Purchaser the benefit of any warranty provided by the third-party software owner to the extent that it is reasonably able to do so, and that shall be the extent of Supplier's responsibility to Purchaser in respect of such software;
- (j) Purchaser may not assign or transfer the benefit of the warranty to any third party. In the event a ship owner/operator makes a warranty claim against Supplier, Supplier may refer that ship owner/operator to direct its claim to Purchaser for the Purchaser to handle. Any warranty claim from a ship owner/operator which is accepted by Supplier will be deemed to have been made by Purchaser and on Purchaser's behalf; and
- (k) Purchaser will notify Supplier immediately in writing in relation to any Defect in any safety critical system or component supplied by Supplier and will provide (or procure the provision of) unhindered access to the critical system and/or component to Supplier and its subcontractors to assess and rectify any Defect with such safety critical system and/or component;

- (l) **Notwithstanding anything to the contrary in the Contract, the warranty set out in this Clause 5 is exclusive and is in lieu of all other warranties in relation to Goods and Services, whether written or oral, implied or statutory, including without limitation any warranty with respect to hidden defects, merchantability or fitness for an intended purpose or particular use. The remedies set forth in this Clause 5 are Purchaser's sole and exclusive remedy for breach of this Clause 5 by Supplier.**

#### 6. Limitation of Liability

To the extent permitted under the applicable laws:

- (a) **Under no circumstances shall Supplier be liable to Purchaser or Purchaser's customers or affiliates, whether in contract, tort (including negligence), statute, misrepresentation, restitution or otherwise, for (i) any loss of profits, business, contracts, anticipated savings, goodwill, or revenue, any wasted expenditure, or any loss or corruption of data (regardless of whether any such loss or damage is direct, indirect or consequential); or (ii) any punitive, exemplary, special, incidental, indirect or consequential loss or damage whatsoever, whether foreseeable or not when the Contract was entered into; and**
- (b) **Supplier's maximum liability to Purchaser under the Contract and otherwise in connection with the Goods and Services hereunder shall not exceed fifty percent (50%) of the total price payable under the Contract.**

#### 7. Intellectual Property Rights

- (a) Supplier or its licensors will retain ownership of any and all intellectual property rights contained in or otherwise in relation to Goods and Services supplied by Supplier and any part thereof. Unless otherwise expressly agreed by Supplier, Purchaser will not (and will not allow any other party to) copy, adapt, reverse engineer, decompile, disassemble or modify such intellectual property rights.
- (b) Subject to Purchaser complying with the Contract, Supplier hereby grants to Purchaser a non-exclusive, royalty free license to use the intellectual property rights related to the Goods or Services solely for the purposes of receipt of Services and use of Goods for the purpose provided. Such license is not transferable except for the transfer to a subsequent purchaser of Goods provided the purchaser will comply with the provisions of this Clause 7.
- (c) Certain intellectual property rights contained in Goods or Services may be owned by a third party licensor. Where requested by Supplier, Purchaser shall enter into a direct license with the third party licensor.

#### 8. Confidentiality

Each party undertakes to keep confidential and not to use or disclose to any other person (except where necessary to perform the Contract) any information of a confidential nature which it receives from the other party under or in relation to the Contract or its performance. For the avoidance of doubt, the terms of the Contract are confidential and Supplier will be entitled to share information related to the Contract with its affiliates. This Section does not apply to information that is: (a) in the public domain through no fault of the receiving party; (b) known to the receiving party at the time of disclosure; (c) rightfully obtained by the receiving party on a non-confidential basis from a third party; or (d) is required to be released pursuant to a court order or legal process, provided that the receiving party notifies the disclosing party prior to disclosure to allow the disclosing party to seek protective or other court orders.

#### 9. Force Majeure

- (a) Neither party will be liable to the other party for failing to fulfill its obligations under the Contract, and the timeline for performance will be extended, as a result of circumstances beyond its reasonable control, including without limitation fire, explosion, accident, strike, lockout, hurricanes and named storms, flood, drought, embargo, war (whether declared or not), riot, act of God or the public enemy, action of any governmental authority, general shortage of material or transportation, or the delay or non-performance of a subcontractor due to the above reasons.

- (b) The party wishing to claim relief by reason of any of the aforesaid events shall without undue delay give the other party notice in writing of the cause and estimated duration of the delay.

#### 10. Termination

- (a) The Contract may be terminated by a party with immediate effect if the other party: (i) commits a material breach of its obligations under the Contract and such breach is (A) not capable of remedy; or (B) is capable of remedy but is not remedied within a period of thirty (30) days' following receipt of notice in writing requiring it to do so; (ii) is declared bankrupt, becomes insolvent, is unable to pay debts or enters into an arrangement with its creditors; (iii) has a petition presented, an order made or a resolution passed for its liquidation, bankruptcy or dissolution; or (iv) violates Clause 11 or 12.
- (b) For the purposes of this Clause 10, Purchaser's material breach shall include but not be limited to (i) not making payment or issuing the Letter of Credit according to the terms stipulated in the Contract and (ii) not taking delivery of the Goods according to the schedule stipulated in the Contract.
- (c) In the event that Purchaser terminates the Contract for reasons not attributable to the Supplier or Supplier terminates the Contract due to Purchaser's material breach, Purchaser shall pay Supplier for all fees earned and costs incurred up until the time of termination and any additional costs which may arise as a result of the termination including any sub-supplier cancellation costs or fees.
- (d) Termination of the Contract shall not prejudice any of the parties' rights and remedies which have accrued as at termination. Clauses 6, 7, 8, 10(c), 10(d), and 13 will survive the termination of the Contract.

#### 11. Ethical Standards

Each party shall at all times comply with (and ensure that all persons employed or engaged by it comply with) all anticorruption legislation, rules and regulations of any applicable jurisdiction, whether domestic or foreign, including but not limited to the UK Bribery Act 2012 and the US Foreign Corrupt Practices Act 1977

#### 12. Compliance with Law

The parties will comply with all applicable laws, regulations, rules and orders, including but not limited to the U.S. Department of Treasury, Office of Foreign Assets Control ("OFAC") regulations and the European Union sanctions or restrictive measures.

#### 13. General

- (a) The Contract (including 1) these T&Cs, 2) the Purchase Order, 3) the Quotation and 4) the Technical Specification and any other attachments specifically included in the Contract) constitutes the entire agreement between Supplier and Purchaser regarding the subject matter of the Contract. In case of any discrepancy between the terms of the aforesaid documents, the documents shall have priority as listed in this Clause 13 (a).
- (b) Any amendment to the Contract must be signed by both parties in writing. Changes to the Purchaser's requirements under the Contract may result in a cost and/or schedule impact, the consequences of which shall be mutually agreed prior to the change being implemented.
- (c) None of the rights and obligations under the Contract may be assigned by either party without the prior written consent of the other which shall not be unreasonably withheld or delayed.
- (d) The Contract will be governed by and construed in accordance with the laws of the Supplier's country.
- (e) Any dispute arising from the Contract, if not resolved between the parties within sixty (60) days of commencement of consultation between the parties on the dispute, will be settled by arbitration proceedings with the applicable rules and location being determined by the Supplier. The arbitral award(s) will be final and binding upon the parties.