

**CAN (OFFSHORE) LIMITED**  
**TERMS & CONDITIONS OF PURCHASE**



These are CAN's General Terms and Conditions of Purchase, applying to the provision of goods and services to CAN Group (the legal entity being CAN (Offshore) Limited) delivering services through CAN, ENGTEQ and VENTEQ business streams.

**1. DEFINITIONS**

**Affiliate** – shall mean any subsidiary or parent or holding company of any company or any other subsidiary of such parent or holding company. For the purpose of this definition, “subsidiary” and “holding company” shall have the meaning assigned to them under Section 736, Companies Act 1985, as amended by Section 144, Companies Act 1989.

**Purchase Order** – means the body of any purchase order, service order, contract note, form of agreement, letter, work release or other similar document instructing or outlining the Work which incorporate these General Terms and Conditions by reference thereto and constitutes a Contract between the Buyer and the Seller.

**Seller** – the entity named on the Purchase Order as performing the Work or supplying the Goods and shall include the Seller's legal personal representatives, successors and assignees.

**Buyer** – CAN (Offshore) Limited (the legal entity which has business streams comprising of CAN, ENGTEQ and VENTEQ) which is - issuing the Purchase Order to the Seller and shall include its successors in title and permitted assignees.

**Seller Group** – the Seller, its Co-Venturers, its suppliers, subcontractors, its and their affiliates, its and their respective directors, officers and employees (including agency personnel), but shall not include any member of the Buyer Group.

**Buyer Group** – the Buyer, its Co-Venturers, its and their respective Affiliates, its and their respective directors, officers and employees (including agency personnel), but shall not include any member of the Seller Group.

**Co-Venturer** – shall mean any other entity with whom the Buyer or the Seller is or may be from time to time a party to a joint venture agreement or collaboration agreement or similar agreement relating to operations for which the Goods or Services are being provided, or provision or production of the Goods or Services, and the successors in interest of such Co-Venturer or the assignees of any interest of such Co-Venturer.

**Goods** – any and all goods being purchased by the Buyer from the Seller. This shall include goods which are part of the Work, including all components and materials to be incorporated therein or ancillary thereto and all articles, materials, supplies, drawings, data, documentation specified or required and carried out with respect to the Contract.

**Services** - services to be supplied by Seller under the Purchase Order, including the results of those services.

**Work** – all work, including the provision of Goods, Services and/or Hire Equipment, which the Seller is required to perform for the Buyer under the Contract including manufacture, modification, delivery, installation, testing and commissioning as required by the Buyer.

**2. INTERPRETATION**

- 2.1 All instructions, notices, agreements, authorisations, approvals and acknowledgements shall be in writing. All such documentation together with all correspondence and other documents shall be in the English language.
- 2.2 Nevertheless, if for any reason, it is considered necessary by the Buyer to give an instruction to the Seller orally in the first instance, the Seller shall confirm this oral instruction in writing, requesting written confirmation from the Buyer. This confirmation should be provided without undue delay and the original request shall be deemed to be an instruction in writing by the Buyer.
- 2.3 Any reference to statute, statutory provision or statutory instrument shall include any re-enactment or amendment thereof for the time being in force.
- 2.4 Unless the context otherwise requires, words importing the singular shall include the plural, and words importing the masculine gender shall include the feminine and neuter genders, and vice versa.

**3. ENGAGEMENT**

- 3.1 Subject to Clause 33 (Continuing Obligations), the Contract will automatically terminate on completion of the Work.
- 3.2 Unless specifically waived, or otherwise agreed in writing between the parties, in the form of special conditions set out in the Purchase Order which shall take precedence over the General Terms and Conditions set out herein. These General Terms and Conditions shall apply to any and all Work being provided by the Seller to the Buyer and any other terms and conditions proposed by the Seller as governing Work shall be expressly excluded.
- 3.3 The Buyer may engage the Seller to carry out Work based on these General Terms and Conditions by issuing a Purchase Order referencing these General Terms and Conditions to the Seller, which shall constitute an offer by the Buyer to purchase Goods or Services from the Seller in accordance with these General Terms and Conditions.
- 3.4 The Purchase Order shall be deemed to be accepted on the earlier of the Seller issuing written acceptance of the Purchase Order, or any act by the Seller which is consistent with fulfilling the Purchase Order, at which point and on which date the Contract shall come into existence.
- 3.5 Neither the Buyer nor the Seller shall at any time sub-contract or assign any part of their respective rights or obligations under this Purchase Order to any other person, without first obtaining the other party's prior written consent which shall not unreasonably be withheld or delayed.

**4. TERMINATION FOR CONVENIENCE**

The Buyer may at any time give written notice to the Seller to terminate the Purchase Order forthwith and in such event the Buyer shall pay, and the Seller shall accept in settlement of all claims under the Purchase Order, such sums as shall reasonably compensate the Seller for all work done and obligations assumed by it in performance of the Purchase Order prior to its termination and for all work reasonably done by the Seller in giving effect to such termination. The value of any material, payment for which has been made by the Buyer but which is left with, and can be put to use by, the Seller, shall

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be taken into account when calculating such losses but such sum shall in no event exceed the price set out in the Purchase Order unless otherwise previously agreed.

**5. CANCELLATION**

The Buyer or the Seller may terminate the Purchase Order in the event that:

- (a) The other party is in breach of a condition of the Purchase Order; or
- (b) The other party becoming bankrupt or making a composition or arrangement with its creditors or a winding-up order being made or (except for the purposes of amalgamation or reconstruction) a resolution for its voluntary winding-up being passed or a provisional Liquidator, Receiver, Administrator or Manager of its business or undertaking being appointed or presenting a petition or having a petition presented applying for an administration order to be made pursuant to Section 9 Insolvency Act 1986, or possession being taken by or on behalf of the holders of any debenture secured by a Floating Charge of any property comprised in or subject to the Floating Charge, or any equivalent act or thing being done or suffered under any applicable law.

In such an event, the only remaining commitment will be for the Buyer to pay for Work already delivered by the Seller but not yet paid for.

**6. PURCHASE ORDER VALUE**

- 6.1 The prices detailed in this Purchase Order are fixed and firm and not subject to escalation.
- 6.2 The Total Value of this Purchase Order is not to be exceeded without prior notification and agreement in writing in the form of a revised Purchase Order. The Seller must advise, in advance of commencement, of any potential increase, failure to do so will result in delay in payment of invoices for the amounts in excess of those specified in this Purchase Order. If the Buyer does not approve an increase, those costs shall be solely for the account of Seller.
- 6.3 All prices quoted are exclusive of Sales Tax (but inclusive of all other taxes, duties or other charges as applicable) and, unless otherwise stated in the Contract, are deemed to be in Pounds Sterling (GBP).
- 6.4 For Work performed, or Goods supplied, to the Buyer's satisfaction, correctly prepared and adequately supported invoices (to the address stated in the Contract) received on or before the 15th of a month, shall be paid to a bank account nominated by Seller on the last working day of the following month.
- 6.5 Except where it is expressly provided that the Buyer shall carry out an obligation under the Purchase Order at its own cost, the price shall be fixed and unless otherwise agreed in writing between the parties shall encompass all costs associated with the performance of the Work including but not limited to materials, labour packaging, inspections, tests, certificates and transportation.

**7. INVOICING INSTRUCTIONS**

- 7.1 Only One Invoice shall be submitted for each Purchase Order number and shall make reference to Item Number and, if applicable, Tag Numbers. Invoices for Final Payment shall be submitted after contractual delivery of the Goods.
- 7.2 In the Case of Delivery to the Aberdeen facilities, proof of delivery shall be the signature (with name clearly printed) of a person employed by or engaged by the Buyer Group, responsible for accepting delivery of the Goods.
- 7.3 All Invoices shall be submitted to the following address:-  
  
CAN (Offshore) Limited  
Hareness Road  
Altens Industrial Estate  
Aberdeen  
AB12 3LE  
Attn: Accounts Payable Department.
- 7.4 Invoices will be paid only in the currency or currencies specified in this Purchase Order. Only one currency per invoice shall be permitted. Under no circumstances may currencies be converted or altered without the Buyer's express written permission.
- 7.5 Failure to comply with instructions 1 to 4 above may result in the Seller's invoice being returned for amendment and result in a consequent delay in payment.
- 7.6 Unless stated otherwise in the above referenced Terms and Conditions, the Seller shall submit an invoice accompanied by timesheets and signed work order on or before the 15th day of each month for services provided or goods delivered during the preceding month.

**8. PAYMENT TERMS**

One hundred per cent (100%) of the Total Purchase Order Value on contractual delivery of the Work, payable 30 days after month end of receipt of invoice by the Buyer.

**9. PACKING & HANDLING**

Seller shall provide adequate protective packaging to prevent damage, contamination, and deterioration of the Products, comply with Buyer's instructions for, and comply with good commercial practice at no additional charge to Buyer.

- 9.1 All packaging and handling requirements must meet with the Buyer's requirements as specified in the Purchase Order and comply with the relevant legislation and to the UKOOA "Guideline for the Safe Packing & Handling of Cargo to and from Offshore Locations - Current revision.
- 9.2 It is the Seller's obligation and responsibility to ensure an IMDG Declaration is supplied with all applicable Goods. Failure to comply with this legal requirement will result in rejection, and all costs associated will be to the Seller's account.
- 9.3 Shipments shall be made in accordance with Buyer's specific instructions. Seller shall enclose a packing slip with each shipment and all packaging/documentation shall reference Buyer's Purchase Order number and other details requested by the buyer. Seller shall label all shipping containers with Seller name, Buyer's part number, Purchase Order number, total shipment

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quantity, box number, and bar code or details as requested.

- 9.4 INCOTERMS shall be included unless otherwise required by the Buyer. The Seller as deemed applicable by the Buyer shall comply with good commercial practice at no additional charge to Buyer regarding International Maritime Organisation's (IMO's) SOLAS container requirements. The Seller as applicable shall be responsible for all UKOA compliance and liability, all documentation, pre-shipment safety checks, accurate Weights - Dimensions and handling responsibility/requirements at all stages of transit. The Buyer unless stated otherwise in writing shall not be held liable for any financial detriment or otherwise for shipments directly out - with its control.

**10. TAX AND CUSTOMS PROCEDURES**

- 10.1 Unless otherwise agreed, the Seller shall be responsible for the payment of all Taxes, duties levies, charges and contributions (and any interest or penalties thereon) connected with the work for which the Seller is liable as imposed by any appropriate government authority whether of the United Kingdom or elsewhere.
- 10.2 The Seller is deemed to have taken into account in its rates, sums and prices all Taxes other than Sales Taxes. For the avoidance of doubt rates shall not be increased for any Taxes other than Sales Taxes.
- 10.3 The Seller shall supply to the Buyer all such information, in connection with activities under the Contract as is necessary to enable the Buyer to comply with the lawful demands for such information by any appropriate government authority whether of the United Kingdom or elsewhere.
- 10.4 When applicable, the Seller shall pay and make payment at such times when due and payable, all Customs Duties on materials, goods, tools, equipment and supplies required for the Contract and imported or exported by the Seller. Where required, the Seller will be responsible for ensuring that it holds the necessary import/export licences issued by the relevant authorities prior to the commencement of the Work.
- 10.5 Where the Contract requires the Buyer to import or export materials, goods, tools, equipment or supplies the Seller shall assist the Buyer in complying with any and all applicable laws, regulations, guidelines or policies. The Seller shall provide any information as is necessary or deemed necessary by the Buyer to ensure compliance with aforementioned laws, regulations, guidelines or policies. If as a result of the Seller's act or omission the Buyer incurs Customs Duties, including fines, penalties and interest, or other costs which otherwise would not have been due, the Seller indemnifies and keeps indemnified the Buyer in respect of such Customs Duties.
- i) The Seller shall therefore observe and comply with legislative changes in customs practice and ensure compliance with Union Customs Code (UCC) regulation (EU No: 952/2013 or most up to date version, or superseding equivalent, for same), including associated Her Majesty's Revenue and Customs (HMRC) Customs Information Papers or other relevant publications, in relation to cargo transiting to and from offshore installations.

- ii) The Seller warrants that it will comply with all UK, UKCS ,UCC, Foreign and local Customs shipping and

handling regulations, including, but not limited to any statute, rule, regulation, judgment, decree, order, license, or permit applicable to its performance under any Purchase Order at its sole cost liability and expense, including, without limitation all applicable export control regulations and the supply as applicable of accurately completed shipping documentation supplied both to the buyer for in freight transit or otherwise.

- iii) Full compliance with Commercial Documents INCOTERMS and conditions shall be required as applicable. The Seller will comply with good commercial practice at no additional charge as applicable to provide a detailed description HS code of each item being shipped to ensure proper product classification per the Harmonized Tariff Schedule (HTS) and must include at a minimum: The full name by which each item is known. Should the materials shipping not be (FCG) Free Circulating Goods status within the EU; Prior to shipping the Seller must provide the Buyer with the Customs Origin and Customs Status of materials and await clearance, the seller as applicable shall at all times indicate to the Buyer the Customs Status of all supply material FCG or otherwise.
- 10.6 Where Goods are sold to the Buyer under the Contract, the Seller shall:
- (i) Prepare and provide to the Buyer full documentation to show and certify all information regarding items subject to customs control, including the origin, customs status and customs commodity code number as may be necessary for the Buyer to minimise or nullify the effect of Customs Duty on such items; and
- (ii) Apply all tax benefits, reductions and reliefs by all legally available means conferred by applicable legislation and applicable double tax conventions; and
- iii) Inform the Buyer without delay in the event that the Seller is unsuccessful in any application for reliefs. In such event, the Buyer shall have the option to import or export or re-import any times affected under its own authorised procedure.

**11. GOODS - OPERATING INSTRUCTIONS**

It is a fundamental term of the Contract between the Buyer and the Seller that the Seller shall provide, with the equipment, such operating instructions and other data relating to the Goods, the absence of which would, or may, in the Buyer's opinion be prejudicial to the health and safety of any person properly using the equipment or other persons whilst at their place of work.

**12. EC DIRECTIVES AND UK STATUTORY INSTRUMENTS**

- 12.1 EC Directives and UK Statutory Instruments are mandatory. The Seller shall ensure that all individual components, equipment and complete packages, as appropriate are 'CE' marked and as applicable supporting 'Declaration of Conformity' / 'Declaration of Incorporation' shall be included in the Certification Manual.
- 12.2 The Buyer and the Buyer's nominated Independent Competent Person may require access to the Seller's

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and their suppliers' or subcontractors' 'Technical Construction Files' to verify that the testing and the compliance with applicable standards have been achieved and are appropriately documented.

12.3 The Seller is responsible, as described in Regulation 10 of The Provision and Use of Work Equipment Regulations 1998 (PUWER 98), for ensuring compliance with the requirements of any applicable directive if that directive has been incorporated by Statutory Instruments into UK legislation that are relevant to the scope of supply on this order.

**13. CONTROL OF SUBSTANCES HAZARDOUS TO HEALTH REGULATIONS 1988 ("REGULATIONS")**

13.1 The Seller will ensure that the Goods will comply with the requirements of all applicable law and, to the extent that they contain toxic, corrosive or hazardous materials, the Seller will ensure that a notice to that effect accompanies each consignment, together with appropriate care and handling instructions.

13.2 Goods supplied under the Purchase Order, which are contaminated beyond use, at the time of delivery, shall be regenerated or disposed of by the Seller. The title and risk of the contaminated Goods will remain with the Seller, who will bear all expenses for the said processes. In the event that the Buyer contaminates the Goods, the Buyer will be liable for the processes of regeneration or disposal.

**14. DELIVERY TERMS**

The above prices include for Delivery, Packed "Carriage and Insurance Paid" (CIP) per Incoterms 2010, all to Buyer's Aberdeen facilities (address for remitting invoice to on Purchase Order), unless otherwise specified on Purchase Order and:

14.1 Properly packed and secured in such manner as to enable them to reach their destination in good condition and in accordance with any applicable Legislation;

14.2 If the Seller delivers more than the quantity of Goods ordered the Buyer shall not be obliged to pay for any quantities in excess of those stated on the Purchase Order. Any such excess shall be and shall remain at the Seller's risk and expense and shall be returnable at the Seller's risk and expense

14.3 The Buyer considers time to be of the essence and unless otherwise agreed between the parties, the Buyer reserves the right to apply liquidated damages for late delivery of the Work at the rate specified in the Purchase Order. Where no such rate is specified in the Contract the rate of one percent (1%) of the Contract price for each day or part thereof for which the Work is delayed shall apply. Where liquidated damages are payable these shall be deemed to be a genuine pre-estimate of the Buyer's losses as a result of such delay and as shall not be construed as penalties. The Buyer shall have the right to terminate the Purchase Order and recover from the Seller the direct losses sustained as a result of the delay up to an amount not to exceed the value of the Purchase Order.

**15. DISCREPANCIES, INVALIDITY AND SEVERABILITY**

15.1 Should the Seller find any discrepancies, ambiguities or contradictions between any parts of this Purchase Order, or any errors or omissions, the Seller shall immediately inform the Buyer in writing. Any work performed after such discovery, until authorised in writing by the Buyer by issue of a revised Purchase Order, shall be at the Seller's risk and expense.

15.2 If any provision of this Purchase Order shall be found by any court or administrative body of competent jurisdiction to be invalid, unlawful or unenforceable to any extent, the invalidity or unenforceability shall not affect the other provisions of this Purchase Order and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect.

15.3 The Seller and the Buyer agree to attempt to substitute, for any invalid or unenforceable provision, a valid or enforceable provision which achieves to the greatest possible extent, the economic, legal and commercial objectives of the invalid or unenforceable provision.

**16. DRAWING AND DATA REQUIREMENTS**

The Seller shall submit for the Buyer's approval, the indicated number of Drawings and Data required initially in accordance with the attached SDRL (where applicable), and subsequently in accordance with the approved SDR (Supplier Document Register A01) (where applicable), or as noted on the Purchase Order Documents.

Seller documentation should be mailed to:-  
CAN (Offshore) Limited  
Hareness Road  
Altens Industrial Estate  
ABERDEEN  
AB12 3LE

**17. HEALTH AND SAFETY**

It is a fundamental term of this Contract between the Buyer and the Seller that the Seller shall provide with the equipment sold such operating instructions and other data relating to the Work, the absence of which would, or may, in the Buyer's opinion be prejudicial to the health and safety of any person properly using the equipment or other persons whilst at their place of work.

**18. INSPECTION AND TESTING**

The Buyer, the Buyer's Client and their representatives shall, upon giving reasonable notice and at their cost, be entitled to access any premises (including those of the Seller's suppliers) to inspect and test Goods and verify the progress of the Work prior to acceptance or delivery, whichever is later.

**19. AUDIT AND STORAGE OF DOCUMENTS**

19.1 The Seller and its suppliers and subcontractors shall keep full and accurate records pertaining to the Work and shall retain such records for a period of three (3) years from completion of each individual piece of the Work performed under the Contract or such longer period as is specifically required by law.

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- 19.2 The Buyer shall be entitled, at its cost and on giving reasonable notice to the Seller, to audit the documentation within the period noted in Clause 19.1 above.
- 19.3 Both parties shall be entitled to audit the other Party at any time to ensure compliance with Clause 28 (Anti-Bribery and Corruption).

**20. CONFIDENTIALITY**

The Buyer and the Seller shall keep the Purchase Order and any information, which either party learn about the other in strict confidence and will not disclose the same to any third party without the prior written consent of the other party.

**21. PERSONAL DATA PROTECTION**

- (a) Seller will implement all appropriate security measures to protect personal data against accidental, unlawful, or unauthorised, (i) destruction, (ii) loss, (iii) alteration, (iv) disclosure, or (v) access (including remote access). Seller will protect personal data against all other forms of unlawful processing, including unnecessary collection, transfer, or processing, beyond what is strictly necessary for the specific performance of the work.
- (b) The seller is not authorised to and will not process Buyer Group or Co-Venturing personal data, whether or not included in the Purchase Order or disclosed during course of providing the Goods or Services, unless CONTRACTOR has first entered into a data privacy agreement with Buyer.

**22. TITLE, RISK AND LIENS**

- 22.1 Except as otherwise provided for in the Contract, risk of damage to or loss of the Work, including for the purpose of the mutual indemnifications and liabilities provided for herein, shall pass to the Buyer upon delivery or collection of Goods, provided Goods are free from defect or damage. Any defect, damage or breach of Purchase Order must be remedied by the Seller prior to it being deemed to have accepted said Goods.
- 22.2 Except as otherwise provided for in the Contract, title in the Services and/or title in the Goods to be used in the Work (unless already property of the Buyer) shall pass to the Buyer upon said materials being identified as being required for the Work or in proportion to the payments made or delivery to the Worksite, whichever is the earlier.
- 22.3 All items to be incorporated into the Work or related to the Work and where title has passed to the Buyer shall be clearly marked as the Buyer's property and stored separately.
- 22.4 The Seller agrees that it shall not allow any liens to attach to the Work or any property of the Buyer and that it shall furnish, upon request, receipts and releases with respect to the Work showing that all related costs and expenses have been paid (and thus, that no claims, liens, or rights of liens exist against the Buyer or its property or the Work). The Seller shall be responsible for and shall save, indemnify, defend and hold harmless the Buyer Group against any such lien or attachment.
- 22.5 All designs, drawings and other technical information relating to the Work, including any software provided solely by the Seller under the Purchase Order, and the intellectual property rights therein made or acquired solely by the Seller prior to or during the preparation of

the proposal or tender or in the course of work on the Purchase Order shall be and remain the Seller's property unless otherwise set out in the Purchase Order.

**23. GUARANTEE AND WARRANTY**

23.1 The Seller warrants to the Buyer as follows:

- (i) The Work shall be performed by appropriately qualified and trained personnel, with due care and diligence; and
- (ii) The Work shall be of satisfactory quality, complete and fit for purpose; and
- (iii) The Work shall be free from defects in material and workmanship; and
- (iv) The Work shall correspond with all specifications, drawings or samples if any referred to in the Contract; and
- (v) All materials and equipment, drawings, certificates or other documentation supplied by the Seller in the performance of the work shall be new unless otherwise agreed by the Buyer in writing in the Purchase Order, be of high quality, be the quantity requested and shall conform to approved drawings and specifications. Further, all materials and equipment provided by the Seller shall be suitable for the purposes intended.

23.2 If the Work is not supplied or performed in accordance with the Contract, the Buyer shall immediately give notice to the Seller of such failure in writing within the below noted warranty periods, and shall be entitled, at the Buyer's sole discretion, to either request the Seller to promptly repair, replace or re-perform the Work in order to meet the requirements of the Contract or the Buyer can affect the repair or obtain replacement Work itself where it is necessary for the proper execution or safety of the Work or where the carrying out of the work by the Seller will be prejudicial to the Buyer's interests.

23.3 The warranty periods for the Work are as follows:

- (i) Goods: twelve (12) months from installation or eighteen (18) months from delivery (in accordance with Clause 7 above), whichever occurs later.
- (ii) Services: twelve (12) months from completion of the relevant Services.
- (iii) Hire Equipment:  
The Seller warrants to the Buyer that the Hire Equipment shall at all times during the term of the Contract:
  - a) Comply with all applicable laws and statutory regulations;
  - b) Have all approvals, certificates and permits required for use and operation;
  - c) Comply with the Buyer's specifications and requirements;
  - d) Be free from defects in design, materials and workmanship; and
  - e) Be of satisfactory quality, in proper working order and fit for its intended purpose.

23.4 The Seller shall ensure that the guarantees and/or warranties issued by manufacturers of materials and equipment supplied by the Seller or by any supplier or subcontractor of the Seller and covering performances of materials and equipment supplied by them shall be issued in the joint name of the Seller and Buyer such that the Buyer enjoys the same benefits and protection provided by such guarantees and/or warranties as does the Seller. The issuance or existence of any such

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guarantee or warranty shall, however, in no way relieve the Seller of its duties or obligations under the Contract.

22.5 Subject to Clause 24.6 below, the Seller's liability in respect of this Clause 22 shall be limited to replacing, repairing or re-performing the defective Work.

22.6 Should the Seller fail or refuse to repair, replace or re-perform the Work in accordance with Clause 22.2 above, within a reasonable period, the Buyer shall be entitled to effect the repair or obtain replacement Work itself or by means of others at the Seller's cost.

24.7 Replacements, repairs and corrective work shall be warranted for the periods set out in Clause 24.3.

### **23. INSURANCE**

The Seller shall, at their own cost, obtain and maintain, in full force and effect throughout the duration of the Contract, levels of insurance to cover their respective liabilities and obligations under the Contract and at law.

### **24. LIABILITY AND INDEMNITY**

24.1 The Seller shall be responsible for and shall save, indemnify, defend and hold harmless the Buyer Group from and against all claims, losses, damages, costs (including legal costs) expenses and liabilities in respect of:

- (i) Loss of or damage to property of the Seller Group whether owned, hired or leased or otherwise provided by the Seller Group arising from, relating to or in connection with the performance or non-performance of the Contract unless such loss or damage resulted from failure of the Buyer to use goods in accordance with any specific operating instructions set out in the Purchase Order; and
- (ii) Personal injury including death or disease to any person employed or engaged on behalf of the Seller Group arising from, relating to or in connection with the performance or non-performance of the Contract; and
- (iii) Subject to any other express provisions of the Contract, personal injury including death or disease or loss of or damage to the property of any third party to the extent that any such injury, loss or damage is caused by the negligence or breach of duty (whether statutory or otherwise) of the Seller Group; and
- (iv) Pollution occurring on the premises of the Seller Group or originating from the property and equipment of the Seller Group arising from, relating to or in connection with the performance or non-performance of the Contract.

24.2 The Buyer shall be responsible for and shall save, indemnify, defend and hold harmless the Seller Group from and against all claims, issues, damages, costs (including legal costs) expenses and liabilities in respect of:

- (i) Loss of or damage to property of the Buyer Group (excluding Goods prior to delivery) whether owned by the Buyer Group or leased (except where leased from the Seller Group) or otherwise provided by the Buyer Group which is located at a Worksite arising from, relating to or in connection with the performance or non-performance of the Contract; and
- (ii) Personal injury including death or disease to any person employed by or engaged by the Buyer Group arising from, relating to or in connection with the performance or non-performance of the Contract; and

(iii) Subject to any other express provisions of the Contract, personal injury including death or disease or loss of or damage to the property of any third party to the extent that any such injury, loss or damage is caused by the negligence or breach of duty (whether statutory or otherwise) of the Buyer Group; and

(iv) With the exception of the above indemnity given by the Seller at Clause 21.1 (iv) (Title Risk and Liens), any claim relating to pollution and/or contamination originating from any equipment or property of the Buyer Group arising from, relating to or in connection with the performance or non-performance of the Contract.

24.3 For the purposes of this Clause 24, "third party" shall mean any party which is not a member of the Seller Group or the Buyer Group.

24.4 The indemnities given by the parties under this Clause 24 are full and primary and shall apply irrespective of whether the indemnified Party has or does not have insurance in place relating to any claims, losses, damage or costs in respect of the subject matter of any indemnity given under this Contract.

24.5 All exclusions and indemnities given under this Clause (save for those under Clauses 24.1(iii) and 24.2(iii)) and Clause 25 (Consequential Loss) shall apply irrespective of cause and notwithstanding the negligence or breach of duty (whether statutory or otherwise) of the indemnified party or any other entity or party and shall apply irrespective of any claim in tort, under contract or otherwise at law.

24.6 Each Party expressly agrees that the indemnities set out in this Clause 24 do not extend to criminal sanctions imposed upon it, arising from, relating to or in connection with the performance of the Contract.

### **25. CONSEQUENTIAL LOSS**

Notwithstanding any other provision of the Contract to the contrary and except to the extent of any agreed liquidated damages under Clause 11 (Delivery Terms) provided for in the Contract, the Buyer shall save, indemnify, defend and hold harmless the Seller Group from the Buyer Group's own Consequential Loss and the Seller shall save, indemnify, defend and hold harmless the Buyer Group from the Seller Group's own Consequential Loss arising from, relating to or in connection with the performance or non-performance of the Contract.

### **26. FORCE MAJEURE**

26.1 Neither Party shall be considered in breach of its obligations under the Contract for reasons of Force Majeure. For the purposes of this Contract only the following occurrences shall be considered "Force Majeure":

- (i) Riot, war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power; and
- (ii) Ionizing radiations or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or radio-active, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; and
- (iii) Pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds; and

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- (iv) Earthquake, flood, fire, epidemics, explosion and/or other natural physical disaster, including severe weather conditions; and
  - (v) Strikes at a national or regional level or industrial disputes at a national or regional level, or strikes or industrial disputes by labour not employed by the affected party its suppliers or subcontractors or its suppliers and which affect a substantial or essential portion of the Work; and
  - (vi) Maritime or aviation disasters; and
  - (vii) Changes to any general or local statute, ordinance, decree, or other law, or any regulation or by-law of any local or other duly constituted authority or the introduction of any such statute, ordinance, decree, law, regulation or by-law.
- 26.2 Force Majeure shall not include economic or market conditions affecting the parties, or failure to obtain credit by a Party.
- 26.3 Announcement and documentation of a Force Majeure situation must be provided to the other Party without undue delay.
- 26.4 The occurrence of a Force Majeure event shall not excuse the Buyer from making any payments due to the Seller for Work satisfactorily completed prior to the event of Force Majeure and/or agreed standby time/rates and/or any demobilisation costs incurred as a result of the said event of Force Majeure.
- 26.5 Should the Force Majeure event continue for longer than seven (7) days, the parties shall meet to discuss the impact on and future performance of the contract.

**27. GOVERNING LAW AND DISPUTE RESOLUTION**

- 27.1 The formation, existence, construction, performance, validity and all other aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.
- 27.2 The parties shall endeavour to settle by negotiation any dispute arising out of or in connection with the Contract. Any dispute shall be duly notified by the claiming Party to the other Party and the parties shall endeavour to settle such dispute in good faith within thirty (30) days from receipt of said notice between their respective representatives.

**28. ANTI-BRIBERY AND CORRUPTION**

Both parties shall uphold the highest standards of business ethics in the performance of the Contract and both parties warrant that it shall have in place and maintain for the duration of the Contract adequate anti-bribery and corruption policies and procedures of which the other Party in turn warrants it shall comply.

**29. LEGAL AND SAFETY OBLIGATIONS**

Both parties shall comply with all applicable laws in the performance of the Work and shall comply with any and all applicable safety rules, regulations or procedures applicable to the Work.

**30. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT**

With the exception of the provisions contained within Clauses 21.5 (Patents and other Proprietary rights), Clauses 22

(Liability and Indemnity), 23 (Consequential Loss), 24 (Warranty) and 25 (Insurance), the parties intend that no provision of the Contract shall, by virtue of the Contracts (Rights of Third Parties) Act 1999, confer any benefit on nor be enforceable by any person who is not a Party to the Contract. For the purposes of this Clause 31, "third party" shall mean any member of the Buyer Group (other than the Buyer) or the Seller Group (other than the Seller).

Notwithstanding Clause D12.3, the Purchase Order may be rescinded, amended or varied by the parties to the Purchase Order without notice to or the consent of any Third Party even if, as a result, that Third Party's right to enforce a term of this Purchase Order may be varied or extinguished.

The rights of any Third Party under Clause D12.3 shall be subject to the following:-

- (a) any claim, or reliance on any term of the Purchase Order by a Third Party shall be notified in writing in accordance with the requirements of Clause D1.4 by such Third Party as soon as such Third Party becomes aware that an event is likely to give rise to such a claim and such notification shall contain the following information as a minimum:
  - (i) details of the occurrence giving rise to the claim; and
  - (ii) the right relied upon by the Third Party under the Purchase Order,
- (b) the provisions of Clause D8 shall apply in respect of any claim by a Third Party in that the relevant parties agree to resolve any dispute between them in a prompt and amicable manner by adopting the provisions of Clause D8,
- (c) The Third Party's written agreement to submit irrevocably to the jurisdiction of the English Courts in respect of all matters relating to such rights.

**31. ENTIRE AGREEMENT**

The Contract constitutes the entire agreement between the parties hereto with respect to the Work and supersedes all prior negotiations, representations or agreements relating to the Contract either written or oral.

These General Terms and Conditions apply to the Contract to the exclusion of any other terms that the Seller seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. Any terms of the Seller's attached to any of its quotes, Purchase Order acceptances, work tickets, invoices or other documentation are hereby rejected by the Buyer and shall be of no force or effect.

**32. CONTINUING OBLIGATIONS**

Termination of the Contract and/or the Buyer's acceptance of Work, or any part thereof, shall not release the parties from obligations, which expressly or by their nature survive the Contract or extend beyond Contract termination and any acceptance of the Work.