



## General Conditions for Sale of Goods and Services

### 1 SALE

#### 1.1 General Conditions

These general conditions for sales of goods and services shall apply for all sales by any company within the PASSER group of companies and take precedence over any alternative terms and conditions in any other document unless such alternative terms and conditions are agreed upon and accepted in writing by Contractor.

#### 1.2 Definitions

Affiliated Company means any company or incorporated body that (i) is directly or indirectly controlled by a Party, or (ii) directly or indirectly controls a Party, or (iii) is directly or indirectly controlled by a company or incorporated body that also directly or indirectly controls the Party. For the purpose of this definition, "controls" means the right to exercise more than fifty percent (50%) of the voting shares.

Company means the party purchasing Goods, Services or Work from Contractor or that is stated as such in the Contract or its successors or permitted assigns.

Company Group means Company and its subcontractors, partners, contractors, agents, consultants, and suppliers and their respective Affiliated Companies and the directors, officers, employees, agents, consultants of all such companies, all to the extent they participate in the performance of the Work.

Contract means the separate contract document, irrespective of whether such a document has the form of a contract document, purchase order issued by Company or otherwise and that is accepted in writing by Contractor, these general conditions for sale of goods and services and any appendices listed in the separate contract document.

Contract Price means the total price specified in the Contract subject to adjustments as set forth in these general conditions for sale of goods and services and the Contract.

Contractor means the PASSER entity entering into the Contract with Company or its successors or permitted assigns.

Contractor Group means Contractor and its subcontractors, partners, contractors, agents, consultants, and suppliers and their respective Affiliated Companies and the directors, officers, employees, agents, consultants of all such companies, all to the extent they participate in the performance of the Work.

Delivery Date means the date of delivery of the Work as stated in the Contract or such date as may be varied in accordance with the provisions in the Contract.

Delivery Protocol means the written acceptance of the Work by Company confirming that the Work is delivered to Company as set forth in the Contract to Company's satisfaction.

Goods means all goods, materials, equipment, items and property of any type, kind or description to be delivered or provided by Contractor pursuant to the drawings, documents, specifications and descriptions in the Contract.

Intellectual Property means all commercial and technical information, including but not limited to all kinds of technology, ideas, know-how, concepts, patented and unpatented inventions and discoveries, patent applications, formulas, processes, procedures, designs, information, drawings, reports, documents, documentation, specifications, plans, models, samples, tools, equipment, computer programs, data, registered and unregistered trademarks, trade secrets, rights, copyrights and other intellectual and proprietary information together with copies of same and irrespective of means of storage.

Party or Parties means Contractor and Company individually or collectively.

Services means all services, design, delivery, installation, installation services, inspection, supervision and/or testing specified, performed or required to be performed by Contractor pursuant to drawings, documents, specifications and descriptions in the Contract.

Third Party means others than the Parties.

Work means all Services to be performed and/or Goods to be delivered pursuant to the Contract, included drawings and documentation to be provided in connection with such Services and Goods.

#### 1.3 Contract Documents

The Contract constitutes the entire agreement between the Parties and supersedes all prior agreements, promises, correspondence, discussions, representations and understandings.

In the event of any conflict between the provisions of the Contract, the various contract documents shall be given priority in the following order:

- (i) the separate contract document
- (ii) these general conditions for sale of goods and services
- (iii) all appendices in the order they are listed in the separate contract document

Other conditions shall not apply to the Contract unless Contractor has accepted these in writing.

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**1.4** If it is stated in the Contract that the provisions in an agreement between Company and a Third Party shall apply on a back-to-back basis between Company and Contractor for the Work to be performed by Contractor, then Contractor shall not be considered to have accepted any obligations set forth in any such agreement without having had the opportunity to review the agreement in its entirety. And, such terms and conditions will only form a part of the Contract if such are found to be acceptable by Contractor and Contractor has given its express written acceptance of such terms and conditions.

**1.5** The Contract becomes effective upon the signing of the Contract by both Parties.

**1.6** Each party shall appoint a representative with authority to act on its behalf in all matters concerning the Contract. All communication, notices, claims, etc. which the Contract requires to be presented, shall be presented in writing in Norwegian or English and be sent by letter, fax or confirmed electronic mail to the other party's appointed representative.

## **2 GENERAL OBLIGATIONS OF CONTRACTOR**

### **2.1 General obligations**

Contractor shall perform the Work with that degree of skill, care, diligence and good judgement normally exercised by recognised professional firms performing work of the same or similar nature. The Work shall in all respects meet the specifications of the Contract.

### **2.2 Compliance with laws and regulations**

Contractor shall perform works and activities under and in relation to the Contract in compliance with applicable laws, rules and regulations in force at the place where such works and activities are performed. The Work shall comply with the laws, rules and regulations specified in the Contract. Any new laws, rules and regulations or changes to existing laws, rules and regulations or the interpretation thereof effective after the entering into of the Contract and that affects the performance of works and activities under the Contract or the Work, shall entitle Contractor to a variation.

Contractor shall, in due time, obtain and maintain all such approvals and permits as are necessary to perform the Work and which must be obtained in the name of Contractor. Company shall provide any necessary assistance in this regard.

**2.3** Contractor commits to comply with applicable laws relating to anti-bribery and corruption of any country in which Contractor performs work under this Contract. Contractor represents and agrees that it will not, whether in Norway or abroad (i) directly or indirectly, give or offer any improper advantage to anyone in connection with post, office or commission, or (ii) for himself or anyone else, directly or indirectly, request, receive or accept an offer for an improper advantage in connection with post, office or commission, or (iii) directly or indirectly, give or offer any improper advantage with the purpose of influencing the performance of a post, office or commission, or (iv) for himself or anyone else, directly or indirectly, request, receive or accept an offer for an improper advantage with the purpose of influencing the performance of a post, office or commission.

### **2.4 Performance of the Work**

All the Work shall comply with the specifications and other requirements set forth in the Contract.

Contractor shall have an implemented and documented quality system, hereunder systems that fulfil the normal standard requirements for the Work related to the control and monitoring of safety, occupational health and working environment issues, and procedures, including management control systems, to prevent Contractor's employees, personnel, agents and/or contractors from doing or omitting anything which could be considered a breach of Articles 2.2 and 2.3.

**2.5** Company shall not be deemed to be the employer of Contractor's personnel, even if such personnel are to perform all or parts of the Work in co-operation with Company.

**2.6** If the Contract appoints key personnel in Contractor's organisation, such personnel can be replaced by Contractor by giving Company a two (2) week written notice.

**2.7** Contractor shall, when work is carried out at Company Group's or Third Parties' premises, comply with any rules in force relating to health, safety and working conditions at such premises. Company shall in due time before the commencement of such work diligently inform Contractor of any rules related to health, safety and environment (HSE requirements) and other working conditions, requirements and rules relevant for Contractor.

**2.8** Contractor shall, if it discovers any defects, errors, non-conformances, discrepancies or inconsistencies ("Errors") in drawings, specifications or any other documents it has received from Company, notify Company of any such Errors discovered. Contractor shall have no liability, what-so-ever, related to such Errors.

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### 3 OBLIGATIONS OF COMPANY

**3.1** Company guarantees for the receipt by Contractor of all items to be provided by Company and all relevant information, drawings, documents, documentation, specifications and computer programs required for the performance of the Work as scheduled in the Contract. If such are not scheduled in the Contract, they shall be received by Contractor in due time prior to such is needed or required by Contractor. Contractor will be entitled to a variation if any items, information, drawings, documents, documentation, specifications or computer programs are not provided by Company as set forth herein.

**3.2** Company shall, in due time, obtain and maintain all such approvals and permits as are required for the performance of the Work and which must or can be obtained in the name of Company. Contractor shall provide any necessary assistance in this regard.

**3.3** Company shall ensure that Contractor is given necessary access to work sites when Work is to be performed elsewhere than Contractor Group's facilities.

**3.4** Company shall be responsible for the handling of hazardous and toxic materials and waste during the performance of the Work and bear the risk related to surface, sub-surface, seabed, soil and sub-soil conditions on sites others than Contractor Group's facilities.

**3.5** Company shall in due time provide for all items and installations required and that is not part of the Work and shall ensure that all conditions necessary for the correct performance, manufacturing, installation and operation of the Work is satisfied.

**3.6** Company shall, if it anticipates that it will not be able to in a timely manner carry out or fulfil any of its obligations under the Contract, immediately notify Contractor in writing stating the reason for the delay or non-fulfilment and when Company will be able to comply with its obligations.

**3.7** Company shall not recruit or employ any personnel Contractor has introduced to Company or that have performed work under or in relation to the Contract for or on behalf of Contractor. Company shall compensate and pay to Contractor a fee amounting to NOK 300,000 (three hundred thousand Norwegian kroner) for each such person it recruits, employs or hires prior to or within 6 months after the expiry of the warranty period under the Contract.

### 4 INSPECTION AND TESTING DURING MANUFACTURING

**4.1** Company shall have the right to witness tests and inspections performed by Contractor during the manufacturing of the Work.

Contractor shall assist Company in the carrying out of tests and inspections of the Work reasonably requested by Company. The performance of such tests and inspections shall be limited to areas of interest and shall not include access to areas where work of proprietary nature is performed and shall be performed during normal working hours.

Company shall not be entitled to demand tests, inspections or audits that are not specified in the Contract and that will have an impact on the manufacturing process, cost or schedule or that otherwise affects the manufacturing, installation, project schedule or project cost.

**4.2** Contractor shall, when the Work is manufactured at a Contractor Group facility, make available tools, instruments, apparatus facilities, services and materials normally provided for the carrying out of the tests and inspections specified in the Contract. If the Work is manufactured, installed, inspected or tested elsewhere than a Contractor Group facility, then such shall be provided by and at the cost of Company.

Any product specific or special testing and inspection tools and equipment will, irrespective of where the tests and inspections are carried out, be provided by and at the cost of Company.

**4.3** Contractor shall in due time notify Company of any contractual tests and inspections for the purpose of permitting Company to be present during such tests and inspections.

### 5 INSPECTION AND TESTING UPON DELIVERY

**5.1** Acceptance tests and inspections upon delivery provided for in the Contract shall, unless otherwise agreed, be carried out at Contractor's place of manufacture during normal working hours prior to delivery. If such tests and inspections are agreed to be performed elsewhere, then Company shall be responsible for the carrying out of such tests and inspections.

If the Contract does not specify any required tests or inspections, then the Parties shall perform and carry out such tests and inspection for which the Party's agree to be necessary and that is in accordance with general practice in the appropriate branch of industry concerned in the country of manufacturing.

**5.2** Contractor shall in due time before the commencement of tests and inspections provide Company with a schedule identifying a test and inspection plan specifying the time and place for the performance of such tests

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and inspections as are required per the Contract to allow Company to be present during the tests and inspections. Contractor shall, if the acceptance tests and inspections show the Work not to be in accordance or compliance with the requirements of the Contract, without undue delay remedy such non-compliances in order to ensure that the Work comply with the Contract. New tests and inspections shall be carried out if required to ascertain compliance with the contractual requirements.

**5.3** The Parties shall upon the completion of the testing and inspection activities sign a test and inspection protocol verifying the results of the tests and inspections. The protocol will solely be signed by Contractor if Company has not witnessed the testing or been present during the inspections.

If Company has not been present during the performance of the tests or inspections, it shall not be entitled to dispute the results of the tests and inspections or the test and inspection protocol.

Contractor shall within fourteen (14) days after the completion of the testing and inspection activities issue a test and inspection report.

**5.4** Contractor shall bear all costs for acceptance tests and inspections carried out at the place of Contractor's manufacturing facility. Company shall however bear all travelling and living expenses for its representatives in connection with such tests and inspections.

If tests and inspections are to be performed elsewhere than the place of Contractor's manufacturing facility, then such test and inspections shall be performed by and at the expense and risk of Company. Company will have the risk of loss to the Work and cover all costs associated with the performance of such tests and inspections and provide, at Company's cost, any equipment, tools, consumables, labour or other assistance required for carrying out the tests and inspections.

Any product specific or special testing and inspection tools and equipment will, irrespective of where the tests and inspections are carried out, be provided by and at the cost of Company.

**5.5** Company shall, if acceptance tests and inspections are performed elsewhere than Contractor's manufacturing facility, in due time before the commencement of such tests and inspections, provide Contractor with a schedule identifying a test and inspection plan specifying the time and place for the performance of such tests and inspections to allow Contractor to be present during the tests and inspections. Contractor shall be entitled to witness all acceptance test and inspections performed by Company.

Company shall within fourteen (14) days after the completion of the testing and inspection activities performed by Company issue a test and inspection report.

Company shall bear all of Contractors' costs related to the witnessing of tests and inspections carried out elsewhere than Contractor's manufacturing facility.

**5.6** Contractor shall be relieved from his duty to carry out taking-over tests and inspections and the Work shall be considered as having successfully completed all the tests and inspections set forth in the Contract if Company has taken the Work into use or in its possession before the testing and inspection activities are completed.

### **6 6 DRAWINGS, DOCUMENTS AND DESCRIPTIONS**

**6.1** All information, drawings, documents, documentation, specifications and computer programs relating to the Work or its manufacture, installation and use submitted by one Party to the other prior to the formation of the Contract shall remain the property of the submitting Party. Such information, drawings, documents, documentation, specifications and computer programs shall not without the prior written consent of the submitting Party be used for any other purpose than for that which they were provided. They may not, without the consent of the submitting Party, be used or copied, reproduced, transmitted or communicated to a Third Party. The same applies to copies of such material.

**6.2** Contractor shall provide drawings and technical documents as set forth in the Contract.

**6.3** All information, drawings, documents, documentation, specifications and computer programs relating to the Work or its manufacture, installation and use created subsequent to the formation of the Contract shall be the property of Contractor. The same applies to copies of such material.

### **7 7 SUPERVISION AND INSTALLATION SERVICES**

**7.1** This section shall apply to the extent the Parties have agreed that:

- (i) Contractor is to perform or provide supervision activities included as part of the Work related to the installation of Goods and Services delivered by Contractor and where the installation activities, including the providence of labour, equipment, consumables and others necessary for the installation and erection of the Work, is to be carried out by and at the risk, account and expense of Company, or
- (ii) if Contractor as part of the Work is to perform installation and/or supervision activities on sites other than Contractor's own facilities.

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**7.2** Company shall notify Contractor at least one (1) month prior to the date of which the site will be ready for the installation or such other activities that require the presence of Contractor.

**7.3** Company shall in due time provide Contractor with such information and drawings showing the manner in which the plant or the Work is to be erected together with all other information required for the performance of the Work and provide such access as required for the performance of the Work.

**7.4** Company shall in due time provide Contractor with such information concerning local laws and regulations as is necessary for the proper execution of Contractor's obligations and of the safety regulations in force at the site.

**7.5** Company shall ensure that the following conditions are satisfied:

- (i) Contractor's personnel are able to perform the Work in accordance with the agreed schedule during normal working hours. Provided that Contractor is given reasonable notice, work may be performed outside normal working hours,
- (ii) Contractor shall not carry out works in unhealthy or dangerous surroundings,
- (iii) Company shall secure adequate routes required for transportation on the site and to and from the site,
- (iv) Contractor's personnel shall be able to obtain medical services, suitable and convenient board and lodging nearby the site and have access to canteen facilities with an international acceptable standard,
- (v) Company shall make available to Contractor free of charge necessary cranes, lifting equipment, equipment for transportation on site, auxiliary tools, machinery, materials and supplies (including fuel, gas, oils, grease, water, electricity, compressed air, heating, lighting etc.) as well as the measuring and testing instruments at the site,
- (vi) Company shall make available to Contractor free of charge necessary storage facilities and provide protection against theft and deterioration of Contractor's equipment, equipment at the site, equipment required for the Work and of personal effects of Contractor's personnel, and
- (vii) Company shall make available to Contractor sufficient offices at the site with telephone, fax and high speed internet facilities.

**7.6** Supervision and installation services shall be paid for on a monthly basis by Company in accordance with the rates stipulated in the Contract. Contractor's rates shall apply to travelling time and planned and performed activities from the date of departure from Contractor's premises until the date of return and for time needed for preparation for and acquiring formalities for the outward and homeward journeys and other activities required for the preparation for the performance of the installation and/or supervision services.

In addition, Contractor shall charge Company for the following expenses related to the installation and/or supervision services:

- (i) travel expenses incurred by the personnel of Contractor and expenses for transportation of Contractor's and its personnel's equipment,
- (ii) cost of board and living and other living expenses, included any appropriate allowances, of Contractor's personnel for each days absence from their homes, and
- (iii) any taxes or dues levied on Contractor's invoice and taxes or dues payable by and levied on either Contractor or its personnel in the country where the installation activities or Work is performed.

**7.7** Contractor is entitled to, without prior notice, suspend the Work and withdraw his staff at the cost of Company if Company does not ascertain compliance with Article 7.5 or any invoice is not paid within the due date.

**7.8** Contractor is entitled to recall his staff at the expense of Company if a suspension period exceeds one (1) month for reasons not attributable to Contractor.

### **8 PROGRESS**

**8.1** Delivery of the Work shall take place according to the agreed contract schedule and Contractor shall be deemed to have fulfilled its delivery obligations when all the Work specified in the Contract is completed and delivered in accordance with the Contract.

**8.2** Contractor shall notify Company in writing if it is unable to perform the Work in accordance with the contract schedule stating the reason for the delay and the effect on the contract schedule.

**8.3** If the Parties instead of specifying the date of delivery have specified a period of time for or until delivery is to take place, then such period shall start to run from the entering into of the Contract.

### **9 TERMS OF DELIVERY**

**9.1** Contractor shall notify Company when the Work is ready for delivery. Company shall without undue delay, but in no event later than five (5) days after the issuance of such notice, in writing either accept the Work as completed through issuing the Delivery Protocol, or declare that the Work is not accepted and the reason for this. The Delivery Protocol shall be concluded even if minor parts of the Work are incomplete provided that they do not

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have practical significance for the use of the Work. Any incomplete items shall be identified in a punch list attached to the Delivery Protocol with information concerning their completion. The punch list must be accepted and signed by Contractor.

If Company fails to take delivery or issue or sign the Delivery Protocol when the Work is ready for delivery, then delivery shall be considered as have taken place five (5) days after Contractor's issuance of the notice of ready for delivery. Company will be considered to have accepted the Work as being in conformity with the contractual requirements and to have issued the Delivery Protocol.

If Company takes the Work into its possession or temporary or permanent use prior to the issuance of the Delivery Protocol, then:

- (i) delivery shall be considered to have taken place and Company shall be deemed to have accepted and taken over the Work and Company shall be deemed to have issued the Delivery Protocol,
- (ii) the Work shall be considered as being in conformity with the contractual requirements. Any claims (including but not limited to warranty claims) related to issues that would have been discovered during the planned tests, inspections and activities prior to delivery are waived by Company, and
- (iii) Company shall be considered to have waived its right to and Contractor shall not be obliged to perform any testing and inspection activities under the Contract. If Company fails to accept or take delivery at the time of delivery, it shall nevertheless pay any part of the Contract Price that becomes due on delivery, as if the delivery had taken place. Contractor shall, at the expense and risk of Company, arrange for storage of the Work. Risk of loss shall pass to Company upon placing the Work into storage.

**9.2** INCOTERMS 2010 shall apply to the agreed type of delivery. Unless otherwise agreed in the Contract, the delivery of the Work will be EXW Contractor's manufacturing facility.

Passage of title shall unless agreed otherwise pass upon Contractor's receipt of the full Contract Price.

Partial deliveries shall be allowed unless otherwise agreed.

**9.3** Any risk of loss or damage not covered by Article 9.1 and 9.2 will pass to Company upon the signing or issuance of the Delivery Protocol, when Company takes the Work into its possession or use or upon the placing of the Work into storage, whichever occurs first.

**9.4** Company shall, if it is responsible for the transportation of the Work, in good time prior to dispatch, submit dispatch instructions to Contractor to enable Contractor to make preparations for the dispatch of the Work. If Contractor is responsible for the transportation, it shall as soon as possible, but no later than the date of dispatch, send an advance notice advising of dispatch so that Company may make preparations for receipt of the Work.

Contractor shall ensure that the Work is properly packed, secured and labelled in accordance with accepted good industry practice to avoid loss or damage whilst in transport.

All Work shall be duly marked as set forth in the Contract and be in accordance with the packing lists where each item in the packing list corresponds to the Contract with respect to item number, part number, description of the Work and specification.

**9.5** Contractor shall be entitled to withhold and not deliver the Work or parts thereof if Company is in breach of any of its obligations under the Contract.

**9.6** The Work shall remain the property of Contractor until paid for in full and to the extent such retention of title is valid under applicable law.

Company shall at the request of Contractor assist Contractor in taking any measures necessary to protect Contractor's title to the Work in the country concerned.

Retention of title shall not affect the passing of risk of loss.

### **10 VARIATIONS, SUSPENSION AND TERMINATION**

**10.1** Company has the right to order such variations to the Work as in Company's opinion are desirable. Variations to the Work may include an increase or decrease in the quantity, or a change in quality, kind or execution of the Work or any part thereof, as well as changes to the contract schedule. Regardless of the above, Company has no right to order variations to the Work which implies a substantial change of the characteristics of the Work or variations to the Work that cumulatively exceeds that which Contractor could reasonably have expected when the Contract was entered into.

Contractor shall be entitled to a variation if Company initiates or causes changes or changes in law, codes and standards, or the interpretation thereof, or other changed conditions affect the performance of the Work.

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Contractor shall, when Company orders a variation or Contractor is entitled to a variation, notify Company and within reasonable time thereafter present a written confirmation describing the variation to the Work together with an estimate of the effects the variation has on the Work, the Contract Price and the contract schedule.

Company shall respond to Contractor's request for or notification of a variation and Contractor's estimation of the effects of a variation without undue delay. Company is considered as having accepted the variation and Contractor's estimated effects of the variation if Company has not in a timely manner in writing rejected the variation or the estimated effects thereof and presented justifiable reasons for the rejection.

Contractor shall commence with a variation even though Company and Contractor have not agreed upon the effects the variation has on the Work, the contract price or the contract schedule. Company shall, if the Parties are in dispute regarding the effects of a variation, pay to Contractor any undisputed amount related to the disputed variation

Compensation for a variation shall be in accordance with the prices, norms and rates contained in the Contract, or otherwise in accordance with the price level of the Contract. The compensation shall none-the-less be altered to reflect any changed conditions for the performance of the Work.

### **10.2 Suspension for convenience**

Company may temporarily suspend the performance and delivery of the Work, or parts thereof, by giving a written notice to Contractor. Contractor shall, within reasonable time following such notification, inform Company of the effects the suspension will have on the performance of the Work.

Company acknowledge that Contractor has other contractual obligations to fulfil and that Contractor therefore is free to initialize and commence work on other orders than Company's if Company suspends for other reasons than Contractor's default. As such, Contractor cannot guarantee or take on any schedule responsibility for the suspended Work. Contractor shall upon notification from Company, resume the Work and issue a new schedule for the completion of the suspended Work.

Contractor is entitled to terminate the Contract for that part of the Work which has been suspended for a period exceeding ninety (90) days by giving Company a seven (7) days written notice. If Company has not ordered resumption of the suspended Work within seven (7) days of receipt of such notice, then the provisions of Article 10.3 apply accordingly for such Work.

Company shall during the suspension period compensate Contractor all documented and reasonable costs and loses incurred due to the suspension. This includes, but is not limited to cost imposed in connection with demobilisation and mobilisation of personnel, cost of personnel Contractor is not able to allocate to other assignments during the suspension period, storage costs, preservation costs and loss of profit Contractor is exposed to due to the suspension.

Contractor shall be entitled to a variation reflecting the changed conditions for the performance and completion of the Work upon the resumption of work after a suspension period.

### **10.3 Cancellation – Termination for convenience**

Company may for its convenience terminate the Contract and cancel the Work or parts thereof with immediate effect by written notification to Contractor.

Contractor shall be entitled to the unpaid balance due to Contractor for that part of the Work already performed, and coverage for expenses incurred as a result of or in connection with the termination. In addition, Company shall pay Contractor a termination fee equal to the lesser of:

- (i) 4% of the Contract Price, or
- (ii) 6 % of the part of the Contract Price which is not paid at the date of termination.

Company shall be entitled to any Work or material it has paid for.

Company shall, upon receipt of notice from Contractor, at Company's cost remove the Work and Company provided items from Contractor Group's facilities and locations. Contractor may, if Company does not within a reasonable period after receipt of such notice remove the Work and Company provided items, move the Work and Company provided items to a suitable location for storage at Company's cost and risk. Risk of loss shall pass to Company upon placing the Work and the Company provided items into storage.

## **11 PAYMENT**

**11.1** Unless otherwise agreed, payment shall be made within thirty (30) days after Contractor's issuance of an invoice.

The payment conditions shall be cash flow neutral reflecting Contractor's cost structure. Company shall comply with the payment schedule set forth in the Contract. And, Contractor will, if no payment schedule is agreed upon, invoice on a monthly basis based on the progress of the Work and purchases made.

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Contractor shall, in addition to other remedies it may have under the Contract, be entitled to advanced payment of the Contract Price if Company cannot demonstrate financial capabilities to comply with its payment obligations under the Contract.

**11.2** If the Parties have agreed upon payment milestone(s) that are linked to the achievement of specific schedule events or delivery milestones scheduled in the Contract and such milestones are not achieved as planned due to reasons not attributable to Contractor, then Contractor shall be entitled to invoice and Company obliged to pay such payment milestone(s) within thirty (30) days after such milestone was originally scheduled in the Contract. Any changes and variations that have a negative effect on Contractor's cash flow, will entitle Contractor to compensation.

**11.3** If Company fails to pay by a stipulated date, then Contractor shall be entitled to interests in accordance with the Norwegian Interests on Late Payment Act ("forsinkelsesrenteloven").

If Company fails to pay by a stipulated date, then Contractor may, after having notified Company in writing, suspend its performance under the Contract until Company has complied with all its payment obligations under the Contract.

**11.4** All financial settlements, billings and reports rendered to Company shall properly reflect the facts about all activities and transactions handled for the account of Company.

**11.5** The contract number and other agreed references shall be quoted on all invoices which shall also clearly indicate what the invoiced amount relates to.

**11.6** Company is entitled to perform audits at Contractor's premises with regards to payments for reimbursable work up to two years after receipt of Contractor's final invoice. Such audits shall be limited to areas of interest and not include access to areas where work of proprietary nature is performed or proprietary information is stored. Contractor may require the audit to be performed by an independent auditor.

**11.7** All prices are excluded the Norwegian sales tax (MVA), VAT, tax, import duties, customs and excise duties, or other sales, use, excise gross receipt or similar taxes or charges related to the Work.

## **12 BREACH OF CONTRACT**

### **12.1 Schedule and delivery**

The delivery of the Work shall take place in accordance with the agreed schedule during Contractor's normal working hours, if not otherwise set forth in the Contract. Contractor shall be deemed to have fulfilled its delivery obligations when Company has taken the Work into use or in its possession or upon the issuance of the Delivery Protocol.

Delay exists when Contractor fails to deliver within the Delivery Date, unless the delay is caused by force majeure or an act or omission on the part of Company or others that entitle Contractor to a schedule relief. The time of delivery shall be extended by a period which is reasonable having regard to all circumstances in the case of a delay is caused by reasons not attributable to Contractor.

### **12.2 Effects of delay**

If the Work is not delivered within the Delivery Date as set forth in the Contract for reasons attributable to Contractor and not excused elsewhere in the Contract or at law, and to the extent Company suffers actual damages as a result of such delay, then liquidated damages shall accrue at a rate of one half of one percent (0.5%) of the Contract Price allocated to the delayed portions of the Work for each full week of delay. Liquidated damages shall not exceed ten percent (10%) of the Contract Price allocated to the delayed portions of the Work. Accumulated liquidated damages under the Contract shall not exceed ten percent (10%) of the Contract Price. Liquidated damages shall constitute Company's sole and exclusive remedy for delay. All other claims against Contractor shall be excluded.

Company shall have forfeited its right to liquidated damages if it has not filed a claim in writing for such liquidated damages within three (3) months after delivery has taken place.

### **12.3 Warranty obligation**

Contractor is liable for and shall remedy defects or non-conformities in the Work pursuant to this Article 12.3. Contractor will not be liable for defects caused by faulty installation, operation maintenance or repair performed by others than Contractor, alteration to the Work carried out without Contractor's prior written consent, defects arising due to normal wear and tear or deterioration or the consequences of that a defect is not rectified in a timely manner.

Contractor warrants that all parts of the Work shall:

(i) comply with all applicable laws and regulations as set forth in the Contract, and





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(ii) be free from defects in material and workmanship.

Company shall immediately after it discovers or ought to have discovered a defect in the Work issue a written notice of defect to Contractor. Such notice must be given prior to the expiry of the warranty period. The notice shall include a description of the defect. If Company fails to notify Contractor as set forth in this Article, then Contractor will not be liable for and Company loses the right to have the defect remedied.

Contractor warrants the Work for twelve (12) months after the Delivery Date, the issuance of Delivery Protocol, the installation is completed or the Work is taken into use by Company or Company's customer, whichever occurs first (the "Base Warranty Period"). If the use exceeds that which is agreed, the Base Warranty Period shall be reduced proportionately.

Any re-performed Work under the warranty period shall carry warranties on the same terms as set forth above, except that the applicable warranty period for the re-performed Work shall be for the longer of:

- (i) the remainder of the Base Warranty Period, or
- (ii) three (3) months from the date of such re-performance.

In any event, the warranty period and Contractor's responsibilities set forth herein for such re-performed Work shall end no later than three (3) months after expiration of the Base Warranty Period.

**12.4** Contractor shall commence the rectification of a defect within reasonable time after Company has notified Contractor of a defect. The rectification work shall be postponed upon Company's request provided that Company has a justified reason for requiring such postponement. Rectification work shall be performed for Contractor's account, but Company shall reimburse Contractor additional cost incurred due to such postponement if the cause of such postponement is not attributable to Contractor.

**12.5** Contractor's liability hereunder shall be limited to the repair or re-performance of the defective Work. Repair and remedial work will, at the discretion of Contractor, be carried out at either the place of delivery, at Contractor's or one of Contractor's Affiliated Companies facilities or at the facilities of a member of Contractor Group. Company shall at its risk and costs (including cost of transportation) make the Work available to Contractor at such a place. Company shall, if Contractor upon the request of Company accepts to perform the remedial work elsewhere, be liable for and reimburse Contractor any and all additional costs Contractor is exposed to when performing remedial work at such other place.

Company shall at its own expense arrange for any dismantling or removal and reassembly or installation/re-installation of equipment others than the Work and for the dismantling or removal and reassembly or installation/re-installation of the Work to the extent such is required for Contractor to remedy the defect. Company shall follow Contractor's instructions with regard to handling, dismantling, re-installation and transportation of the Work.

Contractor shall under no circumstance be liable or responsible for the transport to and from offshore locations, any offshore or subsea related operations, boarding and lodging offshore, heavy lift operations offshore or any rig or vessel costs.

Company shall have risk of loss to and obligation to insure the Work even though Contractor has the Work in its possession.

**12.6** Any and all claims under warranty that relate to issues that would have been discovered during the planned tests, inspections and activities prior to delivery are waived and forever discharged by Company if Company takes the Work into use or in its possession before or prior to the testing and inspection activities are completed.

**12.7** Contractor's liability for defects under the Contract shall not exceed fifteen percent (15 %) of the Contract Price allocated to the section or part of the Work it refers or forms a part of.

Contractor's total liability for defects under the Contract shall not exceed fifteen percent (15 %) of the Contract Price.

The foregoing shall constitute Contractor's exclusive liabilities for defects under the Contract.

### **12.8 Termination due to Contractor's breach of contract**

Company is entitled to terminate the Contract if the maximum of liquidated damages have incurred and the Work is still not delivered and the delay constitutes a material breach of Contractor's obligations under the Contract, or if Contractor in any other way is in material breach of its obligations under the Contract.

Company shall before such termination, in writing demand that Contractor commence to cure such breach within a reasonable period which shall not be less than two (2) weeks.

If Contractor does not commence to cure the breach within such period and this is due to a circumstance for which Contractor is liable, then Company may by written notice to Contractor terminate the Contract in respect of such parts of the Work that cannot, as a consequence of Contractor's breach, be used.

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Company shall pay to Contractor the portion of the Contract Price allocable to the Work performed and/or delivered if Company terminates the Contract as set forth in this Article 12.8.

### **12.9 Company's breach of contract**

Contractor shall, notwithstanding other provisions herein regarding suspension, be entitled to suspend the performance of its obligations under the Contract if Company is in breach of its obligations under the Contract, or where it is clear from the circumstances that Company will not be able to perform its obligations under the Contract. Contractor shall be entitled to terminate the Contract if Contractor has suspended the Contract for reasons attributable to Company for a cumulative total of ninety (90) days.

Contractor is, irrespective of the above, entitled to terminate the Contract if Company is in material breach of its obligations under the Contract and Company does not cure such breach within a final reasonable period set by Contractor.

Contractor is entitled to terminate the Contract if Company cannot demonstrate financial capability to carry out its obligations under the Contract or if Company becomes insolvent, makes an assignment for the benefit of its creditors, has a receiver or trustee appointed for the benefit of its creditors, or files for protection from creditors under any bankruptcy or insolvency laws.

Contractor shall upon termination be entitled to invoice for Work performed.

Contractor shall be entitled to compensation for the loss it suffers due to Company's breach of contract.

### **13 FORCE MAJEURE**

**13.1** Force majeure means an occurrence beyond the control of the party affected, provided that such party could not reasonably have foreseen such occurrence at the time of entering into the Contract and could not reasonably have avoided it or overcome its consequences. This includes, but is not limited to acts of God, act of public enemy, war blockage, strike on a national level, riot, lightning, fire, storm, flood, explosion and government restriction.

**13.2** A party shall not be considered in breach of the Contract to the extent it is proven that it was unable to fulfil its contractual obligations due to force majeure. Each party shall cover its own costs resulting from force majeure.

**13.3** The party invoking force majeure shall notify the other party thereof without undue delay. Such notice shall also include the cause of the delay and the presumed duration thereof.

**13.4** Each Party shall be entitled to terminate the Contract in the event that a single force majeure event continues for more than ninety (90) days. Company shall upon such termination pay to Contractor the unpaid balance for that part of the Work already performed.

### **14 14 INDEMNIFICATION**

**14.1** Contractor shall defend, indemnify and hold harmless Company from and against any claim concerning:

- (i) personal injury to or loss of life of any employee of Contractor, and
  - (ii) loss of or damage to any property of Contractor except for the Work,
- arising out of or in connection with the Work. This applies regardless of any form of liability, whether strict or by negligence, in whatever form, on the part of Company.

Contractor's obligation to defend, indemnify and hold harmless Company under this Article 14.1 shall be limited to NOK 2.000.000 (two million Norwegian kroner) per incident.

**14.2** Company shall defend, indemnify and hold harmless Contractor Group from and against any claim concerning:

- (i) personal injury to or loss of life of any employee of Company Group, and
  - (ii) loss of or damage to any property of Company Group, and
  - (iii) costs resulting from the requirements of public authorities in connection with buoying, lighting, raising and removal of wrecks, or pollution from vessels or other floating devices,
- arising out of or in connection with the Work. This applies regardless of any form of liability, whether strict or by negligence, in whatever form, on the part of Contractor Group.

Company shall defend, indemnify and hold harmless Contractor from any liability or claims related to personal injury to or loss of life to any of Contractor's employees and liabilities or claims for loss or damage to Contractor's property that exceed NOK 2.000.000 (two million Norwegian kroner) per incident for which Company Group is responsible. This applies regardless of any form of liability, whether strict or by negligence, in whatever form, on part of Contractor Group.

**14.3** Each Party (in such case, the indemnifying party) shall defend, indemnify and assume the risk of and save harmless the other Party (in such case, the indemnified party) for all claims and damages, including attorney's fees

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and litigation costs, for injury or death to Third Parties person or damage to Third Parties property to the extent the indemnifying party is liable to such Third Party under applicable law.

Contractor's obligation to indemnify Company under this Article 14.3 shall not apply to the extent Article 14.2 or other provisions of the Contract sets forth that Company has the liability for or is to indemnify Contractor or Contractor Group for such claims and damages.

**14.4** Contractor shall indemnify Company if the performance or result of the Work constitutes an infringement of a Third Party's patent rights or other Intellectual Property rights in connection with the Work, except when this is a consequence or result of Contractor's use of drawings, documents, specifications, computer programs or items provided by Company, alteration of the Work or use of the Work in combination with other products.

**14.5** A Party shall promptly notify the other party if it receives a claim that the other Party is obliged to indemnify. Whenever possible, the other Party shall take over treatment of the claim. The Parties shall give each other information and other assistance needed for handling the claim. Neither Party shall, without the consent of the other Party, approve of a claim which shall be indemnified, in whole or in part, by the other Party.

**14.6** Company shall indemnify Contractor Group from Company Group's own indirect losses, and Contractor shall indemnify Company from Contractor's own indirect losses. This applies regardless of any liability, whether strict or by negligence, on the part of either group and regardless of any other provisions of the Contract. Indirect losses according to this provision include but are not limited to loss of earnings, loss of profit and loss of production.

**14.7** Company shall indemnify and hold harmless Contractor Group from and against any claims, losses, damages or costs (included legal costs) resulting from damage to or loss of the hole or casing therein or of any reservoir or any cost of regaining control of a wild well. Furthermore, Contractor shall not be responsible for pollution arising from subsurface behaviour, wellbore fluids or chemicals and pollution arising from the use of the Work, blowout or loss of control, nor property damage or loss or damage to personnel of Company Group or any Third Party following such pollution.

**14.8** Company shall indemnify and hold harmless Contractor from and against any claims, losses, damages or costs imposed due sub-surface risks (including, but not limited to historical and archaeological findings, soil contamination, pollution etc.) Contractor is exposed to in connection with the Work or the performance thereof.

### **15 INSURANCE**

**15.1** Contractor shall at his own expense provide and maintain personnel insurance which shall cover losses connected to illness, personal injury or accidental death to Contractor's personnel to the extent required by applicable laws or by the provisions, if any, of the Contract.

Contractor shall procure and maintain at his own expense liability insurance adapted to Contractor's operations and the nature of the Work. Unless otherwise agreed, such liability insurance shall cover liability for a minimum amount of NOK 5,000,000 (five million Norwegian kroner) for each occurrence.

**15.2** Company shall include Contractor as additional insured under Company's Construction All Risk insurance policy and shall ensure that the insurance company waives all rights of subrogation towards Contractor.

Company shall have the risk of loss to all Company provided items and maintain adequate insurance for all Company provided items under the Contract.

**15.3** Whenever requested, either Party shall provide to the other insurance certificate(s) documenting that the conditions of this Article 15 are fulfilled.

### **16 INTELLECTUAL PROPERTY RIGHTS, PROPRIETARY RIGHTS AND CONFIDENTIALITY**

#### **16.1 Intellectual property rights**

Company and Contractor shall retain any right, title or interest in Intellectual Property it owned or licenced to a Party and that is developed, conceived, acquired, or obtained prior to the entering into of the Contract or that a Party has developed outside the scope of any Work performed pursuant to the Contract.

Right to, or title or interest in Intellectual Property developed, conceived, acquired or obtained during the performance of, in connection with or arising out of the Work or as a result of the Work or information provided by Contractor shall vest in Contractor. Such Intellectual Property shall become the sole property of Contractor as and when it is performed, made, prepared or developed.

Company shall notify Contractor of any Intellectual Property which shall vest in Contractor and provide necessary assistance to enable Contractor to acquire and register such Intellectual Property.

Contractor's Intellectual Property shall not be used by Company for other purposes than for the use, operation, maintenance and repair of the Work and shall unless agreed otherwise be returned to Contractor upon the completion of the Work or termination of the Contract. No such material can be copied, used or disclosed to any Third Party without the prior written consent of Contractor.

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Company shall be granted an irrevocable, royalty-free and non-exclusive right to use Contractor's Intellectual Property rights when such is necessary for the use, operation, maintenance and repair of the Work.

### **16.2 Confidentiality**

All information exchanged or otherwise transferred between the Parties shall be treated confidential and shall not be disclosed by the receiving Party to any Third Party without the prior written consent of the disclosing Party. The receiving Party may nevertheless make such information available to a Third Party provided that the information was already known to the receiving Party at the time the information was received from the disclosing Party, or that the information is or becomes part of public domain other than through a fault of the receiving Party, or is rightfully received from a Third Party without an obligation of confidentiality or it is required to be disclosed by the receiving Party by law.

Information may also be disclosed to a Third Party to the extent necessary for execution of the Contract or utilization of the Work or the results of the Work or of the product to which the Work is related, provided that the receiver of such information shall be bound by a confidentiality obligation similar to this Article.

### **17 ASSIGNMENT OF THE CONTRACT**

**17.1** Company may not without Contractor's prior written consent assign the Contract or any rights and obligations thereunder.

**17.2** Contractor is entitled to assign the Contract and any rights and obligations pursuant to the Contract.

### **18 LIMITATION OF LIABILITY**

**18.1** Neither party shall be liable to the other for any loss of profit or anticipated profit, loss of revenues, loss of use, loss of production, interruption of business, cost of capital, cost of replacement equipment, downtime costs, increased operating costs, loss of contracts or for any special, indirect, consequential, punitive or exemplary damage that may be suffered by the other.

**18.2** Contractor shall not be liable for any claims of Company's customers or damage caused by the Work after it has been delivered to or is in the possession of Company. Nor shall Contractor be liable for any damage to products manufactured by Company or to products for which the Work form a part. If Contractor is held liable towards any Third Party for such damage, then Company shall indemnify, defend and hold Contractor harmless.

**18.3** Contractor's liability for all claims arising out of or relating to the performance or breach of the Contract shall not exceed twenty-five percent (25 %) of the Contract Price allocated to the section or part of the Work it refers or forms a part of.

Contractor's total liability for all claims arising out of or relating to the performance or breach of the Contract shall not exceed twenty-five percent (25 %) of the Contract Price.

Contractor's liability under the Contract shall terminate fifteen (15) months after the Delivery Date.

**18.4** Any exclusions or limitations of liability under the Contract shall apply regardless of legal theory and irrespective of cause and notwithstanding the negligence or breach of duty and shall apply and exclude or limit such liability irrespective of any claim in tort, under contract or otherwise in law. If Contractor incurs liability towards a Third Party as for damages for which Contractor is not liable under the Contract, then Company shall indemnify and save harmless Contractor for any such damages.

Rights, obligations and remedies under the Contract are sole and exclusive and shall be to the exclusion of any other rights, obligations and remedies or liabilities, expressed or implied, at law, tort or otherwise. Liability for others than set forth in the Contract, will only apply to the extent such is due to gross negligence or wilful misconduct by Contractor's senior and management personnel.

### **19 19 APPLICABLE LAW AND LEGAL VENUE**

The Contract shall be governed by and interpreted in accordance with Norwegian law.

Disputes arising in connection with or as a result of the Contract, and which are not resolved by mutual agreement, shall be settled by court proceedings unless the parties agree otherwise. Any court proceedings shall be brought before Tønsberg district court (No.: Tønsberg tingrett).