

The Customer's attention is particularly drawn to the provisions of clause 9 (Limitation of liability).

1. Interpretation

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Commencement Date: has the meaning given in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 13.8.

Contract: the contract between the Company and the Customer for the supply of Services or rental of the Company Equipment as set out in a Sales Order Acknowledgment and incorporating these Conditions.

Company: Tyne Subsea Limited registered in England and Wales with company number 09165220.

Company Equipment: the equipment and other property of the Company which is (i) used in connection with the provision of the Services by the Company; or (ii) rented by the Customer.

Customer: the person or firm who purchases the Services or rents the Company Equipment from the Company.

Customer Equipment: the equipment and other property of the Customer to which the Services are to be applied.

Force Majeure Event: has the meaning given to it in clause 12.

Order: the Customer's order for the supply of Services or rental of the Company Equipment, as set out in the Customer's purchase order form.

Premises: the Company's premises at Mylord Crescent, Camperdown Industrial Estate, Killingworth, Newcastle upon Tyne, NE12 5SN or such other address as is notified to the Customer in writing from time to time.

Quotation: the Company's quotation for the supply of Services or the rental of the Company Equipment.

Rental Charges: the rental and other charges for the rental of the Company Equipment by the Customer as set out in the Quotation and/or Sales Order Acknowledgment and accepted by the Customer in writing, whether or not set out in an Order.

Rental Period: the period set out in clause 4.2.

Sales Order Acknowledgment: the written acceptance of an Order sent by the Company to the Customer setting out the Services to be performed.

Services: all operations to be performed by the Company, Company personnel, subcontractors or agents (including but not limited to the provision of pressure testing services) as set out in the Specification.

Services Period: the period set out in clause 3.2.

Specification: the description or specification for the Services provided in writing by the Customer to the Company and set out in or attached to the Order and confirmed in the Sales Order Acknowledgment.

1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its successors and permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (e) A reference to **writing** or **written** includes faxes and emails.

2. Basis of contract

- 2.1 The Order constitutes an offer by the Customer to purchase Services and/or rent the Company Equipment in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Company issues a Sales Order Acknowledgment at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 Any samples, drawings, descriptive matter or advertising issued by the Company and any illustrations or descriptions of the Services and/or the Company Equipment contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or the Company described in them. They shall not form part of the Contract or have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5 Any Quotation given by the Company shall not constitute an offer, and is only valid for a period of fifty (50) Business Days from its date of issue, provided it has not been previously withdrawn.

3. Supply of Services

- 3.1 The Company shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 3.2 The Services Period commences and finishes on the dates set out in the Contract or such other dates as are agreed by the Company and the Customer in writing from time to time.
- 3.3 The Company shall use reasonable endeavours to meet any performance dates for the Services specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 3.4 The Company reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Company shall notify the Customer in any such event.
- 3.5 The Company warrants to the Customer that the Services will be provided using reasonable care and skill.

4. Rental of Company Equipment

- 4.1 The Company shall allow the Customer to use the Company Equipment to carry out pressure testing services on the terms set out in the Contract.
- 4.2 The Rental Period commences and finishes at the times and on the dates set out in the Contract or such other dates and times as are agreed by the Company and the Customer in writing from time to time.

5. Customer's obligations

5.1 The Customer shall:

- (a) ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
- (b) where the Company is providing pressure testing services to the Customer Equipment, be responsible for the set up of the Customer Equipment and ensure that the Customer Equipment is in a safe condition and capable of being moved, installed and tested at the pressure and/or other test conditions set out in the Specification;
- (c) where the Customer is renting the Company Equipment to use it to provide pressure testing services to the Customer Equipment, provide:
 - (i) such evidence as the Company may require that the Customer's personnel are competent and have adequate and suitable training to carry out the testing of the Customer's Equipment in accordance with its requirements; and
 - (ii) a method statement and risk assessment for the testing to be carried out as agreed in writing by the Company and the Customer at least seven Business Days in advance of the Commencement Date;
- (d) provide suitably qualified and skilled personnel to oversee the installation and operation of the Customer Equipment in the Company Equipment from time to time when required;
- (e) co-operate with the Company in all matters relating to the Services;
- (f) provide the Company with such information and materials as the Company may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (g) comply with all applicable laws, including health and safety laws;
- (h) comply with the Company's health and safety policy and all other policies of the Company which apply to persons permitted access to the Premises as the same are in force from time to time and are notified to the Customer;
- (i) be responsible for all risk associated with the transportation of the Customer Equipment to the Premises, including unloading of the Customer Equipment at the Premises;
- (j) be responsible for insuring the Customer Equipment at all times;
- (k) follow all rules, regulations and procedures in relation to the use of the Company Equipment; and
- (l) comply with any additional obligations as set out in the Specification.

5.2 During the term of the Contract and for a period of six years thereafter, the Customer shall maintain in force, with a reputable insurance company, employer's liability insurance at an amount not less than £5,000,000 and public liability insurance at an amount not less than £5,000,000 to cover the liabilities that may arise under or in connection with this agreement and shall produce to the Company on request both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

5.3 If the Company's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) without limiting or affecting any other right or remedy available to it, the Company shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the

performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Company's performance of any of its obligations;

- (b) the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause 5.3; and
- (c) the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer Default.

5.4 The Customer shall indemnify the Company against all and any losses relating to loss or damage to the Company Equipment arising out of the performance of the Services provided always that such indemnity shall not apply:

- (a) if such losses arise as a result of the Company failing to comply with the requirements of the Specification; or
- (b) to the extent that a defect in the Company Equipment has caused or contributed to such losses.

6. Charges and payment

6.1 The charges for Services and the Rental Charges shall be as set out in the Quotation.

6.2 In the event that the Company has agreed with the Customer to extend the Rental Period, any charges for the additional time shall be as agreed between the Company and the Customer from time to time and the provisions of this clause 6 shall apply.

6.3 In the event that any contamination of the Company's Equipment arises out of:

- (a) the performance of the Services by the Company in accordance with the Specification; or
- (b) the performance of pressure testing services by the Customer during the rental of the Company Equipment

the Customer shall be liable to pay an additional charge for the cleaning of the Company's Equipment at the rate of cost of cleaning plus 20%.

6.4 The Customer shall pay each invoice submitted by the Company:

- (a) within 30 days of the date of the invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by the Company, and time for payment shall be of the essence of the Contract.

6.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Company to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

6.6 If the Customer fails to make a payment due to the Company under the Contract by the due date, then, without limiting the Company's remedies under clause 10 (Termination), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 6.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

6.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

7. Cancellation

- 7.1 The Company reserves the right to accept or reject any request for cancellation or rescheduling of the commencement of the Services Period or the Rental Period from the Customer.
- 7.2 In the event that the Company accepts a request for cancellation or rescheduling by the Customer, the Customer shall be liable to pay a cancellation charge in the amount notified by the Company to the Customer unless the Company decides, in its sole discretion, to waive such cancellation charge.

8. Confidentiality

- 8.1 Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 8.2.
- 8.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 8; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 8.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

9. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

- 9.1 Nothing in these Conditions shall limit or exclude the Company's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; or
 - (b) fraud or fraudulent misrepresentation.
- 9.2 Subject to clause 9.1, the Company shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of anticipated savings;
 - (e) loss of use or corruption of software, data or information;
 - (f) loss of or damage to goodwill; and
 - (g) any indirect or consequential loss.
- 9.3 Subject to clause 9.1, the Company's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract, shall be limited to 100% of the total charges paid under the Contract.
- 9.4 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

9.5 This clause 9 shall survive termination of the Contract.

10. Termination

10.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

10.2 Without affecting any other right or remedy available to it, the Company may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment; or
- (b) there is a change of control of the Customer.

10.3 Without affecting any other right or remedy available to it, the Company may suspend the supply of Services under the Contract or any other contract between the Customer and the Company if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 10.1(b) to clause 10.1(d), or the Company reasonably believes that the Customer is about to become subject to any of them.

11. Consequences of termination

11.1 On termination of the Contract the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Customer immediately on receipt.

11.2 Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

11.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

12. Force majeure

Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

13. General

13.1 Assignment and other dealings

- (a) The Company may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Company.

13.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).
- (b) Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

13.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

13.4 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

13.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

13.6 Entire agreement.

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

- 13.7 **Third parties rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 13.8 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 13.9 **Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 13.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.