



1 **DEFINITIONS**

- 1.1 **"Contract"** means relevant Specification Document of which these Terms and Conditions for the supply of Goods and Services (including Rental) form part and any other Written material expressly incorporated therein by the parties.
- 1.2 **"Consequential Loss"** means any indirect, incidental, special, punitive, exemplary, or consequential damage or loss and/or deferral of production, loss of business or business interruption, loss of product, loss of opportunity, vessel downtime, loss of use and loss of revenue, profit, or anticipated profit (if any) and in any event whether direct or indirect and whether or not foreseeable at the date of execution of this Contract.
- 1.3 **"Customer"** means the organization or legal person indicated in Specification Document who purchases Work from Supplier.
- 1.4 **"Customer Group"** means Customer, its clients of any tier, its and their co-venturers, its and their affiliates, its and their contractors of any tier and its and their respective directors, officers, employees (including agency personnel, consultants and invitees) and agents, but shall not include any member of Supplier Group.
- 1.5 **"Goods"** means the goods, materials, products, or equipment which Supplier is to supply to Customer in accordance with this Contract.
- 1.6 **"Intellectual Property Rights"** means all patents, registered and unregistered designs, copyright, trademarks, know-how, trade secrets and all other forms of intellectual property wherever in the world enforceable.
- 1.7 **"Rental"** means the rental to Customer by Supplier of plant and equipment (**"Rental Equipment"**) under a Specification Document in accordance with the terms of this Contract.
- 1.8 **"Services"** means the services which Supplier is to supply to Customer in accordance with this Contract.
- 1.9 **"Specification Document"** means a statement of Work, quotation, proposal or other similar document issued by Supplier describing Work to be supplied to Customer.
- 1.10 **"Supplier"** means Proserv Gilmore Valve LLC d/b/a Gilmore (or such other company indicated in Specification Document who supplies Work to Customer).
- 1.11 **"Supplier Group"** shall mean Supplier, its sub-contractors and suppliers of any tier and its and their respective affiliates and each of its/their respective directors, officers, employees (including agency personnel, consultants, and invitees) and agents, but shall not include any member of Customer Group.
- 1.12 **"Work"** means all Goods and/or Services, and/or Rental which Supplier is to supply to Customer in accordance with this Contract and all manpower, components and materials to be incorporated therein or ancillary thereto.
- 1.13 **'Worksite'** means the lands, waters, seabed, subsoil, buildings, facilities, assets and other places on, under, in or through which Work will be provided including any onshore and offshore installations, floating construction equipment, vessels, design offices, workshops and places where any equipment, materials or supplies are being obtained, stored or used for the purposes of Contract.
- 1.14 **"Writing"** includes facsimile transmission, electronic mail and comparable means of communication and **"Written"** shall be construed accordingly.



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- 1.15 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 gender and vice versa. A provision of law is a reference to that provision as amended or re-enacted, and to any regulations made by the appropriate authority pursuant to such law. The clause headings and sub-headings in this Contract are intended for convenience only and are not in any way to be taken into account when construing the meaning of any part of this Contract.

**2 GENERAL**

- 2.1 Before the commencement of Work, Supplier shall submit to Customer a Specification Document which shall specify Work to be supplied and the price payable.
- 2.2 Supplier shall use reasonable endeavors to complete Work within the estimated timeframe(s) agreed in Specification Document.
- 2.3 Supplier's employees or agents are not authorized to make any representations concerning Work unless confirmed by Supplier in Writing. By entering into Contract, Customer acknowledges that it does not rely on any representations which are not so confirmed.
- 2.4 Any advice or recommendations given by Supplier Group to Customer or any member of Customer Group as to the storage, application or use of Work which is not confirmed in Writing by Supplier is followed or acted upon entirely at Customer's own risk, and accordingly Supplier shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.5 Any order received from Customer shall be construed as an acceptance of Supplier's Written offer to sell and shall be fulfilled exclusively in accordance with the terms and conditions set forth herein. Any terms contained in Customer's order which are in addition to or change or otherwise conflict with Contract are hereby rejected. If Supplier's order confirmation deviates from the Customer's order due to additions, removals or reservations, and Customer does not accept such deviations, Customer must notify Supplier in Writing without undue delay, and no later than three (3) business days after receiving the order confirmation. If not, Supplier's order confirmation and this Contract will apply. The failure of Supplier to object to any provision in Customer's purchase order in conflict with or in addition to those terms and conditions herein shall not be construed as a waiver of the provision hereof nor as an acceptance thereof and are hereby expressly rejected.

**3 PRICE AND PAYMENT**

- 3.1 The price for the supply of Work is set out in Specification Document. Supplier shall invoice Customer upon delivery of Work unless otherwise stated in Specification Document. Prices quoted therein are subject to change without notice unless otherwise stated in Specification Document to be effective for a fixed period.
- 3.2 The price shall be due and payable in full, without deduction, retention or set-off, within 30 days of the date of invoice unless otherwise stated in Specification Document. Customer shall be responsible for all bank charges associated with the payment of the invoice and in no event shall any deductions be made in respect of any bank charges.
- 3.3 If Customer fails to make payment on the due date and for a period of fourteen (14) days thereafter, for reasons other than Supplier's default, without prejudice to any other right or remedy available to Supplier, Supplier shall be entitled to:
- 3.3.1 charge interest on overdue invoices from the date when payment becomes due from day to day until the date of payment at a rate of 4.0% (four percent per annum) and shall be calculated pro rata on a daily basis; and/or
- 3.3.2 require payment in advance for Work yet to be performed under any order; and/or



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- 3.3.3 revoke any discounts available with respect to Work performed or to be performed under any order (including discounts granted with respect to Work covered by any outstanding invoice), and/or
- 3.3.4 suspend Work or terminate this Contract. Such suspension or termination shall be treated as suspension or termination for Customer convenience in accordance with Clause 13 herein and Supplier therefore to be compensated accordingly.
- 3.4 In the event that Customer's procedures require that an invoice be submitted against a purchase or service order to payment, Customer shall be responsible for issuing such purchase or service order before Work is supplied.
- 3.5 The time of payment of the price under this Contract shall be of the essence.
- 3.6 The price shall be exclusive of value added tax, sales and use tax, customs duties and charges payable with respect to Goods and Rental Equipment, and any withholding taxes and/or such other similar taxes or duties, which Customer shall be additionally liable to pay to Supplier.

**4 SPECIFICATION OF WORK AND COMPANY PROVIDED INFORMATION**

- 4.1 All Work shall be required only to conform to the specification in Specification Document. For the avoidance of doubt no description, specification or illustration contained in any product pamphlet or other sales or marketing literature of Supplier and no representation Written or oral, correspondence or statement shall form part of Contract.
- 4.2 Notwithstanding anything to the contrary in this Contract, Supplier's knowledge and understanding of Work and Worksite is limited to the information in connection therewith provided by Customer to Supplier in Contract and Supplier shall not be responsible for the correctness and sufficiency of such information. Supplier shall be entitled to an adjustment of Work schedule (if any) and Contract price to compensate for any delays and costs incurred by Supplier as a result of Work or Worksite conditions (including general and local climatic and weather conditions) not set out in, or different from, the information provided by Customer to Supplier in Contract. Supplier shall not, in any case, be bound to prove a difference between the actual or Worksite conditions (including general and local climatic and weather conditions) and the information provided by Customer in connection with the Contract.
- 4.3 Should Supplier encounter any slow-down or halt in the performance of Work not attributable to a breakdown of Supplier's equipment then Supplier shall be compensated for any additional time in accordance with the applicable rates and any incidental costs arising therefrom.

**5 DELIVERY**

- 5.1 The date of delivery specified by Supplier is an estimate only. Time for delivery shall not be of the essence of Contract and, except for any agreed liquidated damages (which shall not, in any case, exceed cumulative five percent (5%) of Contract price), Supplier shall not be liable for any loss, costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of Goods.
- 5.2 Liquidated Damages as described herein shall be construed as a genuine pre-estimate of the loss suffered by Customer and not as a penalty and shall be Customer's sole and exclusive remedy against Supplier arising from the late delivery of Goods. For the avoidance of doubt, liquidated damages, and Customer's right to terminate this Contract shall not apply in the event any delay or deficiency on the part of Supplier is due to any fault, action or omission of Customer Group or pursuant to a default or delay as set forth under Clause 17 hereto.
- 5.3 When obliged to do so in Specification Document, Supplier shall attempt to pack and prepare all shipments in such a manner as to prevent breakage, rust or deterioration in transit. The cost of special packing for international shipment including specific requirements for the destination country shall be an additional charge to Customer. Supplier however does not



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guarantee against such damage and the risk of any damage to Work in transit shall be borne by Customer at all times.

5.4 Unless otherwise expressly agreed by the parties in Specification Document, delivery of Work shall be Ex-Works (Incoterms 2020) at Supplier's premises. Goods may be delivered by Supplier in advance of the quoted delivery date upon giving reasonable notice to Customer.

5.5 If Customer fails to take delivery of Goods or fails to give Supplier adequate delivery instructions at the time stated for delivery or otherwise has failed to provide appropriate documents, licenses or authorizations required by Supplier in order to deliver Goods, then, without prejudice to any other right or remedy available to Supplier, Supplier may, at its sole discretion, either:

5.5.1 store Goods until actual delivery and charge Customer for all costs of storage, including costs associated with preparation and placement into storage, handling, inspection, preservation, insurance, removal charges, interest, and any value added tax or other taxes imposed directly or indirectly under applicable law, and the applicable day rate (for Rental Equipment). Such expenses shall be reimbursed or paid by Customer upon submission of Supplier's invoices. Moreover, payment for Goods that would otherwise be made upon delivery at the original delivery destination shall be paid at the time Goods are placed into storage; or

5.5.2 sell Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to Customer for the excess over the price of Contract or charge Customer for any shortfall below the Contract price.

5.6 Supplier may accept, if necessary, responsibility for permits that can only be obtained by Supplier and that are in Supplier's name. Customer shall, at its own expense, obtain and pay for all other licenses, permissions, approvals, customs clearances or authorizations, including, but not limited to, export, import and re-export permits, required for the performance of Work. Any delay of Customer in providing such permits which affects the timely performance of Work shall entitle Supplier to adjustments of Work schedule and contract price, accordingly.

5.7 Customer acknowledges and agrees that all sale of Goods to Customer are made on a one-way basis and Customer has no right to return or cancel Goods purchased or ordered.

## **6 RENTAL EQUIPMENT**

6.1 Upon receipt by Customer of each item of Rental Equipment, Customer shall immediately inspect the Rental Equipment and promptly deliver to Supplier a Written notice of acceptance. In the event Supplier does not receive such Written notice within one (1) business day after receipt of such Rental Equipment then Customer shall be conclusively presumed to have accepted Rental Equipment. Customer's representative may inspect Rental Equipment at Supplier's facility during working hours prior to delivery in such manner as will not interfere with Supplier's operations.

6.2 During the time any Rental Equipment is in transit to and/or from Customer, and during the time Rental Equipment is in Customer's possession, Customer will pay all sales, use, excise and property taxes assessed by any relevant governmental authority relating to the use or existence of Rental Equipment. If such taxes are levied on Supplier as owner, Customer shall assist Supplier in filing appropriate tax reports and shall immediately reimburse Supplier in connection with the same. Customer will assume all duties, taxes, fees and charges or other costs associated with the importation and exportation of Rental Equipment into or out of any jurisdiction.

6.3 Customer hereby represents, warrants and undertakes as follows with respect to any Rental: Customer: (i) shall not modify, alter, reproduce, disassemble or otherwise change Rental Equipment while in the possession of Customer, (ii) shall keep Rental Equipment in good repair during the Rental, (iii) shall have and assume all responsibility for the care, custody and control of Rental Equipment after delivery and until its return, (iv) agrees to use and operate Rental Equipment in a careful and prudent manner, not subjecting Rental Equipment to careless or needless rough usage, (v) shall use only competent, duly qualified and properly trained employees or subcontractors, and (vi) shall only use or operate Rental Equipment in



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accordance with any Written installation, maintenance and/or operating manuals, procedures or instructions applicable thereto. In addition, Customer shall have sole responsibility for the installation, routine inspection, service and maintenance of Rental Equipment, and shall be responsible for furnishing or obtaining all labour, parts and other materials necessary to service and maintain Rental Equipment in good operating condition throughout Rental term. Customer shall maintain a maintenance log indicating the details of all maintenance and service performed on Rental Equipment and shall provide a copy thereof to Supplier upon request.

- 6.4 Customer shall not relocate any Rental Equipment provided as part of Work except with Supplier's Written permission and shall return all such Rental Equipment to Supplier on demand. Should any Rental Equipment not be used or abandoned, or should Customer fail to timely pay Rental fees or other amounts due with respect to Rental Equipment, or to otherwise comply with its obligations with respect to Rental Equipment, Supplier reserves the right, upon Written notice, to enter any premises where Rental Equipment may be located and take possession thereof without being liable for any claims, suit or proceeding by Customer. The Rental shall terminate as of Supplier's taking possession, but the termination shall be without prejudice to any rights, remedies or claims Supplier may have.
- 6.5 At the expiration of Rental term or in the event Customer is otherwise required to return Rental Equipment to Supplier pursuant this Contract, Customer shall return Rental Equipment to Supplier, prepaying all transportation and export charges, at a location designated by Supplier, in the same repair and condition as at the time of original delivery to Customer, reasonable wear and tear excepted. Customer shall pay for any repairs necessary to place Rental Equipment in such condition.
- 6.6 Unless stated otherwise in Specification Document, Customer undertakes at his own expense to insure Rental Equipment for all risk of damage or loss for the period from transfer of risk until return to Supplier's facility and Supplier shall be named as an additional insured under such insurance.

**7 TITLE AND RISK**

- 7.1 Notwithstanding any earlier delivery, all Work, other than Rental, provided by Supplier shall become the property of Customer in proportion to the total or partial payments made by Customer.
- 7.2 Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness Work, in whole or part, which shall remain the property of Supplier at all times, but if Customer does so all moneys owing by Customer to Supplier shall (without prejudice to any other right or remedy of Supplier) forthwith become due and payable.
- 7.3 Title to any Rental Equipment shall at all times remain in Supplier and Customer shall give Supplier immediate notice of any claim, levy, lien, or legal process issued against Rental Equipment.
- 7.4 All risks in Work or in any Goods (including Rental Equipment) provided by Supplier to Customer in the performance of Work (e.g. goods assembled, manufactured or procured by Supplier on Customer's account) shall pass to Customer upon their delivery.
- 7.5 Equipment interfacing - when Supplier's equipment is interfaced, positioned and/or utilised in conjunction with a remotely operated vehicle (ROV), diver or crane that is not supplied, owned and/or operated by Supplier Group then Customer shall be responsible for any loss of or damage to the equipment regardless of cause and whether or not the equipment is provided with or operated by any Supplier Group personnel.
- 7.6 Equipment abandonment - In the event that Supplier's equipment is abandoned subsea (e.g. by cutting the wire and/or umbilical) then Customer shall be responsible for any loss of or damage to such equipment regardless of cause and/or reason for such abandonment.
- 7.7 Loss or damage to equipment (including Rental Equipment) - Customer shall be responsible for any loss of or damage (reasonable wear and tear excepted) to Supplier's equipment (including Rental Equipment), regardless of cause and/or reason for such loss or damage, from the date of departure from the point of delivery until the date of return to the agreed re-delivery point at Supplier's facility. Customer shall at all times be subject to the representations,



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warranties and undertakings given by Customer to Supplier under Clause 6.3 with respect to Customer's use, operation, maintenance and preservation of Rental Equipment.

- 7.8 In the event of losses or damages to Supplier's equipment (including Rental Equipment) under Clauses 7.5, 7.6 and 7.7 Supplier shall, at its sole option, be entitled to either:

7.8.1 be reimbursed by Customer for all costs incurred by Supplier to repair and restore the equipment/Rental Equipment to its condition prior to being lost, damaged and/or abandoned, covering all costs of repair, including transportation and recovery costs, or

7.8.2 be compensated by Customer in an amount equal to the replacement cost of the lost, damaged and/or abandoned equipment/Rental Equipment.

In all cases, Customer shall continue to pay Supplier Contract applicable rates until such time that Supplier's equipment/Rental Equipment is recovered, repaired or replaced, or until such time that Supplier receives the replacement cost of its equipment/Rental Equipment.

## **8 CUSTOMER'S OBLIGATIONS**

- 8.1 To enable Supplier to perform its obligations under this Contract Customer shall:

8.1.1 co-operate with Supplier (e.g. providing free and uninterrupted access to Worksite);

8.1.2 provide Supplier with any information reasonably required by Supplier;

8.1.3 obtain all necessary permissions and consents which may be required before the commencement of Work; and

8.1.4 comply with such other requirements as may be set out in Specification Document or otherwise agreed between the parties.

- 8.2 Supplier shall be entitled to adjustments of Work schedule and Contract price as a result of Customer's failure to comply with Clause 8.1.

- 8.3 In the event that Customer or any third party, not being a sub-contractor of Supplier, omits or commits anything which prevents or delays Supplier from undertaking or complying with any of its obligations under this Contract, then Supplier shall notify Customer as soon as possible and:

8.3.1 Supplier shall have no liability in respect of any delay to the completion of Work;

8.3.2 Work schedule will be modified accordingly;

8.3.3 Supplier shall be entitled to claim for all additional costs and the respective adjustments of Contract price.

## **9 ALTERATIONS TO SPECIFICATION DOCUMENT**

- 9.1 The parties may at any time mutually agree upon and execute new Specification Document. Any alterations in the scope to be provided under this Contract shall be set out in Specification Document, which shall reflect the changed Work and price and any other terms agreed between the parties.

- 9.2 Customer may at any time request alterations to Specification Document by notice in Writing to Supplier. On receipt of the request for alterations Supplier shall, within five (5) working days or such other period as may be agreed between the parties, advise Customer by notice in Writing of the effect of such alterations, if any, on the Contract price and any other terms already agreed between the parties.

- 9.3 Where Supplier gives Written notice to Customer agreeing to perform any alterations on terms different to those already agreed between the parties, Customer shall, within five (5) working days of receipt of such notice or such other period as may be agreed between the parties, advise Supplier by notice in Writing whether or not it wishes the alterations to proceed.

- 9.4 Where Supplier gives Written notice to Customer agreeing to perform alterations on terms different to those already agreed between the parties, and Customer confirms in Writing that



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it wishes the alterations to proceed on those terms, Specification Document shall be amended to reflect such alterations and thereafter Supplier shall perform this Contract upon the basis of such amended terms.

- 9.5 In the event of any increase or decrease in the cost to Supplier of fulfilling its obligations under this Contract due to any new, or change in, legislation, applicable law, regulations or ordinance or the interpretation or enforcement practices thereof by government officials applicable to Work that comes into effect after the execution of Contract, such increase or decrease will be treated as an alteration under this Clause 9.

**10 WARRANTY**

- 10.1 Supplier warrants for the earlier of twelve (12) months from the date of Goods being put into use or 18 months from its delivery ("Warranty Period") that Goods and all its component parts, where applicable, are free of defects of material or workmanship and will be of a quality conforming to generally accepted industry standards and practices ("Warranty"). Warranty and Supplier's obligations thereunder are expressly conditioned upon the following:

10.1.1 Goods shall have been properly installed, operated and maintained by Customer Group and conformance with the operating instruction and installation manual (including revisions thereto) supplied by Supplier;

10.1.2 Goods shall not have been repaired or altered without Written approval of Supplier;

10.1.3 Customer shall have given Supplier notice, confirmed in Writing, within Warranty Period, specifying, in reasonable detail, the defects in Goods, as soon as the defect becomes apparent;

Warranty does not extend to repairs or replacements resulting from normal wear and tear, erosion or corrosion or to Work performed by anyone other than Supplier, operating under conditions more severe than or otherwise exceeding those design parameters as set out in the specifications for the relevant Goods or to cutting, dredging, excavating, marine growth, coating removal, tests and/or calibration services.

- 10.2 If Goods fails to conform to Warranty prior to delivery or during Warranty Period, as Customer's sole and exclusive remedy regarding such failure, Supplier shall have the right and obligation, at Supplier's option, to make repairs either at Customer or Supplier's site, or replace any defective parts EXW (Incoterms 2020) Supplier's premises. Supplier reserves the right to require prepaid return of the allegedly defective Goods to establish a claim. Supplier shall not be responsible for retrieving or removing defective items (whether manufactured by Supplier or not) or any part thereof, or for reinstalling the same when repaired or replaced, or for any cost incurred in connection with such retrieval, removal or reinstallation. Replacements, repairs and corrective work shall not extend Warranty but shall be warranted for Warranty Period remaining at the time of the replacement, repair or corrective work.
- 10.3 For Services, Supplier's Warranty obligations shall be expressly limited to the re-performance of the defective service. This limited Warranty shall apply until Supplier's demobilization from Worksite.
- 10.4 Products manufactured by a third party ("Third Party Product") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, Goods. Third Party Products are not covered by Warranty in this Clause 10. For the avoidance of doubt, SUPPLIER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.
- 10.5 Customer acknowledges that the information, service or assistance provided by Supplier's personnel shall be in an advisory capacity only and that Supplier assumes no liability for any damage and/or loss arising out of, resulting from, or caused by, in whole or in part, the information or advisory assistance provided.



- 10.6 Supplier makes no Warranties, expressed or implied, as to Rental Equipment, and assumes no responsibility for its condition after acceptance. Customer shall use, operate, maintain and preserve Rental Equipment in accordance with the representations, warranties and undertakings given by Customer under Clause 6.3. Customer shall comply with all laws, ordinances, and regulations relating to the possession, use, or maintenance of Rental Equipment.
- 10.7 Warranty set out herein shall be Customer's sole and exclusive remedy for any defects in Work. Except as expressly stated in this Contract, all Warranties whether express or implied, including Warranty for merchantability and fitness for a particular purpose, by operation of law or otherwise, are hereby excluded in relation to the Work to be provided by Supplier.

## **11 INDEMNIFICATION AND INSURANCE**

- 11.1 Notwithstanding anything to the contrary in this Contract or elsewhere, the parties agree that Customer shall, to the maximum extent permitted under law, release, defend, indemnify and hold Supplier Group harmless from and against any and all claims, demands, causes of action, liabilities, damages, judgments, awards, losses, costs, penalties, fines and expenses (including, without limitation, reasonable attorneys' fees and costs of litigation) of any kind or character arising after risk of loss has passed to Customer in accordance with Clause 7, asserted by or in favor of any person, party or entity (including but not limited to Customer Group, Supplier Group or any third party) ("Claims") including, but not limited to, those arising from or related to damage to or loss or destruction of real or personal property, personal or bodily injury to, sickness, disease or death of any person, any contamination or adverse effect on the environment, the manufacture, transportation, storage or handling of Goods, and/or any Consequential Losses, REGARDLESS OF THE CAUSE, INCLUDING WITHOUT LIMITATION ANY FORM OF NEGLIGENCE, STRICT LIABILITY, BREACH OF DUTY (STATUTORY OR OTHERWISE), BREACH OF CONTRACT, OR ANY OTHER LEGAL FAULT OR RESPONSIBILITY OF SUPPLIER GROUP, CUSTOMER GROUP, OR ANY OTHER PERSON, PARTY OR ENTITY.
- 11.2 Upon Written request, Customer shall furnish to Supplier certificates of insurance evidencing that adequate insurance to support Customer's obligations hereunder has been secured. Customer agrees that all such insurance policies shall (i) be primary to Supplier's insurance, (ii) include Supplier, its affiliates and its and their respective officers, directors, employees, consultants and agents as additional insured, and (iii) be endorsed to waive subrogation against Supplier, its affiliates and its and their respective officers, directors, employees, consultants and agents.

## **12 LIMITATION OF LIABILITY**

- 12.1 Notwithstanding anything to the contrary in this Contract or elsewhere, Supplier's total cumulative liability to Customer Group arising out of or in relation to the performance or non-performance of this Contract including but not limited to liability for delay, default, rework or re-performance or replacement, under any cause of action whether in tort, contract or otherwise at law shall not exceed the lesser of Contract price or the portion of it paid by Customer to Supplier at the time of the claim ("maximum liability"). Customer shall be responsible for and shall save, indemnify, defend and hold harmless Supplier Group from and against all claims, losses, damages, costs, expenses and liabilities of any kind or character (including without limitation, reasonable attorneys' fees and costs of litigation), in excess of the maximum liability, asserted by or in favor of any person, party or entity, REGARDLESS OF THE CAUSE, INCLUDING WITHOUT LIMITATION ANY FORM OF NEGLIGENCE, STRICT LIABILITY, BREACH OF DUTY (STATUTORY OR OTHERWISE), BREACH OF CONTRACT, OR ANY OTHER LEGAL FAULT OR RESPONSIBILITY OF SUPPLIER GROUP, CUSTOMER GROUP, OR ANY OTHER PERSON, PARTY OR ENTITY.
- 12.2 All of Supplier's rights and privileges arising from the indemnities contained in Clause 11 and 12 shall survive the expiration or other termination of this Contract, and said indemnities are expressly made for the benefit of and shall be enforceable by Supplier Group, its successors and assigns.



### 13 TERMINATION

13.1 Either party may terminate this Contract forthwith by notice in Writing to the other if:

13.1.1 the other party commits a material breach of this Contract and, in the case of a breach capable of being remedied, fails to remedy or otherwise compensate the other party in full within 30 calendar days of being given Written notice from the other party to do so; or

13.1.2 the other party commits a material breach of this Contract which cannot be remedied; or

13.1.3 the other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect; or

13.1.4 the other party ceases to carry on its business or substantially the whole of its business; or

13.1.5 the other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, administrator, manager, trustee or similar officer is appointed over any of its assets; or

13.1.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to that other party.

If Clauses 3.3, or 13 apply then, without prejudice to any other right or remedy available to Supplier, Supplier shall be entitled to: (i) terminate or cancel Contract or suspend the performance of any Work under Contract without any liability to Customer; (ii) payment in full for all Work performed by Supplier up to the date of termination including any committed charges and cancellation fees under subcontracts; (iii) Customer shall, if required by Supplier, immediately return all Work and/or items associated with Work to Supplier's premises; and (iv) Customer shall additionally be liable to pay to Supplier for all direct and documented costs incurred by Supplier due to the termination including, but not limited to, any costs and expenses incurred by Supplier in locating, repossessing, transporting or recovering Work and/or items associated with it.

13.2 Customer shall not be entitled to terminate Contract for Supplier's default unless: (i) it has given Supplier notice in Writing of Supplier's default and given Supplier reasonable period within which to commence the rectification of the default and (ii) in respect of a termination pursuant to Clause 5.1, only in the event the agreed maximum level of liquidated damages has first been reached. If Customer terminates Contract due to Supplier's failure to comply with the notice of default given by Customer, Supplier shall be liable to Customer for all direct and documented costs incurred by Customer in completing or causing the completion of Work in excess of Contract price for the unperformed Work, provided always that Supplier's liability in respect of such costs shall be limited to cumulative 25% of Contract price for such unperformed Work that Supplier would otherwise have charged had Supplier completed Work.

13.3 Customer shall be entitled, at Customer's convenience, to terminate Contract in part or whole by giving notice to Supplier. In such case Supplier shall cease performance of Work to the extent instructed in the notice and shall take all reasonable steps to mitigate liabilities arising from the termination. Supplier shall be entitled to payment for the part of Work performed up to the effective date of termination together with any direct and documented costs incurred by Supplier in complying with Customer's instructions in regards to such termination, any committed costs and cancellation fees under subcontracts, all mob/demob costs incurred (if any) and a termination fee of twenty-five percent (25%) of Contract price of Work no longer to be performed. Customer convenience shall also include termination by its client for any reason (except force majeure) under any main contract between Customer and its client.

13.4 Termination of this Contract shall not affect any rights or obligations of either party which have accrued prior to the date of termination and all provisions which are expressed to or by implication survive the termination of this Contract shall remain in full force and effect.



#### **14 INTELLECTUAL PROPERTY RIGHTS**

- 14.1 All Intellectual Property Rights produced from or arising as a result of the performance of this Contract shall, so far as not already vested, become the absolute property of Supplier, and Customer shall do all that is reasonably necessary to ensure that such rights vest in Supplier by the execution of appropriate instruments or the making of Contracts with third parties.
- 14.2 Supplier shall defend any suit or proceeding brought against Customer based on a claim that Work of Supplier directly infringes any valid third party patent, provided, that Supplier is notified promptly in Writing and given all necessary information, assistance and authority to defend same. If, as a result of such direct infringement, a court enjoins the use of Work, Supplier shall at its sole expense and option:
- 14.2.1 procure for Customer the right to continue using Work;
  - 14.2.2 replace Work with non-infringing products;
  - 14.2.3 modify said Work so that it is non-infringing, or
  - 14.2.4 remove the infringing Work.

In the event Supplier shall deliver Work in whole or in part to specifications or designs supplied by Customer, Customer agrees to save, defend, indemnify and hold harmless Supplier from and against any and all loss, cost, expense (including attorney fees), claims, demands, suits and judgments arising from actual or alleged infringement of such Work of any third party intellectual property right. Customer shall also save, defend, indemnify and hold harmless Supplier for actual or alleged patent infringement for claims based on: (a) the combination of Work purchased hereunder with other equipment, or (b) methods or process patents in the application or use of any Work purchased hereunder.

#### **15 COMPLIANCE WITH U.S. EXPORT LAW**

The parties acknowledge that certain products and technology may be controlled by United States export control laws. The parties expressly agree to take reasonable care to ensure that neither they nor their customers will export, re-export or otherwise divert any products or technology in violation of any U.S. and other applicable export control laws or regulations. Diversion contrary to U.S. and other applicable export control laws is strictly prohibited. In addition, the parties will not participate in, or cooperate with, an unsanctioned international boycott within the scope of the U.S. Export Administration Act and the U.S. Tax Code in connection with any transaction or action undertaken in relation to this Contract.

#### **16 CONFIDENTIALITY**

All non-public, confidential or proprietary information of Supplier, including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, Intellectual Property Rights, business operations, customer lists, pricing, discounts, or rebates, disclosed by Supplier to Customer, whether disclosed orally or disclosed or accessed in Written, electronic or other form or media, and whether or not marked, designated, or otherwise identified as "confidential" in connection with this Contract is confidential, solely for the use of performing this Contract, and may not be disclosed or copied unless authorized in advance by Supplier in Writing. Upon Supplier's request, Customer shall promptly return all documents and other materials received from Supplier. Supplier shall be entitled to injunctive relief for any violation of this Clause 16. This Clause does not apply to information that is: (a) in the public domain; (b) known to Customer on a non-confidential basis at the time of disclosure; or (c) rightfully obtained by Customer on a non-confidential basis from a third party who, to Customer's knowledge, after due enquiry, was not under any confidentiality obligation in respect of such information.

#### **17 FORCE MAJEURE**

Neither party shall be liable for any delay or failure to perform any of its obligations (other than non-payment of the price for Work completed (in whole or in part)) if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, epidemic, pandemic, the act or omission of



government, highway authorities or any telecommunications carrier, operator or administration or other competent authority, or the delay or failure in manufacture, production, or supply by third parties of equipment, components and/or other goods/services, and each party shall be entitled to a reasonable extension of time to perform its obligations after notifying the other party of the nature and extent of such events.

**18 INDEPENDENT CONTRACTORS**

Supplier and Customer are contractors independent of each other, and neither has the authority to bind the other to any third party or act in any way as the representative of the other, unless otherwise expressly agreed to in Writing by both parties. Supplier may, in addition to its own employees, engage sub-contractors to provide all or part of Work being provided to Customer and such engagement shall not relieve Supplier of its obligations under this Contract or any applicable Specification Document.

**19 ASSIGNMENT**

19.1 Subject to the further provisions of this Clause 19, neither Supplier nor Customer shall assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Contract without the prior Written consent of the other party (such consent not to be unreasonably withheld or delayed).

19.2 Supplier may, after having given prior Written notice to Customer, assign or subcontract any or all of its rights and obligations under this Contract to a member of Supplier Group for as long as that member remains a member of the Supplier Group.

19.3 Supplier may grant security over, or assign by way of security, any or all of its rights under this Contract for the purposes of, or in connection with, the financing (whether in whole or in part) by Supplier of any of its working capital or other requirements. On the enforcement of any security of a kind referred to in this Clause 19.3, Supplier or any person having the benefit of such security may assign any or all of the relevant rights to any person, but Customer's liability to any assignee in respect of those rights shall not be greater than if no assignment had taken place.

**20 DATA PROTECTION**

Each party shall comply with its respective obligations under all applicable data protection laws and regulations to the extent in connection with this engagement and Work when it collects, accesses, stores, processes, uses and/or transfers any data (including but not limited to, any confidential information or personal data) to which data protection laws apply.

**21 WAIVER OF SOVEREIGN IMMUNITY**

If Customer is owned directly or indirectly, in whole or in part, by any country or sovereign, or is an authority or agency of any country or sovereign, then Customer hereby waives any and all rights and immunities, including without limitation, any immunities from lawsuits, claims, prejudgment seizure, arrest or attachment it may have under any statute, law, rule or regulation of any country or sovereign.

**22 SEVERABILITY**

If any provision of this Contract is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be severed and the remainder of the provisions herein shall continue in full force and effect as if this Contract had been agreed with the invalid illegal or unenforceable provision eliminated.

**23 WAIVER OF TERMS**

The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions of this Contract shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions of this Contract.

**24 NOTICES**



Any notice to be given by either party to the other may be served by e-mail, personal service or by post to the address of the other party given in Specification Document or such other address as such party may from time to time have communicated to the other in Writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent, if given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by post shall be deemed to have been delivered in the ordinary course of post.

**25 ENTIRE AGREEMENT**

This Contract contains the entire agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings, or proposals, oral or Written. Unless expressly provided elsewhere in this Contract, this Contract may be varied only by a Written document signed by both parties.

**26 NON-HIRING**

During the term of Contract and until twelve (12) months after the date of payment by Customer's final invoice, Customer shall have the obligation not to solicit, recruit or induce, directly or indirectly through third parties, any of Supplier's employees, consultants or representatives involved in the performance of Work to leave, terminate or otherwise end his/her association with Supplier in order to become an employee, consultant or representative of Customer or its affiliates. Should Customer default on this obligation, Supplier shall be entitled to liquidated damages (and not as a penalty) of a sum equal to one hundred percent (100%) of the annual gross salary of the employee in question from Customer for the loss caused by said breach. Said amount will be invoiced by Supplier to Customer on the last day of work of the employee, consultant or representative for Supplier and paid by Customer within thirty (30) days of receipt of the related invoice.

**27 ANTI-BRIBERY**

The parties warrant that neither of them nor any member of Customer Group (in case of Customer) or Supplier Group (in case of Supplier) has made or will make, with respect to the matters contemplated by Contract, any offer, payment, promise to pay or authorization of payment of any money, or any offer, gift, promise to give or authorization of the giving of anything of value, directly or indirectly, to or for the use or benefit of any person, official or employee of any government or private entity, or to or for the use or benefit of any political party, official, or candidate for any of the purposes prohibited by the applicable laws including the U.S. Foreign Corrupt Practices Act., the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the Convention on the fight against corruption involving officials of the European Communities or officials of the Member States of the European Union or the UK Bribery Act. Parties represent that they will keep records sufficient to demonstrate compliance with the abovementioned legislation for a period of at least two (2) years after the delivery of Work. Parties shall indemnify, protect and hold harmless each other and, with respect to Customer, shall indemnify, protect and hold harmless Supplier Group and with respect to Supplier, shall indemnify, protect and hold harmless Customer Group, from any fines (whether civil or criminal) or damages resulting from their breach of these provisions.

**28 GOVERNING LAW AND JURISDICTION**

The validity, performance and construction of this Contract shall be governed by and construed in accordance with the internal laws of the State of Texas without giving effect to any choice or conflict of law provision or rule. Any legal suit, action or proceeding arising out of or related to this Contract or the matters contemplated hereunder shall be instituted in the courts of Harris County in each case located in the city of Houston in the State of Texas, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding and waives any objection based on improper venue or forum non convenience. This Contract shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods which shall not apply to this Contract.

**29 THIRD PARTY RIGHTS WAIVER**



**TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES (INCLUDING RENTAL)  
TEXAS LAW VERSION (Rev 00/21)**

Unless expressly stated otherwise herein, this Contract is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein is intended to, or shall confer on any other person or entity, any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Contract.

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