

These Terms and Conditions apply to all pre-contract negotiations, Quotations, Orders, and Contracts for Sale, Hire or Provision of Services provided by or entered into by Scantech Offshore Limited, Scantech Offshore Pty Limited or any subsidiary or related company thereof.

Attention is drawn in particular to clause 11, which excludes or restricts the Company's liability or contain indemnities in the Company's favour in certain circumstances.

## 1. Definitions

In these Terms and Conditions:

**"Affiliates"** means any subsidiary or parent or holding company or any other subsidiary of such parent or holding company. For the purpose of this definition "subsidiary" and "holding company" shall have the meanings assigned to them under Section 1159 and Schedule 6 of the Companies Act 2006.

**"Company"** means Scantech Offshore Limited, Scantech Offshore Pty Limited or any subsidiary or related company thereof who is providing Equipment, Products or Services to the Customer pursuant to the Contract.

**"Company's Address"** means the address for delivery of Products or Equipment which shall be the Company's usual place of business or such other address as may be agreed in Writing.

**"Company Group"** means, individually or in any combination, (i) the Company, its parent, subsidiaries, Affiliates, subcontractors and suppliers of all tiers; (ii) its and their parents, joint venturers and all of their respective parents, subsidiaries and Affiliates; and (iii) the respective directors, officers, agents, servants, representatives, employees, invitees and insurers of all of the foregoing.

**"Customer"** means any person, firm, company, partnership, competent authority or other business entity who agrees to obtain Services or purchase Products or hire Equipment from the Company under the Contract.

**"Customer Group"** means, individually or in any combination, (i) the Customer, its parent, subsidiaries, Affiliates, contractors (other than the Company Group), subcontractors and suppliers of all tiers; (ii) its and their parents, joint venturers and any entities for whom the Customer is performing services and all of their respective parents, subsidiaries, Affiliates, contractors and subcontractors of any tier; and (iii) the respective directors, officers, agents, servants, representatives, employees, invitees and insurers of all the foregoing.

**"Contract"** means the agreement between the Company and the Customer for any form of business conducted by or with the Company, including all related Quotations and Orders, incorporating these Terms and Conditions.

**"Delivery"** has the meaning given in clause 4.2.

**"Delivery Date"** means the date specified in the Order on which the Products or Equipment may be delivered and/or Personnel mobilised.

**"Equipment"** means the equipment, plant, machinery, tools, parts and accessories, including any instalment, part or combination of same, which the Company is to hire to the Customer or provide Services in respect of in accordance with the Contract.

**"Hire Period"** has the meaning prescribed in clause 8.3.

**"including"** means without limitation.

**"Losses" or "Claims"** includes all actions, causes of action, claims, demands, proceedings, damages, awards, payments, debts, losses, costs, expenses (including legal or professional expenses), penalties, fines, compensation or other liabilities whether direct, indirect, consequential or otherwise including loss of profit, business, turnover or market share, and interest thereon.

**"Notification Period"** means the minimum period of notice that the Company requires to prepare the Products, Equipment or Services for the Customer.

**"Order"** means any written instruction issued by the Customer and accepted by the Company for the provision of Products, Equipment or Services.

**"Party"** means each of the Company and the Customer and **"Parties"** shall be construed accordingly.

**"Person"** means any person or company or other legal entity.

**"Personnel"** means any and all individuals, including supervisors and operators, supplied by the Company to the Customer to perform Services.

**"Price"** means the charge made or to be made by the Company for the sale of Products, hire of Equipment or provision of Services as further defined in the Contract.

**"Product(s)"** means any goods, materials, equipment, machinery, products or articles of whatsoever nature, which the Company is to supply or sell to the Customer or provide any Services in respect of under the Contract.

**"Quotation"** means the Company's commercial proposal or quotation for the provision of Services, sale of Products or hire of Equipment which term includes any document issued by the Company indicating the terms on which the Services, Products or Equipment are to be provided.

**"Services"** means any services or work provided by the Company to the Customer under the Contract including the provision of any supervisory or advisory services, maintenance, repair or refurbishment of Products or Equipment or the provision of Personnel for the use or operation of the Products or Equipment.

**"Terms and Conditions"** means the terms and conditions set out in this document and any other terms and conditions agreed pursuant to clause 2.1.

**"Worksite"** means the offshore or onshore location where the Products or Equipment are to be used or the Services are to be provided.

**"Writing"** means any form of written communication including Orders, facsimile and electronic mail ("Email") where the parties have agreed either expressly or by a course of dealing to communicate by Email and have provided each other with correct Email addresses accordingly, save that any Email shall take effect only when received by the recipient.

**2. Application**

- 2.1 All business conducted by the Company with the Customer, including any contracts, Quotations, pre-contractual negotiations and all Orders shall be subject to these Terms and Conditions to the exclusion of any and all other terms and conditions, including any standard or general terms and conditions of purchase, sale, hire or for services confirmed or referred to in any Order, acknowledgement or other document issued by the Customer, except where (i) such other terms and conditions form part of a written agreement which has been expressly agreed and executed between the Parties and which the Parties have expressly agreed in writing shall override these Terms and Conditions in the event of a conflict ("Master Service Agreement") in which case such Master Service Agreement shall govern the business which is the subject matter thereof; or (ii) the Parties have expressly identified in or incorporated into an Order mutually agreed Special Conditions which are expressly stated to modify, supplement or amend these Terms and Conditions. Such Special Conditions shall apply equally with these Terms and Conditions but shall, in the event of conflict, prevail over these Terms and Conditions.
- 2.2 Any and all statements, representations, advice or recommendations made or given by the Company during negotiations prior to the conclusion of a Contract are not binding unless incorporated into the Contract in Writing signed by both parties.
- 2.3 The headings in these Terms and Conditions are for convenience only and shall not affect their interpretation.
- 2.4 If any provision of these Terms and Conditions is held by any competent court, tribunal or authority to be invalid or unenforceable in whole or in part the validity of the remainder of the provision and all other remaining provisions of these Terms and Conditions shall not be affected thereby.

**3. Description of Contract**

The Contract constitutes the entire agreement between the Company and the Customer and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between the Company and the Customer, whether written or oral relating to its subject matter.

**4. Performance of Contract**

- 4.1 The Company will sell, hire and/or provide Products, Equipment and/or Services and the Customer will pay the specified Price in accordance with the Contract.
- 4.2 The Company shall load/unload the Products or Equipment at the Company's Address for collection by the Customer. The Customer shall pay the cost of and make all arrangements for transportation of the Equipment or Products from the Company's Address to the Worksite, during the Hire Period and from the Worksite to the Company's Address (or such other address as the Company may agree in Writing) at the end of the Hire Period. Any transportation of the Equipment or Products provided by the Company shall be charged to the Customer at cost plus agreed uplift.
- 4.3 The Customer shall pay the cost of and make all arrangements for transportation of Personnel from their respective home base to the Worksite, during the Hire Period, and from the Worksite to their respective home base (or such other address as the Company may agree in Writing) at the end of the Hire Period. Any transportation of the Personnel provided by the Company at the Customer's request shall be charged to the Customer at cost plus agreed uplift.
- 4.4 The Company will use all reasonable efforts to supply any Product or Equipment or Services by the Delivery Date. However, any dates specified by the Company for delivery of the Products or Equipment or mobilisation of the Personnel are intended to be a genuine estimate only and time for delivery or mobilisation, as the case may be, shall not be made of the essence of the Contract. If no dates are so specified, delivery or mobilisation will be within a reasonable time. All Delivery Dates are subject to the expiry of the Notification Period.
- 4.6 The Customer shall, at its own expense, provide free and suitable access to the Worksite for the provision of any Services under the Contract.
- 4.7 The Customer shall ensure that the Worksite is suitable for the positioning and operating of the Products or Equipment and shall protect, cover or reinforce as necessary any surface or other parts of the intended place of operation liable to be damaged in the course of moving or operating the Products or Equipment. The Customer shall be solely responsible for and shall indemnify the Company in full against all claims for damage to the place of operation or surrounding area.
- 4.8 The Equipment or Products shall be deemed to have been received in good order unless notice in Writing to the contrary is received by the Company from the Customer within three (3) days of collection from the Company's Address.

**5. Not used.**

**6. Customer's Obligations**

- 6.1 During the Hire Period the Customer shall, at its own expense:
- 6.1.1 comply with all laws and regulations and the Company's recommendations relating to the installation, use, storage and maintenance of the Equipment including health and safety requirements and shall use or permit the use of the Equipment only in accordance with relevant operating and safety instructions, including without limitation, any supplied with the Equipment. Any typographical, clerical or other error or omission in such instructions shall be subject to correction without any liability on the part of the Company;
- 6.1.2 ensure that the Equipment is operated properly and safely with due care and skill at all times by suitably competent, qualified, experienced and instructed personnel;
- 6.1.3 fully acquaint itself with the appropriate manufacturers' and Company guidelines and not use or permit the use of the Equipment for any purpose beyond its capacity or in a manner likely to result in excessive wear in accordance with such guidelines;
- 6.1.4 ensure that the Equipment remains safe, serviceable and clean;
- 6.1.5 ensure that the Equipment undergoes daily routine maintenance, including, but not limited to, maintenance of the correct levels of all lubricants and other fluids;
- 6.1.6 ensure that all fuel and lubricants used in respect of the Equipment shall be of suitable grade and quality for use with the Equipment;
- 6.2 Additionally the Customer shall:
- 6.2.1 not make any alterations or modifications to the Equipment;
- 6.2.2 take all reasonable steps to keep itself acquainted with the state and condition of the Equipment;
- 6.2.3 not operate the Equipment in an unsafe or unsatisfactory state;

- 6.2.4 not permit any person other than the Personnel to operate the Products or Equipment or perform the Services without obtaining prior consent in Writing from the Company;
- 6.2.5 ensure that each individual item of Equipment is not operated in any day for more than twelve (12) hours unless previously agreed by the Company in Writing. Notwithstanding any such agreement, the Customer is responsible for and shall ensure that each individual item of Equipment is shut down for the purpose of routine and operating maintenance as set out in the Company's operation and maintenance guidelines or other instructions. The Price for rental of each individual item of Equipment is based upon operation of each item for up to twelve (12) hours in any day and therefore if any individual item of Equipment is operated for in excess of twelve (12) hours in any day, then an additional charge for the Equipment concerned shall be due to the Company, which shall be invoiced to and paid by the Customer, for each hour of operation in excess of twelve (12) hours in any day at the rate of two thirds of the equivalent hourly rate. In this clause "equivalent hourly rate" means, for the relevant item of Equipment, the daily rate of hire as set out in the applicable Contract divided by twelve (12);
- 6.2.6 in the case of electric motor driven equipment, ensure that the Equipment is properly connected to the electric power supply and that resistances tests are carried out on all cabling switchgear and motor windings and that all test failures are reported immediately to the Company in order for appropriate action to be taken;
- 6.2.7 ensure that when the Equipment requires the fitting or re-fitting of any accessory (which term includes but is not limited to drills, wheels, discs and blades), that only accessories supplied by the Company are utilised and that any such accessory is correctly fitted or re-fitted in a manner so as not to damage the Equipment or render it unsafe;
- 6.2.8 immediately notify the Company of any malfunctioning of the Equipment and the Customer shall not carry out any repair to the Equipment without obtaining prior authorisation from the Company in Writing;
- 6.2.9 immediately notify the Company if the Equipment is involved in any incident or accident resulting in damage to the Equipment or to other property or injury to any person and immediately cease using the Equipment if there is any possibility that it or a defect with it was responsible for such incident or accident;
- 6.2.10 ensure that the Company, and any person authorised by it, shall at all reasonable times have full access to the Equipment and satisfactory facilities for inspecting, testing, adjusting, repairing and replacing same. If the Company, in its sole discretion, considers there are insufficient facilities or access to facilities to support the maintenance or repair of the Equipment, the Company shall supply a mobile containerised workshop for which an appropriate charge will be made to the Customer.
- 6.2.11 not remove, deface or cover up any name-plate or identification mark or number on the Equipment nor put any mark on the Equipment which might indicate or suggest that the Equipment is not the property of the Company;
- 6.2.12 not sell, mortgage, charge, pledge, part with possession of, or otherwise deal with the Equipment except with the prior written consent of the Company;
- 6.2.13 protect the Equipment against distress, execution or seizure; and
- 6.2.14 ensure that all documentation (including certification, permits, visas and Letters of Invitation) required for the Personnel to perform Services at the Worksite is up to date and compliant with all applicable laws, rules and regulations.
- 6.3 The Customer shall indemnify the Company against any loss, cost, damage or expense which it may suffer or incur as a result of the Customer failing to comply with any of its obligations under this clause 6.
- 7. Title and Risk**
- 7.1 All Equipment hired by the Customer under any Order shall at all times remain the sole and exclusive property of the Company. The sole right granted to the Customer is to use the Equipment in accordance with the terms and conditions of the Contract.
- 7.2 Title in any Products sold to the Customer shall not pass to the Customer until the full Price is received by the Company.
- 7.3 The Customer shall return the Equipment to the Company on completion of the Hire Period in the same condition as at the commencement of the Hire Period, fair wear and tear excepted.
- 7.4 During the Hire Period the Customer shall make good to the Company all loss of or damage to the Equipment from whatever cause the same may arise.
- 7.5 In the event that the Equipment is damaged during the Hire Period, hire charges shall continue during any repair period. If repair or rectification of damage is necessary at the Worksite, the charges for labour, materials, travel and shipping will be charged to and payable by the Customer in full.
- 7.6 In the event that the Equipment is lost, stolen or damaged beyond economic repair during the Hire Period, the Customer shall pay to the Company a sum equivalent to the price of new, replacement Equipment at the relevant time, without depreciation or other deduction.
- 8. Price**
- 8.1 The Price and currency for the sale of Products, rental of Equipment or provision of Services shall be as set out in the Quotation and confirmed in the Order. The Company's costs, charges and expenses relevant to the provision of Personnel and spare parts packages for the Products or Equipment shall be specified separately for each Contract. The Company shall not accept any variation of the Price unless agreed by the Company in Writing.
- 8.2 All prices quoted by the Company in its Quotations are valid for the period stated in the Quotation. The Company reserves the right to amend any typographical, clerical or other error or omission on any documentation containing pricing information issued by or on behalf of the Company and the Company shall have no liability to the Customer for any such errors or omissions.
- 8.3 Hire rates for the Equipment shall commence on the earlier of:- (i) the end of the Notification Period; (ii) the date the Equipment is mobilised from the Company's Address; or (iii) the date of third party certification (DNV, ABS or Customer Group) of the Equipment. Hire rates for the Equipment shall end on the date that the Equipment is received in good working order at the Company's Address or other such address as the Company may agree in Writing. Hire rates for Personnel shall commence on the date the Personnel is mobilised from their respective home base and shall end on the date the Personnel is returned to their respective home base.

- 8.5 The full contracted hire rate will be charged for the full Hire Period irrespective of the actual time during which the Equipment or Products were in operation or the Personnel were performing Services.
- 8.6 Any minimum Hire Periods must be completed. If early termination is specifically agreed by the Parties in Writing the hire charges for the balance of the minimum Hire Period shall be payable by the Customer in addition to any other charges due on termination.
- 8.7 In the event of a breakdown of the Equipment otherwise than as a result of breach by the Customer of its obligations under these Terms and Conditions, hire rates will cease from the time the Customer first notifies the Company in Writing that such breakdown has occurred until the Equipment is repaired or replaced provided that the Customer permits the Company to repair or replace the Equipment at Company's request. The cessation of hire rates under this clause 8.7 shall not apply in the event of delay in the repair or replacement of the Equipment due to Customer Group.
- 8.8 No allowance will be made for stoppages resulting from the Customer's misuse, negligence or misdirection or other causes outside the Company's control.
- 8.9 Unless otherwise specified, the Price for any Products or Equipment or Services provided by the Company to the Customer shall be exclusive of:- (i) any travel, accommodation, subsistence or other out-of-pocket expenses of the Personnel, the Company's directors, officers, agents, representatives or employees (which, where applicable, the Customer shall pay to the Company at cost); (ii) any costs, charges or taxes relating to packaging, storage, loading, carriage, transportation, unloading, delivery, mobilisation, demobilisation and insurance of any Products or Equipment; or (iii) any sales tax, value added tax, licence fees, duties, local taxes, liens, withholding taxes or deductions, customs charges, or additional costs of such nature which shall remain the liability of the Customer unless agreed otherwise in Writing. In the event that the Company is required to pay such charges or taxes, they shall be invoiced to and paid by the Customer at cost.
- 8.10 The Customer shall pay the cost of and be responsible for obtaining all necessary permissions and authority and documentation pursuant to clause 6.2.14 for the Personnel to work at the Worksite.

## **9. Invoicing and Payment**

- 9.1 The Company will issue to the Customer from time to time an invoice or invoices for the Price of Products or Equipment or Services together with any additional costs and/or charges or taxes payable by the Customer under clauses 4, 6 and 8.
- 9.2 Unless otherwise agreed in Writing, payment of any invoice submitted by the Company to the Customer is due within thirty (30) days of the date of the invoice.
- 9.3 If the Customer fails to make any payment of any invoice within due time then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled, upon notice to the Customer, to:
- (i) terminate the Contract in whole or in part, and require immediate return of any Products or Equipment and/or Personnel at the Customer's expense; and/or
  - (ii) suspend performance in whole or in part by the Company under the Contract; and/or
  - (iii) charge the Customer interest on any unpaid amount from the date payment is due to the date payment in full is made. Interest shall be calculated on a daily basis at the per annum rate of either 2% above the base bank rate from time to time of HSBC Bank PLC or 8%, whichever is the higher. The Customer shall pay interest together with the overdue amount;
  - (iv) be reimbursed by the Customer for all Losses incurred by the Company in the collection of any overdue amount; and/or
- 9.4 Nothing in this clause shall prevent the Company from alternatively electing to charge interest pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.
- 9.5 If the Customer disputes all or any part of the Company's invoice it shall notify the Company in writing of the particulars of the dispute within ten (10) days of the date of the invoice. Payment and interest shall cease to run in respect of the disputed element only from the date of receipt of such notice. Payment days shall continue run on any undisputed element and interest will accrue in accordance with clause 9.3 (iii) or 9.4 (as the case may be). The invoice dispute shall be addressed as follows:-
- (i) the dispute shall be referred to the Company's purchase ledger department. The parties shall have a fair, honest and genuine discussion aimed at resolving the dispute;
  - (ii) if no agreement is reached under clause 9.5 (i) within ten (10) days, the dispute shall be referred to the Managing Directors of each of the Company and the Customer who shall have a fair, honest and genuine discussion aimed at resolving the dispute.
  - (iii) if no agreement is reached under clause 9.5 (ii), either party may refer the dispute to the English Courts pursuant to clause 22.2 or to such other alternative dispute resolution procedure as may be agreed by the Parties.
  - (iv) once the disputed element of the invoice is resolved, the Customer shall pay the agreed sum within seven (7) days together with any interest that may be due. Interest days will recommence from the date that the disputed element is resolved.

## **10 Warranties**

- 10.1 Subject to clause 10.2, the Company warrants that any Products sold hereunder shall be free from defects in materials and/or workmanship for a period of twelve (12) months from the date of delivery of the Products to the Customer.
- 10.2 The warranty in clause 10.1 shall be limited in respect of the sale of ex-rental Products to a period of three (3) months from the earlier of (i) successful factory acceptance testing; or (ii) the date of delivery of such Products to the Customer
- 10.3 Subject to clause 10.10, the Company warrants that Equipment supplied hereunder shall be free from defects in materials and/or workmanship for a period of twelve months from delivery.
- 10.4 Where the Company is not the manufacturer of the Products or Equipment, the Company will endeavour, where applicable and upon the Customer's written request, to transfer to the Customer the benefit of any warranty or guarantee given to the Company. Where there is a manufacturer warranty the Company's liability in respect of such Products or Equipment shall be limited to the extent of the related manufacturer warranty.
- 10.5 The Company shall perform all Services with reasonable skill and care in accordance with these Terms and Conditions and all applicable laws and, where applicable, shall supply Personnel who it considers to be competent in performing the Services.

- 10.6 Subject to clauses 10.1, 10.2, 10.3 and 10.5, unless otherwise expressly agreed by the Company and set out in Writing in the Contract, no warranties or representations are given or made by or on behalf of the Company as to the performance, availability, durability, use, storage, effectiveness, quality, suitability or fitness for any purpose of any Product or Equipment sold or supplied hereunder, or for any Service provided hereunder, and any conditions or warranties implied or imposed by operation of law are hereby excluded.
- 10.7 In the event of a breach of any warranty or warranties in respect of any Products or Equipment sold or hired or any Service provided, the Customer shall give written notice of the breach complained of within a reasonable time not to exceed thirty (30) days' of the time the Customer discovers or ought to have discovered such breach and the Company shall be given a reasonable opportunity of remedying the breach.
- 10.8 It is the Customer's responsibility and risk that any Order, specification, drawing or information provided to the Company by the Customer, or any person acting for or on behalf of the Customer in connection with the Contract, is true, complete and accurate in all respects.
- 10.9 Notwithstanding anything elsewhere contained in the Contract, the Company shall not be liable for any defects in the Products, Equipment, or Services (as the case may be) arising from: (i) fair wear and tear; (ii) defects in design; (iii) defects in materials furnished or specified by the Customer and/or defects in manufacture where the method of manufacture was specified by the Customer; (iv) acts or omissions of any member of the Customer Group or any persons not within the Company's reasonable control or any third parties; (v) abnormal working conditions; (vi) failure to follow the Company's instructions (whether oral or in Writing); (vii) misuse, alteration or repair of the Product or Equipment without the prior approval in Writing of the Company; or (viii) change in terms of the Services without the prior approval in Writing of the Company.
- 10.10 If any Product or Equipment does not conform with any warranty or warranties provided by the Contract then the Company shall at its option either: (i) repair or replace such Products or Equipment (or any defective part or parts) EXW Company's Address; or (ii) refund the Price of the Products at the Contract rate provided that (if the Company so requests) the Customer at its cost returns the defective Products, Equipment or part(s) to the Company. The Company shall not be responsible for any on-site costs associated with the repair or replacement including but not limited to the cost of removal or reinstallation of any warranted Products or Equipment. For Personnel operated Equipment or Products, the Company shall provide repair or replacement at the Company's cost. For Equipment or Products operated other than by the Personnel, a charge shall be made for the labour costs associated with the repair or replacement. The Customer agrees to provide the Company with reasonable and clear access to its Products or Equipment which may include removal of materials or structures as well as supplying equipment, materials or structures which are necessary to provide reasonable access to the Products or Equipment being repaired or replaced. The Company shall have no liability for any costs or Losses arising therefrom. All repaired or replaced Products or Equipment (or part or parts) shall be re-warranted only for the remainder of the original warranty period.
- 10.11 The Company's liability arising out of or in connection with the Services shall be limited to re-performing at its expense any Services that are deficient because of the Company's failure to perform the Services in accordance with the standard of performance specified in clause 10.5.
- 10.12 Provided that the Company complies with clauses 10.10 or 10.11 (as the case may be), it shall have no further liability for breach of any warranty or warranties whatsoever and howsoever arising in respect of the Product or Equipment or any Services provided.
- 10.13 Notwithstanding anything elsewhere contained, all warranties and obligations of the Company under this clause 10 shall terminate if the Customer fails to comply with any of its obligations under clauses 6, 9.2 or 10.7. The Company shall not be responsible or liable for repairs or alterations to any Product or Equipment made by the Customer or third parties acting on its behalf without the Company's prior written agreement.
- 10.14 Each Party agrees that it shall have no remedies in respect of any misrepresentation or warranty (whether made innocently or negligently) that is not expressly set out in the Contract. No Party shall have any claim for innocent or negligent misrepresentation based upon any statement in the Contract.

#### **11 Limitation of Liability and Indemnities**

- 11.1 Customer shall be liable for, and hereby agrees to release, indemnify, defend and hold the Company Group harmless from and against any and all Losses arising out of personal or bodily injury, sickness, disease or death and/or property damage, destruction or loss suffered by any member of the Customer Group in connection with the Contract and/or any applicable Order.
- 11.2 Subject to clause 11.3, Company shall be liable for, and hereby agrees to release, indemnify, defend and hold the Customer Group harmless from and against any and all Losses arising out of personal or bodily injury, sickness, disease or death and/or property damage, destruction or loss suffered by any member of the Company Group in connection with the Contract and/or any applicable Order.
- 11.3 Notwithstanding the foregoing, Customer shall be responsible for, and shall release, indemnify, defend, and hold harmless the Company Group from and against any and all Losses, arising out of the loss, damage or destruction of any Equipment or Products leased hired or otherwise provided by Company to Customer Group under any Order whilst the Equipment or Products are in the care, custody or control of the Customer Group or their permitted assigns except to the extent such loss, damage or destruction is due to the act, omission or negligence of any member of the Company Group.
- 11.4 Subject to any other express provisions in the Contract, Customer shall be liable for, and hereby agrees to release, indemnify, Defend and hold the Company Group harmless from and against any and all Losses arising out of personal or bodily injury, sickness, disease or death and/or property damage, destruction or loss suffered by any Third Party in connection with the Contract and/or any applicable Order to the extent caused by the act, omission or negligence of any member of the Customer Group or their permitted assigns.
- 11.5 Subject to any other express provisions in the Contract, Company shall be liable for, and hereby agrees to release, indemnify, defend and hold the Customer Group harmless from and against any and all Losses arising out of personal or bodily injury, sickness, disease or death and/or property damage, destruction or loss suffered by any Third Party in connection with the Contract and/or any applicable Order to the extent caused by the act, omission or negligence, of any member of the Company Group or their permitted assigns.

- 11.6 Subject to clause 11.2, Customer shall be liable for, and hereby agrees to release, indemnify, defend and hold the Company Group harmless from and against any and all Losses arising out of pollution and/or contamination emanating from the reservoir, any third party oil and gas production facilities and pipelines or any property of the Customer Group or their permitted assigns howsoever arising in connection with the Contract and/or any applicable Order.
- 11.7 Subject to clause 11.1, Company shall be liable for, and hereby agrees to release, indemnify, defend and hold the Customer Group harmless from and against any and all Losses arising out of pollution and/or contamination emanating from any property of the Company Group or their permitted assigns howsoever arising, in connection with the Contract and/or any applicable Order except to the extent any such property is in the care, custody or control of the Customer Group.
- 11.8 Notwithstanding anything elsewhere contained in the Contract, the Customer shall be liable for, and hereby agrees to release, indemnify, defend and hold the Company Group harmless from and against any and all Losses arising out of loss or damage to any third party oil and gas production facilities and pipelines and consequential losses arising therefrom where such loss or damage arises from or is in connection with the Contract and/or any applicable Order.
- 11.9 Notwithstanding anything elsewhere contained in the Contract but subject to clauses 11.4, 11.5, 11.8, and 11.14 each Party agrees to release, indemnify, defend and hold the other Party harmless from and against its own:- (i) indirect, incidental, special, punitive, exemplary or consequential losses or damages; and (ii) Claims for loss of profits, loss of bargain, loss of revenue, reduction in turnover, loss of use of the Products or Equipment, downtime costs, loss of productivity, acceleration, loss of production, loss of business or business interruption, loss of efficiency or loss of contract, whether direct or indirect.
- 11.10 Where the Company agrees to sell or hire Products or Equipment to the Customer, the Company will not be liable for any Losses caused directly or indirectly by any delay in the delivery of the Products or Equipment (even if caused by the negligence of the Company, its employees, servants or agents), nor will any delay entitle the Customer to terminate or rescind the Contract unless such delay is attributable solely to the breach by the Company and exceeds ninety (90) days and provided that prior to any such termination or rescission the Customer has given the Company not less than 30 days Written notice requiring the Company to complete its delivery obligations .
- 11.11 Where the Company agrees to provide a Service to the Customer, the Company will not be liable for any Losses caused directly or indirectly by any delay in the provision of the Service (even if caused by the negligence of the Company, its employees, servants or agents). Unless otherwise expressly agreed, the Customer shall not be entitled to cancel the Contract solely because of such delay.
- 11.12 The Company's total liability arising under or in connection with the Contract including liability for all Claims of any kind and description howsoever and whatsoever arising including arising from breach of contract, tort (including negligence), breach of statutory duty or otherwise shall not in the aggregate exceed the price paid or to be paid in the preceding twelve (12) months under the Contract.
- 11.13 Nothing in these Terms and Conditions excludes or limits the liability of either Party for:
- (i) death or personal injury caused by the Company's negligence;
  - (ii) fraud or fraudulent misrepresentation; or
  - (iii) wilful default or deliberate breach of contract.
- 11.14 Where the Company provides heat suppression equipment to the Customer, then notwithstanding anything elsewhere contained in the Contract, the Customer shall assume responsibility for, and shall defend, indemnify and hold harmless the Company from and against any and all Losses, including Claims for injuries to, deaths or illness of third parties or loss of or damage to third parties' property and any consequential losses arising therefrom, of any kind whatsoever and howsoever arising out of or in respect of fire, explosion or any other form of combustion howsoever caused.
- 12. Termination, Suspension and Order Cancellation**
- 12.1 The Company shall be entitled to terminate the Contract in whole or in part or suspend performance under the Contract in whole or in part forthwith by notice in Writing to the Customer if:
- (i) the Customer commits an irremediable breach of the Contract (including a breach of any of its obligations under clause 9), persistently repeats a remediable breach or commits any remediable breach and fails to remedy it within seven (7) days of receipt of notice in Writing of the breach requiring remedy of the same; or
  - (ii) the Customer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of solvent amalgamation or reconstruction); or
  - (iii) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or
  - (iv) the Customer ceases or threatens to cease to carry on business; or
  - (v) where the Customer is resident in a jurisdiction other than England and Wales, an event similar to any of those specified in clauses 12.1 (ii) and 12.1 (iii) occurs to or in relation to the Customer.
- 12.2 In the event of termination by the Company pursuant to clause 12.1 above then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel or suspend any further deliveries or Services due under it without any liability to the Customer and, if the Services have already been provided, Products delivered or Equipment hired but not paid for, the price of the Services, Products or Equipment shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary and the Company shall be entitled to charge interest in accordance with clause 9.3(iii) or 9.4.
- 12.3 Subject to clause 8.6, the Customer shall be entitled to terminate the Contract by giving thirty (30) days' notice in Writing of termination to the Company. In the event of termination by the Customer pursuant to this clause, the Company shall invoice the Customer and the Customer shall immediately pay to the Company the full Price together with any additional costs and/or charges payable by the Customer under clause 9.1.
- 12.4 In the event that the Customer cancels an Order the Customer shall be charged and shall pay for the hire rates for the Equipment and/or Personnel from the date such Equipment and Personnel were allocated to the Contract by the Company up to and including the date of cancellation by the Customer together with all costs incurred by the Company in respect of the

purchase, manufacture, preparation, mobilisation or demobilisation of such Equipment and Personnel arising out of or in connection with the Order.

- 12.5 The terms of clauses 8, 9, 11.12, 13, 15, 16, 18, 19, 21, 22 and 23 shall survive the expiry or termination of the Contract. Termination or expiry of the Contract shall be without prejudice to any rights or remedies accrued by either Party prior to the date of termination.

**13. Laws and Regulations**

- 13.1 The Customer shall comply with all laws and regulations relating to the ownership and use of the Products or Equipment including health and safety requirements.
- 13.2 The Customer shall ensure that all appropriate safety information (whether or not supplied by the Company) is distributed and drawn to the attention of all members of the Customer Group and all others who require it for the safe handling or use of the Products or Equipment.
- 13.3 The Customer shall indemnify and hold the Company Group harmless from and against any and all Losses suffered by the Company attributable to a breach of this clause 13.
- 13.4 Where changes in law or legislation or rules or regulations having the force of law, or changes in the interpretation thereof, take effect after the date of an Order which affects the cost or time for performance of an Order or the Contract, the Company shall have the right to increase the Price and/or adjust the schedule for performance accordingly.

**14. Resources**

The Customer hereby agrees that, during the term of the Contract and for a period of twelve (12) months after expiry or termination howsoever caused, he will not solicit the Company's staff who are known by the Customer to have been employed or engaged in the performance of the Contract. For the purposes of this clause, 'solicit' means a direct or indirect attempt to induce such person to take an engagement with such party as an employee, director, sub-contractor or independent contractor provided that this clause shall not apply to any engagement as a result of a general advertisement or recruitment campaign.

**15. Confidentiality**

All techniques, processes, inventions, equipment, drawings, designs, specifications, proposals and such information concerning the Services, Products or Equipment or relating to the Company's business of which the Customer shall obtain knowledge or information (except to the extent that they are within or fall into the public domain other than by breach of the Contract) shall remain both during and after the completion of the business conducted under the Contract the absolute and exclusive property of the Company and the Customer shall keep confidential and retain the same with the utmost secrecy and shall use its utmost endeavours to procure that all members of the Customer Group abide by the terms of this provision as though it were binding upon each of them and the Customer shall not, and shall procure that all members of the Customer Group shall not, use same for its own purposes, nor shall it cause or permit anything which may damage or endanger the intellectual property of the Company or allow or assist others to do so.

**16. Waiver**

No payment accepted by the Company and no neglect, delay or indulgence on the part of the Company in enforcing the Contract or any of the Terms and Conditions thereof shall operate as a waiver of the Company's rights thereunder, unless in each case the Company expressly so agrees in Writing.

**17. Force Majeure**

The Company shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations if the delay or failure was due to any cause beyond the Company's reasonable control including (without limitation):

- (i) act of God, storm, flood, tempest or other weather conditions, explosion, fire or accident;
- (ii) war or threat of war, civil war, hostilities, sabotage, insurrection, riot or civil disturbance, or requisition;
- (iii) Governmental or local authority acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind;
- (iv) import or export regulations or embargoes;
- (v) strikes, lock-outs or other industrial actions or trade disputes whether involving employees of the Company or of a third party;
- (vi) difficulties in obtaining raw materials, labour, fuel, parts, equipment, machinery or other essential supplies; or
- (vii) failure or breakdown in equipment or machinery from power failure or other external causes.

**18. Cross Claims and Set Off**

The Customer hereby waives any right to set-off under the Contract or otherwise and agrees to pay all sums due regardless of any equity, set-off or cross claim on the part of the Customer against the Company.

**19. Notices**

Any notice required to be given by either party under the Contract shall be delivered or sent by pre-paid first class recorded delivery letter or facsimile addressed to the registered office of the party to be served or to such other place as may be designated by the party for the purpose of service and shall be deemed to have been served in the case of a notice delivered by hand, when delivered, in the case of a letter, forty-eight (48) hours after the time of posting, in the case of facsimile when despatched.

**20. Non-Assignment**

The Customer shall not assign, transfer or sub-contract the Contract or any benefit, interest, right or obligation under the Contract, without the prior agreement of the Company in Writing.

**21. Anti-Bribery**

21.1 The Customer shall:

- (i) comply, and shall procure that each member of the Customer Group shall comply, with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;

- (ii) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
  - (iii) have and shall maintain in place throughout the term of the Contract its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure its compliance with clause 21.1(i) and (iii) and will enforce them where appropriate;
  - (iv) promptly report to the Company any request or demand for any undue financial or other advantage of any kind received by any member of the Customer Group in connection with the performance of the Contract; and
  - (v) immediately notify the Company in writing if a foreign public official becomes an officer or employee of any member of the Customer Group or acquires a direct or indirect interest in the Customer or in any member of the Customer Group (and the Customer warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of the Contract).
- 21.2 The Customer shall ensure that all members of the Customer Group performing services in connection with the Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Customer in clause 21.1.

**22. Governing Law and Jurisdiction**

- 22.1 The Contract and all obligations relating to or arising out of the Contract shall be governed by and construed in accordance with the laws of England.
- 22.2 The Parties hereby agree that any Claims, disputes, legal actions, suits or proceedings that either Party may have against the other arising out of or in connection with the Contract shall be subject to the exclusive jurisdiction of the English Courts. In addition the Customer hereby agrees that the Company shall have the right to bring any Claims, disputes, legal actions, suits or proceedings it may have against the Customer in the courts of any jurisdiction where the Customer or any of its property or assets may be found or located, and the Customer hereby irrevocably submits to the jurisdiction of any such court.
- 22.3 Should changes in applicable laws, rules and regulations, including any change in interpretation thereof by the courts or a legally constituted government or regulatory body or similar authority, made after the effective date of commencement of the Contract, result in an increase in the cost to the Company and/or a delay in the Company's time for performance of the Contract, the Price and/or the schedule for performance, as the case may be, shall be adjusted to the extent necessary to provide the Company with relief from such increase in cost and/or delay.

**23. Forced Labour**

- 23.1 The Customer shall:
- (i) comply, and shall procure that each member of the Customer Group shall comply, with all applicable laws, statutes, regulations and codes relating to slavery, servitude, forced or compulsory labour and human trafficking including the Modern Slavery Act 2015;
  - (ii) undertake not to purchase any resource, materials or products from producers, suppliers or manufacturers using forced or compulsory labour in its operations or practices;
  - (iii) have and shall maintain in place throughout the term of the Contract its own policies and procedures to ensure its compliance with clause 23.1 (i) and 23.1 (ii) and will enforce them where appropriate;
  - (iv) immediately notify the Company in Writing if it becomes aware of any breach or alleged breach of this clause within its supply chain (and the Customer warrants that has not been convicted of any offence involving slavery and human trafficking and, having made reasonable enquiries, to the best of its knowledge none of the members of the Customer Group or their direct or indirect owners at the date of the Contract have been or are the subject of any investigation, enquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding an offence or alleged offence of or in connection with slavery and human trafficking),
- 23.2 The Customer shall ensure that all members of the Customer Group performing services or work in connection with the Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Customer in this clause 23.