



# **SUBSEA**

ENERGY SOLUTIONS



**Subsea Energy Solutions Ltd.**

**Terms & Conditions Of Purchase**

**Ref. DO-006-SES-SES-010**

**(Strictly Confidential)**



Subsea Energy Solutions, Unit 04, Colburn Business Park, Chartermark Way, Catterick Garrison, N.Yorkshire, England, DL9 4QJ

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## Section 1.0 - Revision

The following section provides the document details, revision and comment tracker;

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### Revision Tracker

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### Comment Tracker

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## Section 2.0 - Definitions

### 1.0 Definitions

1.1 In these General Conditions of Purchase the following terms shall have the following meanings: -

<b>Bank Holiday :</b>	Public Holidays in England
<b>Conditions :</b>	These terms and conditions.
<b>Contract :</b>	The contract between Subsea Energy Solutions and the Supplier for the Purchase and sale of the Goods in accordance with these Conditions.
<b>Contract IPRS :</b>	Contract Intellectual Property Rights
<b>Deliverables :</b>	The Goods and/or outputs of the Services to be provided by the Supplier to the buyer under the purchase order
<b>Goods :</b>	The goods (or any part of them) set out in the Order.
<b>Purchase Order :</b>	Contract between the buyer and the seller giving specific information like product or services to be delivered, delivery date, and any other terms and conditions including the price.
<b>Specification :</b>	Any specification for the Goods, including any related plans and drawings.
<b>Services :</b>	The services to be supplied by the supplier to the buyer under the Purchase Order
<b>The Buyer :</b>	Subsea Energy Solutions Limited.
<b>The Supplier :</b>	Person or company to whom the Purchase Order is addressed.

## Section 3.0 - Terms & Conditions Of Purchase Clauses

### 1.0 Exclusion of Supplier's Terms and Conditions

- 1.1 Every supply of Goods to the Buyer by the Supplier is made on these Conditions and all terms and conditions proposed by the Supplier (except to the extent that they are repeated in and are not inconsistent with the Conditions) or which are implied by law, trade custom, practice or course of dealing are hereby expressly excluded.

### 2.0 Basis of Purchase

- 2.1 The Purchase Order constitutes an offer by the Buyer to purchase the Goods from the Supplier subject to the Conditions. No verbal or written order, request or enquiry for Goods is binding on the Buyer unless set out in a Purchase Order signed by a duly authorised representative of the Buyer.
- 2.2 No variation to the Purchase Order or the Conditions is binding on the Buyer unless agreed in writing between the authorised representative of the Buyer and the Supplier.
- 2.3 A Purchase Order shall be deemed to be accepted on the earlier of the Supplier issuing written acceptance of the Purchase Order or any act by the Supplier consistent with fulfilling the Purchase Order at which point and on which date the Contract shall come into existence.

### 3.0 Specification

- 3.1 The quantity, quality and description of the Goods and each installment of the Goods shall correspond exactly with those specified in the Purchase Order and/or in any applicable Specification supplied by the Buyer to the Supplier and referred to in the Purchase Order.
- 3.2 Any Specification supplied by the Buyer to the Supplier, or specifically produced by the Supplier for the Buyer, in connection with the Contract, together with any dies, moulds, tools and materials and any intellectual property rights in the Specification or arising out of or in connection with the Contract (**Contract IPRs**), shall be and remain the exclusive property of the Buyer and shall be used by the Supplier only for performing work ordered by the Buyer. To the extent that any Contract IPRs do not automatically vest in the Buyer on creation, the Supplier hereby assigns to the Buyer, with full title guarantee, title to and all present and future rights and interest in the Contract IPRs. If requested to do so by the Buyer, the Supplier shall, without charge to the Buyer execute all documents and do all such acts as the Buyer may require to perfect the assignment under this clause 3.2, or shall procure that the owner of the Contract IPRs does so on the same basis.
- 3.3 The Supplier shall treat the Specification and all information provided by the Buyer as confidential and shall use any such Specification or information only for the purpose of performing the Purchase Order. Where drawings or other data are issued to the Supplier, the Supplier shall exercise proper custody and control and return or dispose of such in accordance with the Buyer's instructions. This obligation shall not apply to the extent that any such Specification or information is or becomes within public knowledge otherwise than as a result of breach by the Supplier of this clause 3.3.
- 3.4 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

### 4.0 Prices

- 4.1 Unless otherwise stated in the Purchase Order all prices are fixed and include the cost of packing and delivery and all taxes (other than V.A.T). The prices set out in the Purchase Order shall be the full and exclusive remuneration of the Supplier in respect of the performance of any services forming the whole or part of the Goods. Unless otherwise agreed in writing by the Buyer, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the services.

### 5.0 Delivery

- 5.1 The Goods shall be delivered to the address for delivery and on the date or within the period stated in the Purchase Order, between 08:00-1600 hours Mon to Thurs and 08:00-15:30 on Friday on a weekday which is not a Bank Holiday.
- 5.2 If no date for delivery of the Goods or time for performance is specified or such date or time may be specified after acceptance of the Purchase Order, the Buyer may at any time give notice to the Supplier requiring the Supplier to perform the Contract by the time specified in such notice.

### Section 3.0 - Terms & Conditions Of Purchase Clauses (continued...)

- 5.3 The time of delivery of the Goods (and of performance of any services comprised therein) is of the essence of the Contract.
- 5.4 Delivery of the Goods shall be completed on the completion of the unloading of the Goods at the delivery location set out in the Purchase Order (or as otherwise agreed between the parties).
- 5.5 A packing note quoting the number of a Purchase Order must accompany each delivery or consignment of the Goods and must be displayed prominently. If the Buyer is required to return any packaging material for the Goods to the Supplier, this requirement must be clearly stated on the packing note and such material shall only be returned to the Supplier at the cost of the Supplier.
- 5.6 The Goods shall be securely and properly packed in such manner as to enable them to reach their destination in good condition and in a manner acceptable to the Buyer.
- 5.7 If the Goods are to be delivered by installments, the Contract will be treated as a single contract and not severable. The Supplier shall not deliver the Goods in installments without the Buyer's prior written consent.
- 5.8 If the Supplier delivers less than 95% of the quantity of Goods ordered, the Buyer may reject the Goods or, if the Supplier delivery more than 105% of the quantity of Goods ordered, the Buyer may at its sole discretion reject the Goods or the excess Goods, and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and the Buyer accepts the delivery, the Supplier shall make a pro rata adjustment to the invoice for the Goods.
- 5.9 Notwithstanding the provisions of clause 5.1 the Buyer may by notice in writing to the Supplier given at any time before actual delivery of the Goods postpone delivery, in which case the Supplier shall store the Goods at the Suppliers risk.
- 5.10 The Buyer shall be entitled to reject any Goods delivered which are not in accordance with the Contract and shall be deemed not to have accepted any Goods until the Buyer has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.
- 5.11 If Goods are not supplied in accordance with the Contract, then without prejudice to any other remedy to which it shall be entitled whether pursuant to the Conditions or otherwise, the Buyer shall be entitled to terminate the Contract, to be repaid forthwith any price paid for the Goods or to obtain equivalent Goods or rectification from a suitable source, the cost of which shall be reimbursed by the Supplier to the Buyer, and to claim damages for any additional costs, loss or expenses incurred by the Buyer which are in any way attributable to the Supplier's failure to provide Goods in accordance with the Contract.
- 5.12 Where the Goods comprise services to be provided by the Supplier, the Supplier shall:
  - 5.12.1 Co-operate with the Buyer in all matters relating to the Goods and comply with all instructions of the Buyer.
  - 5.12.2 Perform those services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade.
  - 5.12.3 Use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract.
  - 5.12.4 Ensure that the Services will conform with all descriptions, standards and specifications set out in the Specification, and that any Deliverables shall be fit for any purpose that the Buyer expressly or impliedly makes known to the Supplier.
  - 5.12.5 Provide all equipment, tools and vehicles and such other items as are required to provide the Services;
  - 5.12.6 Use the best quality goods, materials, standards and techniques, and ensure that all goods and materials supplied and used in the Services or transferred to the Buyer, will be free from defects in workmanship, installation and design;
  - 5.12.7 Obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
  - 5.12.8 Observe all health and safety rules and regulations and any other security requirements that apply at any of the Buyer's premises;



### Section 3.0 - Terms & Conditions Of Purchase Clauses (continued...)

- 5.12.9 Hold all materials, equipment and tools, drawings, specifications and data supplied by the Buyer to the Supplier (**Buyer Materials**) in safe custody at its own risk, maintain the Buyer Materials in good condition until returned to the Buyer, and not dispose or use the Buyer Materials other than in accordance with the Buyer's written instructions or authorisation; and
- 5.12.10 Not do or omit to do anything which may cause the Buyer to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Buyer may rely or act on the services.
- 5.13 The Buyer's rights and remedies under the Contract are in addition to, and not exclusive of, any rights or remedies implied by statute and common law.

### 6.0 Terms of Payment

- 6.1 The Supplier shall be entitled to invoice the Buyer on or at any time after delivery of all the Goods (or performance of all services comprised therein), and each invoice shall quote the number of the Purchase Order.
- 6.2 Unless otherwise stated in the Purchase Order, the Buyer shall pay the price of the Goods within 30 days after the end of the month of receipt by the Buyer of a proper invoice or, if later, within 30 days after acceptance of the Goods by the Buyer. Any invoice which fails to state clearly the correct reference of the Goods as set out in the relevant Purchase Order shall not be a proper invoice for the purpose of this condition.
- 6.3 The Buyer shall be entitled to set off against the price any liability owed to the Buyer by the Supplier on whatever account whether the liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. Any exercise by the Buyer of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.
- 6.4 Time for payment shall not be of the essence and the Supplier shall not be entitled to suspend or to cancel any delivery by reason of any failure by the Buyer to make any payment (under the Contract or otherwise) on the due date.

### 7.0 Risk and Property

- 7.1 Title and risk in the Goods, including any components thereof and/or raw materials incorporated therein, shall pass to the Buyer upon completion of delivery.
- 7.2 All property of the Buyer (including without limitation the Goods and the Specification) for the time being in the custody or the possession of the Supplier shall be at risk of the Supplier which shall at its own expense insure such property against the risk of loss and/or damage from whatsoever cause and all other usual risks.

### 8.0 Warranties and Liabilities

- 8.1 The Supplier warrants to the Buyer that the Goods are of satisfactory quality, fit for any purpose held out by the Supplier in writing at the time of the Purchase Order, or reasonably to be inferred from the nature of the Goods, are and will for twelve months after delivery be free from defects, whether design, material, workmanship or otherwise, correspond with and relevant Specification or sample, and comply with all statutory requirements including Health and Safety at Work 1974 the Environment Protection Act 1990 and the Control of Substance Harmful to Health (COSHH) Regulations and regulations relating to their manufacture and supply throughout the United Kingdom.
- 8.2 Without prejudice to any other remedy, if the Goods or any of them are not delivered or in the case of services are not performed in accordance with the Contract, the Buyer is entitled to require the Supplier either to repair the Goods or to supply replacement Goods in accordance with the Contract or in the case of services to perform the same by such date as the Buyer shall notify to the Supplier to treat the Contract as discharged by the Supplier's breach and to require immediate repayment of any part of the price which has been paid.
- 8.3 The Supplier shall indemnify the Buyer in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Buyer arising out of or in connection with:

### Section 3.0 - Terms & Conditions Of Purchase Clauses (continued...)

- 8.3.1 Late delivery of, defective workmanship, quality or materials or breach of any warranty given by the Supplier in relation to, the Goods.
- 8.3.2 Any claim made against the Buyer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods, as delivered.
- 8.3.3 Any claim made against the Buyer for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services (excluding the Buyer Materials).
- 8.3.4 Any claim made against the Buyer by a third party arising out of or in connection with the supply of the Goods, as delivered, or services forming part of the Goods.
- 8.3.3 Any liability under the Consumer Protection Act 1987 in respect of the Goods.
- 8.3.4 Any breach of the Contract and any other act or omission of the Supplier or its employees, agents or sub-contracts in supplying, delivering or installing the Goods; and
- 8.3.5 Any failure by the Supplier to comply with all applicable laws in the United Kingdom.
- 8.4 The Supplier represents warrants and undertakes to the Buyer that it has carried out all testing and evaluation and other work necessary to eliminate any risk to health or safety from the use of the Goods and that if it in any circumstances there is or may be any such risk then no later than the delivery of the Goods the Supplier will bring such circumstances to the attention of the Buyer in writing and provide free of charge full and proper information about such circumstances and safeguards to be observed to ensure that the Goods are used safely and without risk to health. Goods which are hazardous must have prominent warning in English on all packing and documents.
- 8.5 The Supplier undertakes to the Buyer that prior to the delivery it will inspect and test the Goods to ensure that they comply in all respects with the Contract and, on request by the Buyer, will free of charge provide a certificate that the Goods comply in all respects with the Contract.
- 8.6 This clause 8 shall survive termination of the Contract.

### 9.0 Inspection and Testing

- 9.1 The Buyer, though such persons as it shall nominate, shall have the right to inspect and test the Goods at the Supplier's premises during manufacture, processing and storage. For the purposes of such inspection and test the Supplier shall, free of charge to the Buyer, afford all reasonable assistance and facilities. Such inspection and testing by the Buyer shall not relieve the Supplier of any obligation to the Buyer to which the Supplier would otherwise be subject shall not create any estoppel in favour of the Supplier against the Buyer.
- 9.2 If as a result of inspection or testing the Buyer is not satisfied that the Goods will comply in all respect with the Contract then, the Buyer shall be entitled within seven days thereafter to terminate the Contract and any monies paid to the supplier by the Buyer and an amount equal to the cost to the Buyer of any material provided to the Supplier by the Buyer will be paid immediately by the Supplier to the Buyer.

### 10.0 Termination

- 10.1 In addition to and without prejudice to the rights conferred on it in clauses 5.11, 9.2 and 11.2 and without affecting any other right available to it, the Buyer shall be entitled at any time to terminate the Contract in whole or in part upon payment to the Supplier of whichever is the lesser of (i) the balance of the amount payable by the Buyer to the Supplier under the Contract and (ii) the aggregate of the amounts already expended by the Supplier in purchasing material specifically for the purpose of and necessary for its performance of the Contract which have not then been incorporated in finished Goods delivered to the Buyer and any unavoidable cancellation costs incurred by the Supplier to third parties in consequence of termination of the Contract after deducting from such aggregate the amount of any savings from which the Supplier will benefit in consequence of such termination.
- 10.2 The Buyer shall be entitled by giving notice in writing to the Supplier to terminate the Contract with immediate effect and without compensation in any of the following events.



### Section 3.0 - Terms & Conditions Of Purchase Clauses (continued...)

- 10.2.1 The Supplier committing any irremediable breach of its obligations under the Contract or any other contract between the Buyer and the Supplier; 10.2.2 The Supplier failing within seven days of written notice requiring it so to do to remedy any remediable breach of its obligations under the Contract or any other contract.
- 10.2.3 The Supplier takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- 10.2.4 The Supplier fails to make progress with the Purchase Order so as to jeopardise the purpose of the Purchase Order.
- 10.2.5 The Supplier's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 10.3 On termination of the Contract, the Supplier shall immediately deliver to the Buyer all Deliverables whether or not then complete and return all Buyer Materials. If the Supplier fails to do so, then the Buyer may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 10.3.1 Termination or expiry of the Contract shall not affect the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 10.3.2 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

### 11.0 General

- 11.1 The Purchase Order is personal to the Supplier and the Supplier shall not assign or transfer or purport to assign or transfer to any of its rights or sub-contract any of its obligations under the Contract.
- 11.2 Failure or delay on the part of the Buyer to exercise any right conferred by the Contract or at law shall not be deemed a waiver of such right nor bar the exercise on enforcement thereof at any time thereafter.
- 11.3 Any notice required or permitted to be given by either party to the other under the Contract shall be in writing addressed to the other party as its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 11.4 The Contract shall be governed by the laws of England. The Supplier submits to the jurisdiction of the English courts.
- 11.5 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision of the Contract is deemed deleted under this clause 11.5 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 11.6 Failure or delay by the Buyer in enforcing or partially enforcing any provision of the Contract by the Supplier shall not be construed as a waiver of any of its rights under the Contract.
- 11.7 Any waiver by the Buyer of any breach of, or any default under, any provision of the Contract by the Supplier shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the contract.
- 11.8 The provisions of the Contracts (Rights of third Parties) Act 1999 are hereby excluded and shall not apply.
- 11.9 The Supplier shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Supplier by the Buyer or its agents and any other confidential information concerning the Buyer's business or its products which the Supplier may obtain and the Supplier shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Supplier's obligations to the Buyer and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality that bind the Supplier

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