

DOSCPSC06 - Purchasing Standard conditions for the Purchase of General Services

**1. DEFINITIONS**

In the Contract (as hereinafter defined) the following words and expressions shall have the meanings hereby assigned to them except where the context otherwise requires:

- 1.1. "Company" means DeepOcean Subsea Cables Limited;
- 1.2. "Contract" means each contract for the supply and purchase of the Services on these Contract Terms comprising the Company's Order issued to the Supplier, these Contract Terms and any other documents specified therein;
- 1.3. "Order" means the Company's purchase order to which these Contract Terms are annexed;
- 1.4. "Price" means the sum to be paid to the Supplier for the supply of the Services in accordance with the schedule of rates set out in the Company's purchase order (which shall remain fixed for the duration of the Contract) and in accordance with the provisions of the Contract;
- 1.5. "Services" means the services described in the Order;
- 1.6. "Supplier" means the person, firm or company which accepts the Company's purchase order.

**2. BASIS OF PURCHASE**

- 2.1. The Company's Order constitutes an offer by the Company to buy the Services subject to these Contract Terms. Any acceptance of an Order by the Supplier or the performance of any of the Services by the Supplier shall be deemed to constitute a contract for the supply of the Services on these Contract Terms.
- 2.2. These Contract Terms shall apply to each Contract to the exclusion of any other terms and conditions.
- 2.3. No variation to an Order or these Contract Terms shall be effective unless agreed in writing by the Company's authorised representative.

**3. SPECIFICATION OF SERVICES**

- 3.1. The quantity, quality and description of the Services to be supplied by the Supplier shall be as specified in the Company's Order.
- 3.2. Any specification produced or supplied by the Company in connection with the Contract shall be the Company's exclusive property.
- 3.3. The Supplier acknowledges that it has made and shall make its own enquiries to satisfy itself as to the accuracy and

adequacy of any information concerning the Services which the Company supply to the Supplier.

**4. VARIATIONS**

- 4.1. The Company may in its reasonable discretion from time to time change any details specified in the Order by giving written instructions to the Supplier. If any such change affects the time of performance of the Services the Company shall make a reasonable adjustment to any programme specified in the Contract and/or to the Price.
- 4.2. The Supplier shall not vary the Services except as directed in writing by the Company or as may be agreed with the Company.

**5. PRICE**

- 5.1. The Price shall be as stated in the Order and, unless otherwise so stated, shall be exclusive of any applicable VAT.
- 5.2. Save as provided for under Clause 4.1 the Price shall be fixed unless otherwise agreed with the Company in the Contract.

**6. INFORMATION**

The Supplier shall provide all information which is reasonably required by the Company to ensure that the Services comply with and that the Company fulfils its obligations under all applicable legislation and industry codes of practice.

**7. PAYMENT**

- 7.1. Unless otherwise stated in the Order, the Supplier shall submit an invoice at the end of each month for all Services provided under the Contract not previously invoiced. The Supplier's invoice shall quote the Company's purchase order number and shall be submitted with supporting documentation. The Supplier's failure to ensure that an invoice with supporting documentation is received by the Company on or before the end of each month may delay such submission until the last day of the following month for payment purposes.
- 7.2. Unless otherwise provided in the Contract, the Company shall effect payment of the Supplier's invoice inclusive of Value Added Tax at the end of the second month following the month of receipt by the Company of a proper invoice or, if later, after acceptance of the Services in question.
- 7.3. Value Added Tax or other taxes relevant to the Services, as applicable, shall be shown separately on all invoices as a strictly net extra charge.
- 7.4. In the event that all or any part of an invoice is reasonably

disputed, the Company shall be entitled to withhold the amount which is disputed pending resolution of such dispute. The Company shall be obliged within 20 days of receipt of the Supplier's invoice to notify the Supplier of the Company's reasons for disputing the invoice or any part thereof. The parties shall in good faith promptly exercise all due diligence in order to resolve said dispute. The Company shall make payment of all items of the invoice other than disputed items.

7.5. The Company may set off against the Price any sums owed by the Supplier to the Company.

## **8. TAXES**

8.1. The Price shall include all taxes and charges that may be imposed or levied in connection with the Services (excluding VAT).

8.2. The Supplier shall be responsible for payment of all taxes and national insurance contributions payable in relation to or by reference to any payments made to or other remuneration received by the Supplier under the Contract.

8.3. The Supplier shall indemnify the Company in full against any and all such taxes (including, without limitation) any PAYE and national insurance contributions (and any interest, fines or penalties thereon) assessed or levied against the Supplier or a subcontractor in the course of the performance of the Services.

## **9. DELIVERY**

9.1. The Supplier shall commence and complete the Services by the date(s) and in accordance with any programme specified in the Contract.

9.2. Time of performance of the Services is of the essence. Notwithstanding this, if for any reason the Company requests performance to be delayed, the Supplier shall agree to such request and the provisions of this term shall apply to any such revised date for performance.

9.3. Performance by instalments is not accepted by the Company unless previously agreed in writing. If Services are to be performed by instalments, the Contract will be treated as a single contract and not severable.

## **10. ACCEPTANCE**

The Company shall be entitled to reject all or any part of the Services performed which are not in accordance with the Contract. The Company shall not be deemed to have accepted the Services by virtue of having required the Supplier to re-perform or replace Services under these Contract Terms.

## **11. SUSPENSION**

The Company may suspend the Services being performed by the Supplier by giving the Supplier written notice and may subsequently notify the Supplier that the Supplier shall resume the provision of Services. In such circumstances the Supplier shall be paid for Services which the Supplier has performed prior to receiving notice of suspension.

## **12. COMPLIANCE**

The Supplier shall comply with all applicable regulations and other legal requirements concerning the performance of the Services.

## **13. HEALTH AND SAFETY**

13.1. The Supplier shall at all times whilst on the Company's premises or on site comply with and procure that the Supplier's employees, agents and sub-contractors comply with all health and safety legislation and with all security and safety regulations and rules from time to time in force on those premises or site.

13.2. The Supplier will perform the Services in accordance with the latest version of the Company's standard Health, Safety and Environmental policies and procedures.

## **14. WARRANTIES**

14.1. The Supplier warrants to the Company that:

14.1.1. the Supplier is fully experienced, qualified, financed and organised to perform the Contract and that the Services will be performed by appropriately trained and qualified personnel in a professional and workmanlike manner with due care and diligence and with the skill to be expected of a person experienced in the types of work to be carried out under the Contract; and

14.1.2. the Supplier will comply with all statutory requirements and regulations relating to the performance of the Services.

## **15. CERTAIN RIGHTS AND REMEDIES ON DEFAULT**

15.1. Each of the Company's rights or remedies is without prejudice to any of the Company's other rights or remedies, whether or not under the Contract.

15.2. If Services are not performed on the due date then the Company shall be entitled to cancel the Order (or any part) without liability and purchase substitute services elsewhere and recover from the Supplier any loss or additional costs incurred.

15.3. If any Services are not supplied or performed in accordance with the Contract, then the Company shall be entitled to:-

15.3.1. require the Company to supply replacement Services in accordance with the Contract within seven days and/or provide additional labour and/or take such other measures as the Company reasonably deems necessary at no cost to the Company; or

15.3.2. whether or not the Company has previously required the Supplier to supply replacement Services, treat the Contract as discharged by the Supplier's breach and require the repayment of any part of the Price already paid.

## 16. INDEMNITY

The Supplier shall indemnify the Company in full against all liabilities, losses, claims, demands, proceedings, damages, costs and expenses awarded against or incurred or paid by the Company as a result of or in connection with:-

- 16.1. breach of any warranty in relation to the Services;
- 16.2. any claim made against the Company in respect of any breach or alleged breach by the Company of any statutory provision, regulation or other rule of law arising from the Supplier's acts or omissions or those of the Supplier's employees, agents or subcontractors;
- 16.3. any act or omission of the Supplier or the Supplier's employees, agents or sub-contractors in performing the Services, including (but not limited to) any injury, loss or damage to persons or to any property caused or contributed to by the Supplier's negligence or breach of duty (statutory or otherwise) and/or the negligence or breach of duty (statutory or otherwise) of the Supplier's employees, agents and/or subcontractors.
- 16.4. breach of any obligation of the Supplier in relation to the Contract.

## 17. INSURANCE

- 17.1. The Supplier shall be responsible for the provision and cost of all insurances to cover the Supplier's risks and liabilities in connection with the Contract.
- 17.2. Unless otherwise specified in writing by the Company the following minimum levels of insurance cover shall be maintained:
  - 17.2.1. employer's liability insurance: not less than £10,000,000 for each and every

incident; and

17.2.2. public liability insurance: written on an occurrence basis: not less than £5,000,000 for each and every claim; and

17.2.3. third party motor insurance: £5,000,000 per occurrence in respect of personal injury and property damage.

17.3. The Supplier shall provide the Company with Certificates of Insurance evidencing cover prior to the commencement of the Services or immediately upon receipt of a request from the Company. All such policies maintained or procured shall contain a waiver of subrogation against the non-insuring party, its Affiliates, the Company's Clients, the Supplier's Sub-Contractors and their respective officers, directors and employees.

## 18. FORCE MAJEURE

Neither party shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its respective obligations if the delay or failure was beyond its reasonable control.

## 19. TERMINATION

- 19.1. The Company shall be entitled to cancel Orders in respect of all or part only of the Services by giving notice to the Supplier at any time prior to performance of the Services without incurring any liability to the Supplier.
- 19.2. The Company shall be entitled to terminate the Contract at any time during performance of the Services by giving not less than seven (7) days notice in writing to the Supplier.
- 19.3. The Company shall be entitled to terminate the Contract without liability to the Supplier and reserving all rights by giving notice to the Supplier at any time if:-
  - 19.3.1. the Supplier is in material breach of any of its obligations and that breach cannot be remedied;
  - 19.3.2. the Supplier is in material breach of any of its obligations and that breach can be remedied but the Supplier fails to do so within 14 days starting on the day after receipt of notice from the Company;
  - 19.3.3. the Supplier commits more than one breach of any of its obligations and the

cumulative effect of such breaches is that the Company reasonably believes that the Supplier will continue to deliver a standard performance over the one month period immediately after the service of notice specified in condition 19.3.2;

19.3.4. the Supplier makes any voluntary arrangement with the Supplier's creditors or becomes subject to an administration order or goes into liquidation or bankruptcy or an encumbrancer takes possession or a receiver is appointed, of any of the Supplier's property or assets; or

19.3.5. the Company reasonably believes that any of the events mentioned above is about to occur and the Company notifies the Supplier accordingly.

19.4. In the event of termination of the Contract by the Company under clause 19.3, the Supplier shall be entitled to recover all monies due for Services satisfactorily completed at the time of such termination.

19.5. In the event of termination of the Contract by the Company under clause 19.2 above, the Supplier shall further be entitled to payment of the Supplier's direct and unavoidable committed costs reasonably incurred as a result of termination.

## **20. CONFIDENTIALITY**

20.1. All information supplied to the Supplier at any time (or which becomes known to the Supplier through performance of the Services under the Contract) is and remains the Company's property and must be returned to the Company on request and shall be regarded as confidential and shall not be disclosed to any third party (except sub-contractors accepting a like obligation of confidentiality and then only to the extent necessary for the performance of the sub-contract).

20.2. The Supplier shall not mention the Company's name in connection with the Contract or disclose the existence of the Contract in any publicity material or other similar communication to third parties without obtaining the Company's prior written consent in writing.

20.3. The obligations under this clause shall remain in force following completion, cancellation or termination of the Contract.

## **21. COMPLIANCE**

### **21.1 Anti-Bribery**

21.1.1 The Supplier shall:

(a) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including the Bribery Act 2010;

(b) not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

(c) have and shall maintain in place throughout the term of this Contract its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the relevant requirements, and will enforce them where appropriate; and

(d) promptly report to Company any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the Services.

21.1.2 The Supplier shall ensure that any person associated with the Supplier who is performing services under or in connection with this 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 Supplier, the relevant terms in clause 21.1.1. The Supplier shall be responsible for the observance and performance by such persons of the relevant terms, and shall be directly liable to Company for any breach by such persons of any of the relevant terms. Any such breach shall be a material breach, and in the case of a breach of clauses 21.1.1(a) or 21.1.1(b) shall be a material breach that is incapable of remedy.

21.1.3 For the purpose of this clause 21.1, the meaning of adequate procedures and whether a person is associated with another person shall be determined in accordance with the Bribery Act 2010 (and any guidance issued under that Act). For the purposes of this clause 21.1, a person associated with the Supplier includes any member of the Supplier group.

### **21.2 Modern Slavery**

21.2.1 The Supplier undertakes, warrants and represents that:

(a) neither it nor any of its officers, employees, agents or subcontractors:

(i) has committed an offence under the Modern

Slavery Act 2015 (an “MSA Offence”);  
or

(ii) has been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or

(iii) is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;

(b) it shall comply with the Modern Slavery Act 2015 and the Modern Slavery Policy; and

(c) it shall notify Company immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of the Supplier’s obligations under clause 21.3. Such notice to set out full details of the circumstances concerning the breach or potential breach of the Supplier’s obligations.

21.2.2 The Supplier shall take all reasonable steps necessary to ensure:

(a) its supply chain complies with the Modern Slavery Act 2015 and the modern slavery policy; and

(b) it has the right to audit the supply chain to ensure such compliance.

21.2.3 The Supplier shall prepare and deliver to Company no later than 28 February each year, an annual statement setting out the steps it has taken to ensure slavery and human trafficking is not taking place in any part of its business or in any of its supply chains.

## **21.3 Data Protection**

21.3.1 Each party shall comply with Data Protection Law as may be applicable from time to time to the shared personal data and the provisions of this clause 21.3 shall not relieve the Supplier of its own responsibilities under Data Protection Law.

21.3.2 Company shall provide the shared personal data to the Supplier. The Supplier shall process shared personal data only for the agreed purpose. The Supplier shall not process shared personal data in a way that is incompatible with the agreed purpose.

21.3.3 Each party agrees that it shall:

(a) assess the level of security appropriate to the processing in the context of its obligations under Data Protection Law; and

(b) implement all such appropriate technical and organisational measures to protect against unauthorised or unlawful processing and against accidental loss, destruction or damage to shared personal data.

21.3.4 The Supplier shall indemnify Company in full for any and all costs, losses, damages, expenses and liabilities suffered by Company as a result of the Supplier’s failure to comply with the terms of this clause 21.3 and/or any Data Protection Law.

## **21.4 Material Breach**

Any breach of clauses 21.1, 21.2, or 21.3 by the Supplier shall be deemed a material breach of the Contract that is not capable of remedy and shall entitle Company to terminate the Contract with immediate effect

## **22. GENERAL**

22.1. The Company has the right to assign the Contract.

22.2. Orders are personal to the Supplier and the Supplier shall not transfer, assign, charge, dispose of or deal in any manner or purport to do the same with any of the Supplier’s rights or beneficial interests without the Company’s prior consent which shall not be unreasonably withheld.

22.3. The Supplier shall not sub-contract any of the Supplier’s obligations under the Contract without the Company’s prior consent which shall not be unreasonably withheld.

22.4. The relationship between the Supplier and the Company shall not be deemed to be that of agent and principal.

22.5. Nothing in the Contract shall be construed as establishing the Supplier or any of the Supplier’s employees as the Company’s employee or as an employee of the Company’s client. Nothing in this Agreement shall create a partnership, agency or joint venture between the Company and the Supplier.

22.6. The Supplier has and shall continue to have in place an established, documented and maintained Quality Assurance system which is based on, or meets the requirements of, the ISO 9000 series of standards.

22.7. Any notice to be given by either party to the other under these Contract Terms must be in writing addressed to that other party at its registered office or principal place of business or such other address as may have been notified

for these purposes.

- 22.8. Any waiver by the Company of any breach is not a waiver of any subsequent breach.
- 22.9. Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract is not a waiver of any of the Company's rights.
- 22.10. If any provision of these conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the remainder shall not be affected.
- 22.11. The Contract does not create, confer or purport to confer any benefit or right enforceable by any person not a party to it by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 22.12. The Contract shall be subject to English law and to the exclusive jurisdiction of the English courts.