



KONGSBERG

## **General Conditions for Major Purchases**

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## 1. GENERAL

- 1.1 These General Conditions for Major Purchases (“**General Conditions**”) shall apply unless otherwise agreed In Writing between the Parties.
- 1.2 SELLER’s general terms and conditions, exceptions, qualifications, or other terms and conditions shall not apply, unless explicitly accepted In Writing by BUYER.

## 2. DEFINITIONS

“**SELLER**” shall mean the company or person stated as such in the Purchase Order.

“**BUYER**” shall mean the company stated as such in the Purchase Order.

“**Party**” shall mean either SELLER or BUYER.

“**Parties**” shall mean both SELLER and BUYER.

“**Contract**” shall mean the written contract between the Parties for the performance of the Work by SELLER, consisting of these General Conditions and any other Contract Documents.

“**Contract Document**” shall mean any document explicitly made part of the Contract.

“**Work**” shall mean all supplies and services to be performed by SELLER for BUYER under the Contract.

“**Scope of Work**” shall mean the portion of the Work to be performed by SELLER. The Scope of Work may be included in the Purchase Order or in any other of the Contract Documents.

“**Specifications**” shall mean the specification of the Work, including but not limited to quality, design, and construction. The Specifications may be included in the Purchase Order or in any other of the Contract Documents.

“**Delivery Schedule**” shall mean the schedule which specifies the time for delivery, performance, partial performance or Completion, as applicable. The Delivery Schedule may be included in the Purchase Order or in any other Contract Document.

“**Completion**” shall mean when the Work has been performed in full, together with delivery of all applicable documentation, drawings, models, instructions, descriptions, handbooks, and manuals necessary for correct installation, operation, maintenance, and use of the Work, as specified in a Contractual Documentation Requirements List (“**CDRL**”) or any other Contract Document.

“**Purchase Order**” shall mean a request for the performance of the Work, issued In Writing.

“**Order Confirmation**” shall mean a document issued by SELLER In Writing using BUYER’s form as attached to the Purchase Order, in which SELLER declares and undertakes to perform the requested Work according to the Contract.

“**Purchase Order Price**” shall mean the total price specified in the Purchase Order which is subject to adjustment in accordance with Article 7 only and which shall constitute full compensation to SELLER for the Work, including all costs, expenses, taxes (excluding VAT) unless otherwise is explicitly stated in a Contract Document, duties, fees or charges of any kind incurred by or levied on SELLER related to the performance of the Purchase Order and the provision by SELLER of the Work.

“**Day**” shall mean calendar day.

“**Force Majeure**” shall mean an occurrence beyond the control of the Party affected impeding the performance of its obligations under the Contract, provided that such occurrence could not have been reasonably foreseen at the time of entering into the Contract and that the Party affected could not reasonably have avoided or overcome it or its consequences, including but not limited to, act of God, act of public enemy, war, blockage, strike on a national level, riot, lightning, fire, storm, flood, explosion, and Government restriction.

“**In Writing**” shall mean a document signed by BUYER and/or SELLER and submitted to the other Party either by hand, courier service, letter, fax, or pdf-attachment to an e-mail.

“**Open Source**” shall mean any software, which is subject to license terms and conditions currently listed at <http://opensource.org/licenses/> or meeting the criteria listed at <http://opensource.org/docs/definition.php> or which is subject to any similar free or open source license terms.

“**Intellectual Property**” shall mean all work of authorship, procedures, designs, patented and unpatented inventions and discoveries, mask works, drawings, specifications, plans of operation, technical documentation, samples, models, tools, test equipment, copyrighted works, registered and unregistered trademarks, trade secrets, know-how, and proprietary information, in all formats, languages, and versions.

“**Intellectual Property Rights**” shall mean all right, title, and interest in or to any Intellectual Property, in all territories, under all applicable bodies of law (including, without limitation, under the laws of copyright, patent, trademark, trade usage, and trade secrets), and all applications, registrations, renewals, extensions, restorations, and resuscitations relating to any of the foregoing.

“**Proprietary Information**” shall mean all technological, financial, commercial, or other information or data of a proprietary or confidential nature in any form or format (e.g. written, electronic, visual, oral, or otherwise).

### **3. PURCHASE ORDER**

- 3.1 The Purchase Order to which these General Conditions apply is BUYER’s offer and shall become a Contract only upon full and unconditional acceptance by SELLER and in strict accordance with these General Conditions.
- 3.2 SELLER shall within seven (7) Days after receipt of a Purchase Order return the Order Confirmation to BUYER. SELLER can only reject the Purchase Order if it deviates from what is agreed with BUYER. SELLER shall be bound by the Purchase Order upon actual adherence thereto, but if SELLER fails to return an Order Confirmation to BUYER within the time specified herein, together with any extensions that may be granted by BUYER in its sole discretion, or if the Order Confirmation returned by SELLER to BUYER does not comply with the Purchase Order, these General Conditions or what is otherwise agreed with BUYER, BUYER reserves the right to cancel the Purchase Order without cost and/or obligation.
- 3.3 The contact person(s) designated by BUYER in the Purchase Order or otherwise In Writing by BUYER is/are the point(s)-of-contact for SELLER during the execution of the Contract, and all communication and documents relating to the Contract that are required to be transmitted In Writing to BUYER shall be addressed to BUYER and specifically addressed to attention of such point-of-contact(s).

### **4. PURCHASE ORDER PRICE**

- 4.1 Unless otherwise specified in the Contract, the Purchase Order Price shall be firm-fixed.
- 4.2 If the Purchase Order Price is not stated in the Purchase Order, SELLER shall state its proposed price, in accordance with the prices incorporated or otherwise identified in the Contract Documents, if any, for the Purchase Order in its Order Confirmation. Under these circumstances BUYER reserves the right to accept or reject the Purchase Order Price proposed by SELLER and reserves the right to cancel the Purchase Order without cost and/or obligation.

### **5. THE WORK**

- 5.1 SELLER shall perform the Work:
  - (i) in conformity with the Delivery Schedule; and

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- (ii) in conformity with the Scope of Work; and
  - (iii) in conformity with the Specifications; and
  - (iv) in accordance with best industry practices and standards; and
  - (v) to achieve fitness for purpose to the extent that a particular purpose is either expressly or by implication specified in any of the Contract Documents; and
  - (vi) in accordance with SELLER's quality assurance system, unless otherwise required by BUYER in any of the Contract Documents; and
  - (vii) in compliance with all applicable laws and regulations pertaining to the performance and delivery of the Work; and
  - (viii) in a safe and secure manner with active regard to and in compliance with all of SELLER's national health, environmental and safety laws, regulations, and instructions.
- 5.2 SELLER shall continuously monitor the availability of components and resources necessary for the performance of the Work. If SELLER becomes aware of a potential change in the availability of components or resources, SELLER shall immediately notify BUYER In Writing of such change. Without prejudice to SELLER's obligations to perform as originally agreed under the Contract, SELLER shall immediately present to BUYER a plan for how to resolve the issue. BUYER reserves the right, in its sole discretion, to decide how the issue shall be resolved.
- 5.3 The Candidate List of Substances of Very High Concern for Authorisation (the "Candidate List") is defined under the Regulation EC 1907/2006 of the European Parliament. SELLER is required to monitor the Candidate List on a regular basis and provide to BUYER information on new Substances of Very High Concern as they are added, if it applies to the Work. The current Candidate List can be found on the European Chemicals Agency (ECHA) website available at: <http://echa.europa.eu/web/guest/candidate-list-table>. If the Work contain substances found in the list, SELLER agrees to provide, at no additional cost to BUYER, information regarding identified substances name, amount contained by weight, total part weight and safe usage information. BUYER has the right to share all such information with BUYER's customer or any other relevant third party.

## 6. RELIANCE

- 6.1 SELLER represents and warrants that it is an expert fully competent in all phases of performing the Work, and SELLER agrees that BUYER is relying on such representation and warranty by SELLER.
- 6.2 SELLER shall not be relieved of any of its contractual obligations on the grounds that BUYER approved any specification, plan, or other documentation prepared by SELLER, or that BUYER provided recommendations or assistance in any phase of the Work.
- 6.3 In order to ensure successful performance of the Work, SELLER shall as an expert make good faith review of all Specifications, requirements, designs, tools, models, technical data, or other documentation when such is provided by BUYER to SELLER. SELLER shall forthwith notify BUYER In Writing of any missing documentation, deficiencies, discrepancies, or concerns that SELLER identifies in connection herewith.

## 7. CHANGES

- 7.1 BUYER may In Writing, at any time, instruct changes to the Delivery Schedule, Scope of Work, or Specifications of the Work required by the Contract ("**Change Order**").
- 7.2 If any Change Order causes an increase in the cost and/or time required for SELLER's performance of the Contract, SELLER may request an equitable adjustment to the Purchase Order Price and/or Delivery Schedule. Any such request for equitable adjustment must be submitted to BUYER In Writing within fourteen (14) Days, unless otherwise extended by BUYER In Writing, following

receipt of a Change Order to retain its validity. SELLER's request for equitable adjustment must identify the actions SELLER shall undertake to implement the change and identify and document the adjustments to the Purchase Order Price and/or the Delivery Schedule to which SELLER considers it is entitled as a result of the change.

- 7.3 Unless otherwise agreed upon between the Parties, the adjustment to the Purchase Order Price shall be determined on the basis of the following principles:
- (i) by the application of the unit prices and/or rates set forth in the Contract; or
  - (ii) if the Contract does not contain prices applicable to a specific change, suitable adjustment shall be agreed upon reflecting the general level of pricing prescribed in the Contract.
- 7.4 SELLER shall without undue delay implement a Change Order when it has been received, even if the Parties have not reached a final agreement on the adjustment to the Purchase Order Price and/or the Delivery Schedule. Until the Parties have reached an agreement, BUYER shall pay to SELLER the undisputed amount.
- 7.5 If SELLER considers that any statement or conduct of BUYER constitutes or orders a change to the Contract, SELLER shall In Writing identify the nature of such statement or conduct and the manner in which SELLER's performance of the Work is considered by SELLER to be changed. Failure to issue such a notice to BUYER within fourteen (14) Days shall have the effect that SELLER's performance is not subject to an adjustment to the Purchase Order Price and/or Delivery Schedule. If BUYER agrees that such statement or conduct constitutes a change, BUYER shall without undue delay issue a Change Order. If BUYER does not agree that such statement or conduct constitutes a change but is actually a current requirement of the Contract, SELLER shall diligently proceed with the Work as directed by BUYER.
- 7.6 Disputes under this Article 7 which is not amicably resolved must be brought for the arbitration court in accordance with Article 31 within six (6) months, to retain its validity, from the claim for adjustment of the Purchase Order Price and/or the Delivery Schedule was first raised. Failure to comply herewith shall have the effect that SELLER's performance is not subject to an adjustment to the Purchase Order Price and/or Delivery Schedule.

## **8. PLANNING AND PROGRESS REPORTING**

- 8.1 SELLER shall in a format acceptable to BUYER provide a plan showing how SELLER will achieve timely Completion ("**Progress Plan**"). The Progress Plan shall include all relevant milestones and activities such as engineering completed, receipt of main materials, manufacturing, inspection points, testing, documentation, and transportation.
- 8.2 SELLER shall in a format acceptable to BUYER provide monthly progress reports. The progress reports shall demonstrate SELLER's adherence to the Progress Plan, and the actual status of the Work. Any deviations from the Progress Plan shall immediately be reported to BUYER by SELLER In Writing. If SELLER at any time anticipates or realises that performance of the Work will be delayed, SELLER shall immediately notify BUYER In Writing, specifying the reason for the delay and the measures to be taken to avoid or overcome the delay.
- 8.3 Unless otherwise agreed In Writing, SELLER shall not be entitled to deliver larger quantities than specified or in advance of the originally agreed Delivery Schedule.

## **9. DELAYED PERFORMANCE OF THE WORK**

- 9.1 SELLER is in delay if performance of the Work not achieved in accordance with the Delivery Schedule.
- 9.2 In case of delay, BUYER shall be entitled to liquidated damages amounting to five-tenths of one per cent (0.5%) of the total Purchase Order Price for each Day of delay. If only part of the Work is

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delayed, the liquidated damages shall be calculated on the basis of the price of the Work which cannot be used as intended due to the delay. In no event shall the liquidated damages exceed twenty per cent (20%) of the total Purchase Order Price.

- 9.3 Liquidated damages hereunder shall be BUYER's sole monetary remedy in the event of delay on part of the SELLER except for termination for default under Article 12 and except for gross negligence or wilful misconduct on part of SELLER. If the delay is caused by gross negligence or wilful misconduct on part of SELLER, BUYER may claim damages for actual losses in excess of the liquidated damages.

## **10. FORCE MAJEURE**

- 10.1 Either Party shall be entitled to suspend performance of its obligations under the Contract for reasons of Force Majeure.
- 10.2 The affected Party shall notify the other Party In Writing as soon as it becomes aware of any potential or actual Force Majeure event, and shall without undue delay provide sufficient documentation that the affected Party could not reasonably have avoided or overcome it or its consequences.
- 10.3 If performance of the Contract has been suspended under this Article 10 for more than six (6) months, either Party shall be entitled to terminate the Contract by notice In Writing to the other Party, and BUYER shall make payment for the part of the Work that has reached Completion.

## **11. TERMINATION FOR CONVENIENCE**

- 11.1 BUYER may at any time and for any reason (whether SELLER is in default or not) terminate the unperformed parts of the Contract in whole or in part by notice In Writing to SELLER, specifying the part of the Work to be terminated and the effective date of the termination.
- 11.2 SELLER shall immediately cease all further performance of the Work, and make its best efforts to cancel all subcontracts in the most cost effective manner and provide documentation to BUYER hereof.
- 11.3 SELLER shall promptly make delivery of any part of the Work (regardless of its state of progress) which is not already delivered at the date of termination if so requested by BUYER.
- 11.4 In addition to any payment due to SELLER for Work already delivered by SELLER, BUYER shall also make payment for the part of the Work delivered according to Article 11.3. Furthermore, BUYER shall subject to the terms of Article 11.2 make payment of unavoidable and documented direct costs incurred on part of SELLER relating to the terminated part of the Work.

## **12. TERMINATION FOR DEFAULT**

- 12.1 BUYER shall be entitled to terminate the Contract, or any part of the Work thereof, for default with immediate effect by notice In Writing to SELLER in the following circumstances:
- (i) SELLER fails to reach Completion within the time specified in the Contract, or fails to perform any of its other obligations under the Contract, or fails to make progress so as to endanger the performance of the Contract, and, in either case, fails to remedy and cure such failure within thirty (30) Days after SELLER's receipt of written notice specifying the failure; or
  - (ii) SELLER suspends its business, or becomes the subject of bankruptcy, insolvency, liquidation, winding-up, receivership or analogous proceedings or events, or there are otherwise reasonable grounds to assume the occurrence of such events.

- 12.2 SELLER shall diligently proceed with the performance of the Work not terminated by BUYER.
- 12.3 BUYER shall in case of termination for default be entitled to return the terminated part of the Work and to reclaim all corresponding payments made of the Purchase Order Price. In addition, BUYER shall be entitled to compensation for the documented direct costs and expenses, hereunder any excess procurement costs, resulting from the termination, subject to the limitations of liability of Article 22.

### **13. REJECTION**

- 13.1 If SELLER delivers non-conforming Work, BUYER has the right to reject such Work. BUYER shall notify SELLER of such non-conformance and rejection, and BUYER shall at its sole discretion require SELLER, at SELLER's cost and expense to correct and replace the Work promptly.
- 13.2 If the re-delivered Work by SELLER still is non-conforming, then BUYER may return the Work to SELLER for credit or refund, and obtain replacement work at the account of SELLER from another source.
- 13.3 SELLER shall not re-deliver corrected or rejected Work without disclosing to BUYER the former rejection or requirement for correction. SELLER shall disclose any corrective action taken. Repair, replacement and other correction and re-delivery shall be completed within the original delivery schedule or such later time as BUYER may reasonably direct.
- 13.4 All direct costs and expenses incurred as a result of or in connection with non-conformance and repair, replacement, or other correction may be recovered from SELLER by equitable price reduction or credit against any amounts that may be owed to SELLER under the Contract or otherwise.

### **14. PASSING OF TITLE AND RISK**

- 14.1 Title shall pass to BUYER upon delivery according to the agreed trade term (INCOTERMS 2010). Unless otherwise stated in the Purchase Order or any Contract Document, terms of delivery shall be FCA SELLER's premises. If SELLER shall install, implement, integrate, or commission the Work or parts thereof, passing of risk shall however remain with SELLER until Completion.

### **15. PAYMENT AND GUARANTEES**

- 15.1 SELLER's invoices shall be issued according to the Purchase Order.
- 15.2 Unless otherwise specified, invoices may not be issued before actual delivery and Completion of the Work. Payment shall be made against correct invoice(s) sixty (60) Days after receipt of invoice. BUYER reserves the right to make setoff against payments due or at issue under the Contract or any other contract with SELLER. All payments shall be made by wire transfer to a bank account in SELLER's country.
- 15.3 No payment made by BUYER shall relieve SELLER from its obligations under the Contract, or be construed as a waiver of any of BUYER's rights under the Contract, or be regarded as constituting acceptance by BUYER of the Work.
- 15.4 If advance payments are agreed upon, SELLER shall, at no additional cost to BUYER, within thirty (30) Days following request In Writing from BUYER provide a simple on demand guarantee issued by a bank and in a format acceptable to BUYER for a corresponding amount valid until Completion.
- 15.5 SELLER shall at no additional cost to BUYER, within thirty (30) Days following request In Writing from BUYER, provide a simple on demand performance guarantee or parent company guarantee (at BUYER's sole discretion) in a format acceptable to BUYER as security for the correct performance of the Work and the warranty obligations. The performance guarantee shall be effective until all SELLER's warranty obligations have been successfully performed. The performance guarantee shall be limited to an amount equal to the total Purchase Order Price.



## 16. WARRANTY

- 16.1 SELLER warrants that the Work conforms to the Specifications and other requirements of the Contract, and that the Work shall be free from defects in design, material, and workmanship. SELLER's design warranty shall not apply to Work performed by SELLER pursuant to detailed designs developed, furnished, or provided by BUYER to SELLER.
- 16.2 The warranty period shall commence upon transfer of title to BUYER and remain in effect until twenty-four (24) months after Completion of the Work (the "**Warranty Period**").
- 16.3 BUYER's warranty claims shall be presented at the latest thirty (30) Days following the expiry of the Warranty Period.
- 16.4 If any non-conformity or defect in the Work or parts thereof appears within the Warranty Period, SELLER shall at its own cost and risk without undue delay, repair, rectify, replace, or re-perform the Work, after consultation with BUYER or subject to BUYER's instructions. SELLER shall reimburse BUYER all reasonable direct costs and expenses in connection with remedy of defects or non-conforming Work. Return of defective or non-conforming Work and transportation of replacement Work shall be at SELLER's cost and risk.
- 16.5 If SELLER does not timely comply with its obligations to repair, rectify, replace, or re-perform the Work, or if BUYER has reason to believe that SELLER for any reason will not comply herewith, BUYER may at its own discretion elect to repair, rectify, replace, or re-perform the Work either itself or by a third party, and SELLER shall reimburse BUYER all reasonable direct costs and expenses resulting there from.
- 16.6 Repaired, rectified, replaced, or re-performed parts of the Work shall be subject to the same warranty obligations as for the original Work, starting from the date of successful repair, rectification, replacement, or re-performance of the Work.
- 16.7 If a systematic non-conformity or defect in the Work or parts thereof appears within the applicable warranty period or thirty six (36) months thereafter, SELLER shall, at its own cost and risk, upon BUYER's notice In Writing repair, rectify, replace, or re-perform all such non-conformities or defects concerning all Work performed or to be performed by SELLER. In case a systematic non-conformity or defect affects similar work which SELLER has already performed to BUYER under a prior contract or agreement, the same obligation to repair, rectify, replace, or re-perform, at SELLER's own costs and risk, shall apply to such work, provided however that such work was performed by SELLER no earlier than five (5) years before BUYER's warranty claim was presented to SELLER. A systematic non-conformity or defect shall be deemed to exist where failures occurs or may occur with a frequency, pattern, or sameness to indicate a logical regularity of occurrence.
- 16.8 SELLER's warranty for latent non-conformities or defects shall extend for a period of five (5) years from Completion of the Work.
- 16.9 SELLER's obligation to repair, rectify, replace or re-perform the Work under this Article 16 shall not be subject to the limitation of liability provisions of Article 22.
- 16.10 Notwithstanding the provisions of this Article 16, in the event that SELLER's warranty rights granted by SELLER's suppliers are exceeding of the rights granted to BUYER pursuant to this Article 16, then SELLER shall extend BUYER's warranty rights accordingly.

## 17. INDEMNITIES

- 17.1 Except for gross negligent or wilful acts or omissions on part of BUYER, SELLER shall indemnify and hold harmless BUYER, its affiliated entities, BUYER's subcontractors, their respective agents, and employees thereof from and against all claims, damages, losses, and expenses in respect of:
- (i) bodily injury, sickness, diseases, or death of any employee of SELLER; and

- (ii) loss of or damage to the property of SELLER; and
- (iii) bodily injury, sickness, diseases, or death, and loss of or damage to the property of any third party, caused by SELLER;

arising from or related to the performance of the Contract.

17.2 Except for gross negligent or wilful acts or omissions on part of SELLER, BUYER shall indemnify and hold harmless SELLER, its affiliated entities, SELLER's subcontractors, their respective agents, and employees thereof from and against all claims, damages, losses, and expenses in respect of:

- (i) bodily injury, sickness, diseases, or death of any employee of BUYER; and
- (ii) loss of or damage to the property of BUYER; and
- (iii) bodily injury, sickness, diseases, or death and loss of or damage to the property of any third party, caused by BUYER;

arising from or related to the performance of the Contract.

## 18. INTELLECTUAL PROPERTY

18.1 The Parties shall retain all rights, title, and interest in or to all their respective Intellectual Property owned, develop, conceived, acquired, or obtained prior to the Contract (hereinafter referred to as "**Background IP**").

18.2 Intellectual Property developed, conceived, acquired or obtained by SELLER as part of the Work during the performance of the Contract (hereinafter referred to as "**Foreground IP**") shall be regarded as the sole Intellectual Property of BUYER unless otherwise explicitly stated in the Contract.

18.3 Notwithstanding the foregoing, BUYER shall always have the right to exploit the Work by way of a non-exclusive, irrevocable, world-wide, perpetual, royalty free right to use, amend, further develop and make any sale, transfer, assignment, sublicense, distribution, incorporation or other commercial disposal of the Work in the course of its business operations.

18.4 All derivative work made by BUYER based on the Work provided by SELLER to BUYER shall be regarded as the sole Intellectual Property of BUYER.

## 19. TOOLS, MODELS AND BUYER FURNISHED PROPERTY

19.1 Unless otherwise stated in the Contract, SELLER is responsible for the procurement of necessary tools and models at its own cost and expense.

19.2 Tools and models which by agreement shall be paid for by BUYER shall be the sole property of BUYER. Such tools and models shall be used exclusively by SELLER for the performance of the Contract. SELLER shall clearly mark all such tools and models to show its ownership.

19.3 BUYER may provide SELLER with equipment, material, or any other property owned by either BUYER or a third party ("**Buyer Furnished Property**"). Buyer Furnished Property shall be used exclusively by SELLER for the performance of the Contract. Title to Buyer Furnished Property shall remain with its rightful owner. Without cost to BUYER, SELLER shall clearly mark (if not so marked) all Buyer Furnished Property to show its ownership, and maintain adequate control records, and SELLER shall manage, maintain, and preserve Buyer Furnished Property in accordance with good commercial practice.

19.4 When the Contract is completed or otherwise terminated, BUYER has the right to regain or take possession of any such tools, models and Buyer Furnished Property, or otherwise to freely have them at its disposal.

19.5 Notwithstanding the provisions of Article 22, SELLER shall be solely responsible for loss of or damage to any such tools, models and Buyer Furnished Property in SELLER's possession or custody, and shall at BUYER's instruction promptly replace at its own cost and expense any such tools, models and Buyer Furnished Property, or to refund its value.

## **20. THIRD PARTIES' RIGHTS**

20.1 SELLER shall hold harmless, defend, and indemnify BUYER against any claim alleging that any part of the Work infringes any third party Intellectual Property Rights. SELLER's obligation to hold harmless, defend, and indemnify BUYER shall not apply to Work performed by SELLER pursuant to detailed designs developed, furnished, or provided by BUYER to SELLER.

20.2 In case of such claim of infringement from a third party, SELLER shall at its own cost either:

- (i) arrange a settlement granting BUYER the right to use the Work; or
- (ii) change or amend the Work so that the alleged infringement ceases, provided that the change is such that it may reasonably be accepted by BUYER; or
- (iii) replace the Work by similar or interchangeable work which does not infringe any third party Intellectual Property Rights, provided that the replacement is such that it may reasonably be accepted by BUYER.

20.3 SELLER warrants that the Work is free from any liens, attachments, charges, encumbrances, claims, or the like, and undertakes to hold harmless, defend, and indemnify BUYER from and against any claims related thereto.

## **21. OPEN SOURCE**

21.1 SELLER warrants that no part of the Work include, is integrated, bundled or linked with any software that is based upon Open Source. No deviation from this warranty shall be regarded as validly accepted by BUYER; unless and to the extent SELLER:

- (i) explicitly and conspicuously has listed any and all Open Source based software with a brief description of their function separately; and
- (ii) duly provided BUYER with this information In Writing together with correct versions of all relevant license terms and conditions; and
- (iii) thereafter obtained an explicit complete and corresponding acceptance for the deviation In Writing from an authorised BUYER representative, included as part of each relevant Purchase Order from BUYER where such a deviation is regarded as made.

21.2 SELLER shall hold harmless, defend and indemnify BUYER from and against any claims, costs, losses and damages resulting from a breach of this warranty.

## **22. LIMITATION OF LIABILITY**

22.1 Except for gross negligent or wilful acts or omissions on either Party, their employees, subcontractors, or representatives, neither SELLER nor BUYER shall be liable to the other for any loss of profit, loss of use, loss of production, loss of contracts, attorney's fees, or for any indirect, consequential or special damages whatsoever that may be suffered by the other.

22.2 Except for gross negligent or wilful acts or omissions on either Party, their employees, subcontractors, or representatives, the total cumulative liability to the other Party whether in contract or tort shall be limited to the amount of the total Purchase Order Price.

22.3 For avoidance of doubt, the limitation provisions of this Article 22 shall not apply to the indemnity provisions of Articles 17, 20, and 21.

## **23. INSURANCE**

23.1 SELLER shall maintain at its own cost and expense all necessary insurances required for and adapted to SELLER's operations for the performance of the Work or which is otherwise proper in connection with the Contract. SELLER shall ensure that the insurance company waives all rights of subrogation against BUYER. Whenever requested by BUYER, SELLER shall provide insurance certificates which documents that the insurance requirements are fulfilled.

## **24. PUBLICITY AND CONFIDENTIALITY**

24.1 Unless and to the extent required by mandatory laws and regulations, SELLER shall not publicize the Contract or the subject matter thereof in whole or in part without the prior written consent of BUYER.

24.2 The following provisions shall apply if and to the extent it does not contradict the provisions of any applicable confidentiality agreement or similar agreement between the Parties:

- (i) The receiving Party shall treat as confidential and shall not disclose Proprietary Information received from the disclosing Party to any third party, and shall restrict access to such Proprietary Information to those of its employees who have a need-to-know the same to perform the Work in support of the Contract.
- (ii) Proprietary Information received from the disclosing Party shall remain the property of the disclosing Party, and shall be promptly returned to the disclosing Party together with any copies made thereof, upon the disclosing Party's demand In Writing, when the Contract is completed or otherwise terminated.
- (iii) The duty of confidentiality does not apply to Proprietary Information which the receiving Party can prove by documentary evidence:
  - a. is already known to the receiving Party at the time of disclosure, free from any obligations to hold such information in confidence; or
  - b. is independently developed by the receiving Party; or
  - c. has become publicly known through no improper act by or on behalf of the receiving Party; or
  - d. is rightfully received from a third party without restrictions; or
  - e. is approved for release or use by the disclosing Party's prior authorization In Writing.
- (iv) The provisions of this Article 24.2 shall survive the completion or termination of the Contract for a period of ten (10) years.

## **25. AUDIT RIGHTS**

25.1 Subject to any restrictions placed upon SELLER in accordance with Articles 28 and 29, BUYER, its customer, and any representative appointed by them shall at any time, at no extra cost or expense, during normal working hours have the right to:

- (i) for a period of five (5) years following Completion of the Work hereunder, audit SELLER's and its subcontractors' financial records relating to any performance of Work that was performed on a cost-reimbursable basis; and
- (ii) for the duration of the Contract, visit SELLER's and its subcontractors' premises for the purpose of: (a) conducting technical audits, testing and inspections; or (b) conducting quality

assurance audits, testing and inspections; or (c) verifying that the Work is compliant with the Specifications and other requirements of the Contract.

- 25.2 No audits, tests, inspections, or supervisions shall exempt SELLER from its performance obligations under the Contract. Neither BUYER's rights nor SELLER's obligations are in any way diminished if BUYER does not carry out such audits, tests, inspections, or supervisions.
- 25.3 SELLER shall reasonably assist BUYER when such audits, tests, inspections, or supervisions are requested, and SELLER shall place the necessary test equipment and suitable work-area at the disposal of the inspectors at no extra cost or expense to BUYER.

## **26. OFFSET CREDIT/COOPERATION**

- 26.1 All offset or counter trade credit value resulting from the Contract shall accrue solely to the benefit of BUYER. BUYER shall, to the exclusion of all others, be entitled to all domestic and foreign offset credits, or other similar benefits, which may result from the Contract. Under no circumstance can SELLER use these credits/benefits towards any other entities than BUYER. BUYER reserves exclusive right to apply the value of foreign content in the Work to the offset program of choice.
- 26.2 SELLER shall at no extra cost or expense to BUYER diligently assist BUYER in the fulfilment of any foreign offset and counter trade obligations on BUYER. Such assistance may include, but is not limited to, providing BUYER with the necessary documentation to claim offset domestically and internationally. Upon request In Writing, SELLER shall provide information to BUYER of the countries of origin and percentages of foreign content of the Work. For the purpose of fulfilling BUYER's offset requirements, SELLER may be requested to provide further required information, including identification of suppliers, contact person, and price of the foreign content of the Work. Such detailed information shall be used by BUYER for the sole and exclusive purpose of fulfilling BUYER's offset requirements.

## **27. SUPPLIER CONDUCT PRINCIPLES**

- 27.1 SELLER commits itself to conduct its business activities in a fair, honest, responsible, ethical, and lawful manner and in strict adherence to all applicable laws and regulations governing the ethical and legal conduct of business organizations.
- 27.2 SELLER has been provided a copy of the Supplier Conduct Principles of Kongsberg Gruppen ASA (KOG-DIR-0038) or has been informed that these Supplier Conduct Principles are available at [www.kongsberg.com](http://www.kongsberg.com). The Supplier Conduct Principles shall form an integral part of the Contract, and SELLER is expected to comply with or actively pursue compliance with these principles.
- 27.3 SELLER shall always be obliged to:
- (i) document compliance with the requirements set forth above; and
  - (ii) allow BUYER, BUYER's customer, or a third party appointed by BUYER or BUYER's customer the right to conduct such audits as it finds necessary to verify compliance with the requirements of this Article 27. For the avoidance of doubt the audit rights shall include:
    - a. unrestricted access to all production sites and premises; and
    - b. the right to communicate with and interview employees and other personnel; and
    - c. the right to review pertinent documentation or any other relevant material.

SELLER shall ensure that any of SELLER's lower tier suppliers may also be subject to such audits as described above.

The Parties shall carry their own costs incurred in relation to performance of such documentation and audit.

## **28. EXPORT CONTROL**

- 28.1 SELLER shall properly notify BUYER of the applicable classification(s) of the Work and if any part of the Work is subject to export control laws or regulations or similar applicable restrictions such as transit/transport restrictions.
- 28.2 Regardless of any agreed trade term, SELLER shall always be responsible for obtaining and maintaining required export licenses for exporting and transporting the Work to BUYER. If any documentation is required from BUYER, BUYER shall reasonably assist obtaining such documentation.
- 28.3 SELLER is responsible for obtaining and maintaining required import and export licenses relevant to its lower tier suppliers. If any documentation is required from BUYER, BUYER shall reasonably assist obtaining such documentation.
- 28.4 If any documentation is required from SELLER or SELLER's lower tier suppliers, for BUYER to obtain export licenses or the like, SELLER shall reasonably assist BUYER in obtaining such documentation.

## **29. COMPLIANCE WITH LAWS AND REGULATIONS**

- 29.1 Either Party shall comply with all applicable mandatory laws or regulations which affect their rights and obligations under the Contract.
- 29.2 The Parties agree that should any provision of the Contract violate any applicable mandatory laws or regulations, such provision shall be deemed severable and modified to the extent necessary to comply with such applicable mandatory laws or regulations.

## **30. ASSIGNMENT OF CONTRACT AND SUBCONTRACTING**

- 30.1 BUYER shall have the right to assign the Contract, or rights or obligations under the Contract, to any third party upon prior written notice to SELLER.
- 30.2 SELLER shall not subcontract any major part of the Contract without the written approval of BUYER, such approval not to be unreasonably withheld. Regardless of any subcontracting SELLER shall remain fully and solely responsible to BUYER for the performance of the Contract and shall be responsible for any act, default, or neglect of its subcontractor as fully as if they were made by SELLER.
- 30.3 SELLER shall not assign the Contract to any third party without the prior written consent by BUYER. SELLER shall, however, have the right to assign its claim for payment under the Contract to any third party, provided prior written notice to BUYER. Any assignee or successor shall comply with the Contract as if it was the original Party hereto, and BUYER shall retain any and all claims, rights of deductions, price adjustments, or settlements made with SELLER.

## **31. DISPUTES AND APPLICABLE LAW**

- 31.1 The Contract shall be governed and construed by the substantive laws of the Kingdom of Norway, excluding any choice of law rule.
- 31.2 Any dispute, controversy or claim arising out of or relating to the Contract, or the breach thereof, shall be finally and exclusively settled by arbitration pursuant to the provisions of this Article 31, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction

thereof. Before arbitration proceedings are commenced, the Parties shall endeavour to resolve the dispute amicably through negotiations between high-level executives of the Parties. If such negotiations are not successful after a period of sixty (60) Days from a claim In Writing for such negotiations from either Party, either Party has the right to refer the dispute to final settlement through arbitration pursuant to the applicable Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL Arbitration Rules). The International Bar Association (IBA) Rules on the Taking of Evidence in International Arbitration shall apply. The arbitration tribunal shall consist of three (3) arbitrators. The arbitration shall be conducted in the English language in Oslo, Norway.

- 31.3 The Parties will enter into a separate written non-disclosure undertaking or agreement covering a dispute that is subject to arbitration.
- 31.4 Notwithstanding the foregoing, each Party acknowledges that breach of the Contract may cause irreparable damage and agrees that the other Party shall be entitled to seek injunctive relief under the Contract by a competent court in any jurisdiction relevant to a breach of the Contract. For the avoidance of doubt, such competent court shall, notwithstanding Article 31.1 be entitled to apply the substantive law of that jurisdiction on the interpretation of the Contract when determining such injunctive relief.
- 31.5 Until final resolution of any dispute hereunder, SELLER shall diligently proceed with the performance according to the Contract as directed by BUYER.

## **32. ENTIRE AGREEMENT**

- 32.1 The Contract together with all its Contract Documents constitutes the entire agreement between the Parties and supersedes and replaces any prior written or oral agreement, understanding, or the like. Changes, modifications, amendments, or extensions to the Contract shall only be valid if made In Writing and signed by duly authorized representatives of both Parties. Written changes orders issued unilaterally by BUYER need only be signed by the appropriate BUYER representative.
- 32.2 BUYER's engineering and technical personnel may from time to time render assistance, give technical advice, discuss, or effect exchange of information with SELLER's personnel concerning the Work. Such actions shall in no way be construed as a change in the Parties' rights or obligations under the Contract.