

General Terms and Conditions



1 GENERAL PROVISIONS

1.1 DEFINITIONS

In these General Conditions, the following words shall have the following meaning:

- 1.1.1 "Company" shall mean Ims (Global Solutions) Ltd
- 1.1.2 "Contractor" shall mean the person, firm or company to whom this Contract is addressed.
- 1.1.3 "Parties" ("Party") shall mean Company and/ (or) Contractor.
- 1.1.4 "Contract" shall mean the Purchase Order Document, these General Conditions and any appendices and attachments, including any amendments or variations to the said documents which have been duly signed by Contractor and Company.
- 1.1.5 "Contract Price" shall mean the compensation to be paid to Contractor for performance of Work in accordance with the Contract.
- 1.1.6 "Company Group" shall mean Company, its Affiliated Companies, Company's contractors and their contractors and subcontractors, in as much as the abovementioned are involved in the Work, and the employees of the aforementioned companies and others whose services are used by Company
- 1.1.7 "Contractor Group" shall mean Contractor, his Affiliated Companies participating in the Work, his Subcontractors and their contractors and subcontractors, participating companies in an enterprise established for the performance of the Work, and the employees of the aforementioned companies
- 1.1.8 "Sub-contractor" shall mean any entity or person(s) engaged by Contractor for performance of any part of the Work
- 1.1.9 "Work" shall mean all the duties and obligations undertaken by Contractor under the Contract.
- 1.1.10 "Third Party" shall mean any party other than Company and Contractor.

1.2 CONTRACT DOCUMENTS

The Contract consists of the following documents which have priority as listed:

- the Purchase Order Document
- these General Conditions
- appendices in the order they are listed in the Purchase Order Document

2 GENERAL OBLIGATIONS OF CONTRACTOR

- 2.1 Contractor shall carry out the Work in accordance with professional standards of workmanship and in compliance with the terms and conditions of the Contract.

As part of such performance, Contractor shall:

- a) give priority to safety, in order to protect life, health, property and the environment; and
- b) cooperate with Company representative and any person appointed by him; and
- c) keep himself knowledgeable of and comply with requirements and orders of classification societies and public authorities having jurisdiction

- 2.2 Contractor shall not subcontract major parts of the Work to subcontractors without Company's prior consent in writing. Such consent does not exonerate Contractor from any obligations pursuant to the Contract.

- 2.3 If the Contract appoints key personnel in Contractor's organisation, such personnel shall not be replaced without Company's prior consent thereto in writing. Approval shall not be unreasonably withheld.

- 2.4 Contractor shall, at his own expense, immediately replace personnel who conduct themselves in an improper manner or are unsuitable to perform the Work.

- 2.5 Contractor shall have a satisfactory system for quality assurance suitable for the Work. Company is at any time entitled to carry out, and Contractor shall assist in carrying out, quality audits at Contractor's or any subcontractors' premises.

- 2.6 When Work is carried out at Company's premises, Contractor shall comply with Company's rules in force relating to safety and working conditions. Company will inform Contractor of these rules.

- 2.7 When Contractor considers that the Work is completed, he shall notify Company in writing as soon as possible. Within a reasonable time after receiving such notice, Company shall in writing either accept the Work as completed, or declare that the Work is not accepted as completed and the reason for this.

3 PROGRESS

- 3.1 If Contractor should have cause to believe that he will be unable to perform the Work in accordance with the contract schedule, he shall immediately notify Company in writing stating the reason for the delay, the effect on the contract schedule and furthermore include a proposal on how to avoid, limit or recover the delay. Contractor shall bear all costs incurred to avoid, limit or recover the delay unless the delay is caused by Company.

4 VARIATIONS, SUSPENSION AND CANCELLATION

4.1 VARIATIONS

- 4.1.1 Within the scope of what the parties could reasonably have expected at the time the Contract was entered into, Company may require variations with regards to the quality and/or the quantity of the Work as well as the contract schedule.

- 4.1.2 If Contractor finds that a variation is required, Company shall be notified in writing, without delay. Variations shall be approved by Company by means of a written variation order before Contractor initiates the variation work.

- 4.1.3 When Company requires a variation, Contractor shall, without undue delay, submit a written confirmation containing a description of the variation work together with any effects on the contract price and the contract schedule. Contractor shall not initiate the variation work until Company has responded in writing to Contractor's confirmation.

- 4.1.4 Compensation for variation work shall be in accordance with the original price level of the Contract. If a variation entails cost-saving for Contractor, Company shall be credited accordingly.

- 4.1.5 If the parties disagree as to the amount to be added to or deducted from the contract price due to a variation, Contractor shall implement the variation without awaiting the final outcome of the dispute.

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4.2 SUSPENSION

- 4.2.1 Company may temporarily suspend the Work or parts thereof, by written notification to Contractor. Following such notification Contractor shall, without undue delay, inform Company of the effects the suspension will have on the performance of the Work. Contractor shall resume the Work immediately after notification by Company.
- 4.2.2 If the suspension period exceeds 45 days, Contractor is entitled to cancel the Contract by notice in writing to Company.
- 4.2.3 During the suspension period, Company shall only compensate Contractor for documented and necessary expenses in connection with the suspension.

4.3 CANCELLATION

- 4.3.1 Company may cancel the Work or parts thereof with immediate effect, by written notification to Contractor.
- 4.3.2 Following such cancellation Company shall pay the unpaid balance due to Contractor for that part of the Work already performed, and pay documented and necessary expenses incurred as a direct result of the cancellation.

5 PAYMENT

- 5.1 Unless otherwise agreed, payment shall be made within 45 days after receipt of a properly prepared invoice and adequately supported invoice.
- 5.2 The Contract number and other agreed references shall be included on all invoices which shall also clearly indicate what the invoiced amount relates to. Company is entitled to return invoices that do not meet these requirements.
- 5.3 Company is entitled to deduct any prepayments against Contractor's invoices. Furthermore, any disputed or insufficiently documented amounts, as well as any amounts owed by Contractor to Company or Company Group may be set-off against Contractor's invoices.
- 5.4 Contractor shall submit a final invoice within 45 days after Company has accepted the Work as completed. The final invoice shall include all claims to be made by Contractor pursuant to the Contract. Claims not included in the final invoice can not be submitted later by Contractor.
- 5.5 Failure to produce documentation showing that income tax has been paid according to law, entitles Company to withhold payment until Contractor either produces such documentation, or provides satisfactory security for payment of such taxes. Company may recover from Contractor at any time any liability incurred by Company as a consequence of Contractor failing to pay in the required taxes.
- 5.6 Company is entitled to audit at Contractor's premises all payments for reimbursable work for up to two years after receipt of the final invoice.

6 BREACH OF CONTRACT

6.1 DELAY

Contractor is liable for delay pursuant to Art. 6.2 when the Work is not performed in accordance with schedule for the Work as specified in the Contract.

6.2 EFFECTS OF DELAYS

Unless otherwise agreed, liquidated damages shall accrue at a rate of 0.5 percent of the contract price per calendar day by

which Contractor is delayed. Liquidated damages shall, however, not exceed 15 percent of the contract price.

6.3 DEFECTS

- 6.3.1 Contractor is liable for any defect in the Work pursuant to Art. 6.4.
- 6.3.2 Company shall issue a written notice of defect within reasonable time after the defect has been discovered, and in no event later than 12 months after Company has accepted the Work as completed. The same time limit applies in respect of rectification work, calculated from the time the rectification work was completed. The time limits for making a notice of defect does not commence as long as rectification work or other activities necessary to comply with the contractual requirements are performed.

6.4 LIABILITY FOR DEFECTS

- 6.4.1 When Company notifies Contractor of a defect, Contractor shall remedy the defect without delay. The rectification work shall be postponed upon Company's request provided that Company has a justified reason for requiring such postponement. Rectification work shall be performed for Contractor's account.

If Contractor fails to remedy the defect within a reasonable time, Company is entitled to remedy the defect himself or employ a third party to do so for Contractor's risk and account. The same shall apply if awaiting Contractor's remedy will cause substantial inconvenience to Company. In such event, Contractor shall be notified prior to initiating of the rectification work.

7 FORCE MAJEURE

- 7.1 Force majeure shall mean an occurrence beyond the control of the party affected, provided that such party could not reasonably have foreseen such occurrence at the time of entering into the Contract and could not reasonably have avoided or overcome it or its consequences.
- 7.2 A party shall not be considered in breach of the Contract to the extent it is proven that he was unable to fulfil his contractual obligations due to force majeure. Each party shall cover its own costs resulting from force majeure.
- 7.3 The party invoking force majeure shall notify the other party thereof without undue delay. Such notice shall also include the cause of the delay and the presumed duration thereof.
- 7.4 Each party is entitled to cancel the Contract if the force majeure situation continues, or it is obvious that it will continue, for more than 60 days.

8 INDEMNIFICATION

- 8.1 Contractor shall indemnify Company Group from and against any claim concerning:
- personal injury to or loss of life of any employee of Contractor Group,
 - loss of or damage to any property of Contractor Group, which may arise in connection with the Work, irrespective of any liability on the part of Company Group.

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8.2 Company shall indemnify Contractor Group from and against any claim concerning:

- a. personal injury to or loss of life of any employee of Company Group,
- b. loss of or damage to any property of Company Group, which may arise in connection with the Work, irrespective of any liability on the part of Contractor Group.

8.3 With respect to claims made by third parties arising out of the performances or non-performances under the Contract, the Party causing such claim shall indemnify and hold the other Party harmless from and against any loss, damage and/or expense resulting from any such claim.

8.4 Contractor shall indemnify Company group if the performance or result of the Work constitutes an infringement of third party patent rights or other intellectual property rights, except when this is a consequence of Company's specifications and Contractor did not know or ought to have known that such an infringement would occur.

8.5 Contractor shall indemnify Company against any claim arising from the non-payment or insufficient payment of taxes, duties and all other claims which are based on law or associated regulations.

8.6 Company shall indemnify Contractor Group from Company Group's indirect losses, and Contractor shall indemnify Company Group from Contractor Group's own indirect losses. This applies regardless of any liability, whether strict or by negligence, in whatever form, on the part of either group and regardless of any other provisions of the Contract.

Indirect losses according to this provision include but are not limited to loss of earnings, loss of profit, loss due to pollution and loss of production.

9 INSURANCE

9.1 Contractor shall, at his own cost and for the duration of the Contract, maintain insurance cover in respect of his liabilities under the Contract. Contractor's insurer shall waive any rights of subrogation against Company.

9.2 Contractor shall ensure that the insurance waive all rights of subrogation against Company. Furthermore, Contractor shall ensure that the insurance company notifies Company at least 30 days before the insurance pursuant to Art. 9.1 is to be changed, terminated or expires.

9.3 Whenever requested by Company, Contractor shall provide an insurance certificate documenting that the conditions of Art. 9.1 are fulfilled.

9.4 Contractor shall ensure that Subcontractors maintain insurances which comply with Art. 9.1, 9.2 and 9.3.

10 TITLE

Unless otherwise agreed, title to the results of the Work, and any equipment or material purchased by Contractor on behalf of Company, shall pass to Company progressively as the Work is performed and paid for by Company.

Contractor shall mark and keep the Work, as well as materials and equipment belonging to Company stored at the place of production, separate from items belonging to Contractor or a third party.

11 PROPRIETARY RIGHTS

All reports, drawings, specifications and similar documents, including computer programs that are prepared in connection with the Work, constitute part of the results of the Work and shall be the property of Company.

Contractor is entitled to use results of a general nature in his own business.

12 CONFIDENTIALITY

All information exchanged between the parties shall be treated as confidential and shall not be disclosed to any third parties without the written consent of the other party.

A party may nevertheless make such information available to third parties provided that the information was already known to that party at the time the information was received, that the information is or becomes part of public domain other than through a fault of either of the parties, or is rightfully received from a third party without an obligation of confidentiality.

Information may also be disclosed to third parties to the extent necessary for execution of the Contract, provided, however, that the receiver of such information shall be bound by a confidentiality obligation similar to this Art. 12.

13 ASSIGNMENT OF THE CONTRACT

Company is entitled to assign his rights and obligations pursuant to the Contract, fully or partly, to any third party. Contractor may not assign his rights and obligations pursuant to the Contract without Company's written consent.

14 TERMINATION

Company may terminate the Contract with Contractor with immediate effect for the reasons as follows:

- a) if Contractor makes any composition or arrangements with its creditors, becomes insolvent, commits an act of bankruptcy, has a receiver appointed or enters into liquidation, either voluntary or compulsory, or
- b) if Contractor refuses or fails to supply competent supervision or sufficient properly skilled personnel or proper materials or does not make proper or timely performance of the work or otherwise prejudices or fails to carry out any of its obligations hereunder, or
- c) if the maximum of liquidated damages have incurred, or
- d) if the delay constitutes a substantial breach of the Contract, or
- e) if defects entail a substantial breach of the Contract, or
- f) if Contractor fails to comply with Company's HSE and QA requirements.

15 APPLICABLE LAW AND DISPUTES

15.1 The Contract shall be governed by English law.

15.2 Any dispute arising in connection with or as a result of the Contract, and which are not solved by mutual agreement, shall be settled by court proceedings unless the parties agree otherwise. Court proceedings shall be brought before English appointed Court.