

# General Purchasing Conditions

## 1. Preamble

These General Purchasing Conditions ("the Conditions") form part of the "Agreement" between the Parties which replaces and supersedes all other prior oral and written agreements between the Parties as well as any terms and conditions otherwise applicable to said transaction. By confirming the PO or by performing or supplying any goods and/or services set forth in the PO or invoicing pursuant to the PO, Supplier expressly agrees and accepts all terms of the PO and this Agreement.

## 2. Definitions in the PO

"**Buyer**" means APMM, its Affiliate or Associated Company that enters into a PO with Supplier. "**Consequential Losses**" means consequential, indirect or special losses under applicable law. "**Facility**" means Buyer's offshore facility on which Supplier provides goods and/or performs services. "**Government**" means any national, regional or local government including any department, agency or other body thereof, and any enterprise owned, managed or otherwise controlled by a government agency or instrumentality. "**Group Entity**" means one of APMM or Supplier or a respective Affiliate or Associated Company (in plural "**Group Entities**"). "**Intellectual Property Rights**" means copyrights and related rights, patents, utility models, trademarks, service marks, trade names, topography rights, design rights and rights in databases, domain names, rights in know-how, trade secrets and all applications or pending applications for the above in all cases whether or not registrable in any country and all rights and forms of protection of a similar nature or having equivalent or similar effect anywhere in the world. "**Personnel**" means directors, officers and employees, agency staff, agents and invitees and other personnel retained by or engaged in business for the benefit of a Party. "**Public Official**" means any (a) appointed official or any director, officer or other person employed in any capacity (i) at any level of Government, (ii) in a labour union controlled by any Government or political party or (iii) in any public international organization such as the United Nations or the European Union including any department, agency or other body thereof, (b) any candidate or officer or other person employed by a political party or (c) any person acting in any official capacity for or on behalf of any person or organization listed in (a) or (b). "**Sub-contractor**" means a supplier, contractor, vendor, agent or independent consultant selected and retained by Supplier who is providing services on behalf of Supplier.

## 3. Price, Invoicing, Payment and Taxes

**Price and charges.** The fees and charges for the provision of the goods and/or services shall be the price shown for each of such goods and/or services on the face of the PO or as provided in Schedule C (Supplier's Rates) of this Agreement.

**E-Catalogue.** If requested by APMM, Supplier shall submit or upload all relevant information of the Goods/Services (including prices), as the case may be in Excel format or directly to Buyer's "APMT e-Catalogue System (E-PRO)". The details shall include, but are not limited to: 1. Supplier part number, 2. Short Description of each item, 3. Unit of Measure, 4. Export Controlled (Yes/No – including needed Export Control information as outlined Schedule 3, "Compliance", when yes) and 5. Lead Time. Supplier is responsible for keeping the aforesaid information updated at all times and must notify APMM without undue delay on discovery of any incorrect data. Buyer will rely on Supplier's data in the Excel spreadsheet or, as the case may be, the Maersk e-Catalogue when making a purchase under a PO (except in the case of obvious error).

**No other charges.** Apart from VAT and Taxes (as set out below), the fees and charges shall include all costs and expenses, whether internal or external or direct or indirect incurred by Supplier in complying with the obligations set out in this Agreement or required by law.

**Invoicing.** Invoices shall be in English or Spanish, addressed to Buyer and include all necessary references to the specific goods and services provided and Buyer's references including Buyer's name, contact person and department, PO number, place of delivery, quantity and description of the goods or services (in the same sequence as in the PO). With regards to taxes each invoice shall show (i) the governing VAT rate applicable to the charges being invoiced; (ii) the VAT registration number of Supplier; and (iii) the VAT registration number of Buyer.

**Due payment and non-payment.** Payment shall be due and payable current month + 60 (sixty) days from delivery and Buyer's receipt of complete and correct invoice at the address stated in the PO, if not disputed by Buyer prior thereto in writing. In the event Buyer has not received an invoice, in whole or in part, for the goods or services under a PO at the address stated in the PO 180 (one-hundred and eighty) days after the delivery of the goods or completion of the services, such goods or services shall not qualify for invoicing and any such invoice presented shall not be payable.

**VAT and Taxes.** All prices and rates contained in this Agreement are excl. of VAT but incl. of all other taxes, duties and charges including, but not limited to, corporate income taxes, individual taxes and other social contributions (labour law taxes). Notwithstanding anything else herein to the contrary, the Buyer may withhold (or cause there to be withheld, as the case may be) from any amounts otherwise due or payable under or pursuant to this Agreement such federal, state and local corporate, income, employment, or any other taxes or duties as may be required to be withheld pursuant to any applicable law or regulation, determined by the Buyer in its sole discretion exercised in good faith. Supplier acknowledges that it may have tax obligations outside its

state of residence or incorporation or the state from where it operates, including specific tax reporting or filing obligations.

**Right to set off payment.** Buyer, APMM, or affiliates of APMM reserve the right to set off payments against any amount validly in dispute or owed to Buyer by Supplier.

## 4. Delivery, Title and Risk

**Delivery and Incoterms.** Unless otherwise provided in a PO, delivery terms for goods shall be DDP (Incoterms 2010) at the delivery point and on the date stated in the PO with all necessary customs invoices and delivery notes (issued in duplicates in English), advice notes, bills of lading and other documents ordinarily accompanying such goods and (ii) for services shall be at the delivery point and on the date(s) stated in the PO.

**Title and risk.** Without prejudice to Buyer's rights and remedies herein, title and risk for the goods shall pass to Buyer upon, and Supplier remains fully responsible for all goods until, confirmed delivery, whereas title and risk of the services shall pass to Buyer upon approved completion of the services, unless otherwise provided in the PO. Supplier remains responsible for all goods leased to Buyer.

## 5. Packing, Marking and Restricted Articles

**Packing requirements.** Unless it is set out differently in a PO, all goods delivered (including each successive deliveries) shall be packed in non-wooden packaging, presented with a "Non-wooden Packaging Declaration" or alternatively approved wooden packaging, i.e. bark-free and heat or fumetreated carrying an official certificate from the exporting Government approving the above treatment. In case above requirements are not complied with Buyer has the right to reject the delivery or re-package the goods at Supplier's expense. All goods shall be delivered in a secure and appropriate packing suitable for domestic or overseas transport with due consideration to the generic nature and composition of the goods supplied. Each PO must be packed separately to ensure proper registration and receipt. Supplier is allowed to pack several POs on the same pallet, as long as each PO is packed in its own package. Pallets containing packages for several POs shall be labelled with an A4 sized sign "Mixed Pallet" or "Split Pallet". Supplier must pack multiple packages for a single PO on the same pallet. Supplier may not split a PO with multiple packages over several pallets unless the PO is so large that it fills one pallet and needs to be packed on a second pallet. Supplier shall otherwise follow any reasonable handling and packing instructions.

**Marking.** Each delivery shall be clearly marked with Buyer's name and address, Buyer's PO number, place of delivery, consignee and "Ship's spares in transit" or other relevant identifying description on the exterior of the package(s) and be included in the documentation. Restricted articles must be marked and packed according to the IMO/IATA/ADR/RID rules and regulations in force at the time of delivery. Likewise all documents/- certificates prescribed in IMO/IATA/ADR/RID must accompany the goods but should not be enclosed in the package(s).

## 6. Hazardous Substances

**Registration requirement.** If a Supplier delivers hazardous substances, Supplier shall register with The Danish Maritime Occupational Health Service ("Sea health") via [www.seachemistry.dk](http://www.seachemistry.dk) within 14 days to get access to the Maritime Chemical Database ("MCD"). According to international maritime legislation a Safety Data Sheet ("SDS") shall be delivered by Supplier to Buyer together with the delivery taking place. Supplier shall also send a PDF copy of such SDS to [CPHMPROSDS@maersk.com](mailto:CPHMPROSDS@maersk.com) written in English prior to each first time delivery and subsequently after each revision. The initial upload of a SDS shall be made in [www.seachemistry.dk](http://www.seachemistry.dk) by the Buyer.

**Costs.** Supplier is expected to pay for all costs connected with preparation of the SDS.

**Instructions.** All hazardous substances delivered shall be accompanied by easily understandable instructions (SDS and Product Data Sheet) in English and a dangerous goods declaration or a marine pollutants declaration, as applicable, as required by the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997.

**Compliance.** The SDS shall comply with applicable EU and Danish legislations. Supplier shall update the SDS continuously and minimum once a year to confirm the validity. This shall be communicated to [CPHMPROSDS@maersk.com](mailto:CPHMPROSDS@maersk.com). The Supplier shall update all existing SDS at [www.seachemistry.dk](http://www.seachemistry.dk) with CC to the buyer.

**Innovation.** Supplier shall stay up-to-date with the development and ensure that hazardous ingredients are replaced by less hazardous ones where technically possible to comply with the goals to substitute hazardous substances on-board ships. Supplier undertakes not to utilize hazardous ingredients if they can be substituted by a substance which is not hazardous, less hazardous or less noxious than the one being used.

## 7. Asbestos and asbestos containing material

**Prohibition.** The below mentioned Regulations and MSC circulars BAN the use of Asbestos or "Asbestos containing material" ("ACM") on board existing vessels and new-builds.

- SOLAS Regulation II-1/3-5, New Installation of Asbestos

# General Purchasing Conditions

- IMO MSC.1/Circ.1379
- ISO 9001
- IMO MSC.1/Circ.1426

Supplier shall ensure that all Goods (equipment, components, spares, materials, stores, gaskets etc.) supplied are free of ACM.

**Compliance.** All International laws, rules, regulations, orders, conventions directives or ordinances in force from time to time which specifically refer to Asbestos and Asbestos containing material shall be complied with.

**Declaration.** Supplier shall submit a Declaration of Conformity in accordance with SOLAS Regulation II-1/3-5 that No ACM has been used, either together with each delivery or as a general declaration covering all Supplier's Goods and in the latter case such declaration shall be renewed bi-annually. Supplier shall have Industry approved safeguards and best practice in place to ensure that it is possible to verify through audits and analysis of samples that no ACM has been used either by them or their sub-contractors in equipment, components, spares, materials, stores, gaskets etc. that are supplied.

**Costs.** All costs incurred in complying with this Clause (including the cost of removal of non-conforming Goods from Buyer's store, equipment, vessels, rigs or alike and redelivery of goods) shall be for the sole account of Supplier and Supplier shall indemnify and hold Buyer harmless from all fines, penalties and all associated expenses arising out of or resulting from the violation by Supplier of any of its obligations under this Clause.

**Audit.** Buyer shall at all times have the right to audit and take and analyse samples if Buyer believes there are reasons to do so. The cost hereof shall be borne by Buyer, however in case such audit uncovers non-compliance with this Clause and any regulatory requirements, Supplier shall be liable for the complete cost of the audit.

**Cancellation of PO.** In the event that the re-delivery of ACM-free replacement Goods will exceed the originally-agreed delivery date or, if it will directly impact upon the works schedule of the relevant Vessel, the Buyer may, at its sole discretion, terminate the PO in whole or just that part relating to the ACM-affected Goods at no cost to itself and engage another contractor to supply an ACM-free replacement. Supplier shall within seven (7) days of such notice, reimburse Buyer with the cost of the Goods and, on further notice, reimburse Buyer for any additional costs incurred by Buyer in engaging such other supplier for the replacement Goods, including any difference in the cost of such supply.

**Liability.** Notwithstanding anything otherwise agreed between the Parties, the Supplier's obligations under this Clause are not subject to any limitations, whatsoever, under this Agreement or PO and shall extend beyond any agreed warranty period.

## 8. Compliance

**General compliance.** Supplier shall comply with and shall ensure that all sub-contractors comply with all national or international laws, rules, regulations, orders, conventions, directives or ordinances in force from time to time which are applicable to the delivery or performance of goods or services and/or relate to the provision, licensing, approval or certification of the goods or services, including but not limited to those relating to anti-corruption, occupational health and safety, environmental matters, wages, working hours and conditions of employment, International Bill of Human Rights, sub-contractor selection, discrimination, data protection and privacy.

**Export Control Regulation.** Supplier shall comply with and ensure that all sub-contractors shall comply with all laws, regulations and rules applicable to delivery of the goods and services incl. without limitation United States and European Union ("U.S. or EU") regulations and controls involving export and re-export of goods, software and technology as well as in regards to any countries embargoed under U.S. laws or regulations or any decision, directive or regulation issued by the Commission or Council of the EU plus all other relevant Trade Regulations including but not limited to USA, EU and Singapore if applicable. To the extent any goods or parts of goods (including software and technology) supplied by Supplier to Buyer are subject to any such economic sanctions or export control laws and regulations of the U.S., EU or Singapore Supplier shall upon Buyer's placement of a request for quotation or a PO, whichever is the earliest, or in case of defective goods at the time of re-delivery without delay provide in a form satisfactory to Buyer the following export control data of the goods: 1) the specific U.S. and/or EU export classification including the Export Control Classification Number ("ECCN") and/or any similar forms of classification identification, 2) country of manufacture, 3) percentage of U.S. content integrated to each of the goods, 4) confirmation as to whether or not the goods are direct products of U.S. technology and software, 5) Harmonized System Code ("HS Code"). This information shall be stated on quotations / order confirmations / commercial invoices / packing lists, when relevant. Further, Supplier is committed to arrange export control classification of all Goods uploaded to Buyers E-catalogue. All costs incurred in complying with this clause 7 shall be for the

sole account of Supplier and Supplier shall indemnify and hold Buyer harmless from all fines, penalties and all associated expenses arising out of or resulting from the violation by Supplier of any of its obligations in this clause 7. Buyer shall have the right, to appoint at its own cost a firm of chartered accountants to audit and verify Supplier's compliance with this clause 7. Equipment, components, parts or other items falling under the United States International Traffic in Arms Regulations (ITAR) and/or EU regulations covering items on the EU Common Military List or similar items subject to other national regulations governing military related items may only be supplied subject to prior written agreement with Buyer. If Supplier anticipates that any of the items that are contemplated as being supplied under this Agreement may be within such categories of controlled items Supplier shall immediately notify Buyer thereof.

**Anti-Corruption.** As regards this agreement each Party shall (i) comply with all applicable anti-corruption laws and regulations, including without limitation the US Foreign Corrupt Practices Act and the UK Bribery Act of 2010 and (ii) undertakes and warrants to the other Party that it and its officers, directors, shareholders, employees, agents and other intermediaries, and any other person acting directly or indirectly on its behalf, shall not, directly or through third parties, give, promise or attempt to give, or approve or authorize the giving of, anything of value (including facilitation payments) to any person or any entity where such action would be prohibited by applicable law, for the purpose of (i) securing any improper advantage for Supplier or Buyer, (ii) inducing or influencing a Public Official improperly to take action or refrain from taking action in order for either Party to obtain or retain business, or to secure the direction of business to either; or (iii) inducing or influencing a Public Official to use his/her influence with any Government or public international organization for such purpose.

**Costs.** All costs incurred in complying with this clause 7 shall be for the sole account of Supplier and Supplier shall indemnify and hold Buyer harmless from all fines, penalties and all associated expenses arising out of or resulting from the violation by Supplier of any of its obligations in this clause 7. Buyer shall have the right to undertake or to appoint at its own cost, charge and expense a designated representative to audit and verify Supplier's compliance with this clause 7.

## 9. Responsible Procurement

**Code of conduct.** In addition to the obligations of clause 7, Supplier shall respect and commit to implement APMM's Supplier Code of Conduct (the Code) as amended from time to time and found at <http://www.maersk.com/business/sustainability/third-party-code-of-conduct> or alternatively an internationally recognized standard within the areas of human rights, anti-corruption, environment and labour, such as but not limited to United Nations Global Compact (UNGC), and Supplier agrees – if and when so requested - to provide necessary documentation as well as accommodate any audit by APMM or Buyer in order to verify the same. The Supplier shall require their own suppliers to implement similar rules and, as appropriate, pass on such requirements to their sub-suppliers and so on. Supplier's non-compliance with this clause 9 shall be considered a material breach of the Agreement. The original English version of the Code (as of August 2013) shall prevail in the event of any disputes or discussions concerning the content and obligations of either Party. Should the Supplier be unable to meet the listed requirements, the Supplier will agree to develop and execute an improvement plan.

## 10. Intellectual Property Rights

**Intellectual property rights.** All Intellectual Property Rights in and to goods, documentation, data or other deliverables and materials specifically developed by Supplier to fulfil the Agreement shall vest in Buyer upon creation, regardless of the requirement to patent or register such intellectual property or not. Supplier hereby irrevocably assigns to Buyer by way of present and future assignment (as applicable) its whole right, title and interest in and to such Intellectual Property Rights free from all liens, charges and encumbrances at no cost to Buyer and without imposing further conditions with the intent that the same shall vest in Buyer immediately or, in the case of goods, data, documentation or other deliverables not yet in existence that the Intellectual Property Rights shall so vest immediately upon coming into existence.

Notwithstanding anything mentioned hereinabove, the Supplier grants to Buyer's Group a worldwide, royalty free, perpetual, irrevocable, transferable and non-exclusive license to use any and all goods, data, services and Intellectual Property Rights including those described in the paragraph above, to the extent necessary for Buyer's Group to enjoy full benefit of the goods, data and services for such purpose as intended under this Agreement.

## 11. Confidentiality and Reference

**General obligations.** The following information whether in written, oral or visual form shall be considered "Confidential Information" for the purposes of the Conditions: (i) All information of Group Entities concerning employees, products, services, customers, suppliers, contractors, other third parties conducting business with Group Entities or other technical and commercial matters, (ii) the terms of the Agreement, (iii) any information developed by reference to or use of Group Entities' information referenced above and (iv) any information which is revealed, stated to be or marked as confidential, and (v) any information which according to applicable law is confidential, disclosed by a Party ("Disclosing Party") to another Party ("Receiving Party") in relation to this Agreement. Such Confidential Information shall remain the property of the Disclosing Party and shall not be given or disclosed to any third party without Disclosing Party's prior written consent. Receiving Party shall only use

# General Purchasing Conditions

the Confidential Information for the purposes of this Agreement and shall limit internal dissemination hereof.

**Disclosure to Group Entities.** Nothing in this clause 11 may be deemed or construed to prevent Buyer from disclosing any Confidential Information obtained from Supplier or its Group Entities (i) to any Group Entities, employees or other recipients of the goods or services; (ii) if such disclosure is in the discharge of a recipient's obligations to supply information for the purpose of complying with any law; or (iii) if such disclosure is made for due diligence purposes under strict and customary confidentiality obligations in relation to a divestment of business activities or assets of a service recipient subject to such persons having an equal duty of confidentiality as the Buyer.

**Reference and advertising.** Supplier is not permitted without prior written consent from Buyer, to use Buyer's name or any commercial relation with Buyer or a company associated with Buyer for the purpose of advertising or as a reference.

## 12. Warranties

**Supplier's warranties.** Supplier warrants and undertakes that (i) the goods shall be new, of good quality and workmanship, free from defects and fit for the intended purposes as known to the Parties, including complying with any applicable regulation and specifications, including applicable standards, (ii) the services shall be delivered in accordance with market standards and first class professional practices or such other level of standards agreed between the Parties, (iii) relevant spare parts and/or associated services for goods will be available for a minimum of 10 years from delivery of the relevant goods delivered under the Agreement (this obligation shall survive any termination hereof and be subject to the terms and conditions of the Agreement), and (iv) the goods and/or services or any rights conferred to Buyer pursuant to this Agreement do not infringe the rights of any third party.

**Warranty period.** The goods and services delivered shall comply with the warranties and undertakings in (i) and (ii) above for 24 (twenty-four) months from the goods are taken into use or from the date of complete delivery of services whichever is later, however continuing for no longer than 36 (thirty-six) months from delivery of the goods.

## 13. Remedies

**Breach.** Breach of agreement, including breach of warranties, or failure in timely delivery of correct and non-defective goods or services shall entitle Buyer to terminate the PO and /or claim direct damages. In case of failure of timely delivery of correct and non-defective goods or services, Buyer may at its discretion demand that Supplier: (i) pays Buyer a sum by way of liquidated damages of 5% (five per cent) of the total charges to be paid under the PO per day of delay, however such liquidated damages shall not exceed a total of 50% (fifty per cent) of the total charges of the PO in question (the parties acknowledging such sum(s) are a genuine pre-estimate of the actual minimum loss which will be suffered by Buyer and shall not be treated as a penalty) and/or (ii) immediately delivers via the fastest means of transportation available at the cost of Supplier (airfreight included). In the event a delay extends beyond the maximum period for liquidated damages pursuant to clause (i) above, agreed in respect of the relevant PO, Buyer shall be entitled to claim at its discretion direct damages for either (i) all relevant losses; or (ii) for the balance of any losses not paid for by means of the liquidated damages and such delay shall be considered a breach entitling Buyer to terminate the Agreement.

**Occurrence of Defect.** A defect shall be deemed to exist in relation to the goods or services if they are defective under the general principles of English law or if: (i) the goods or services fail to meet the requirements set out in the Agreement and PO, (ii) Supplier is in breach of a service level, or (iii) the goods or services breach Supplier's warranties as set out in Clause 12.

**Proportionate reduction.** Buyer shall be entitled to a proportionate reduction of the price and/or the fees payable for the goods and/or services where they are defective and Supplier shall pay, or deduct a proportionate amount from such agreed price or fees which Buyer has paid or shall pay in respect of that defective part of those goods and/or services with due consideration to the actual reduction in their value and benefit to Buyer.

**Remedial work on breach of warranty.** If Supplier is notified about a breach of warranty claim, Supplier shall upon written request promptly perform all corrective measures which are necessary to remedy any defects arising from any breach of warranty. All costs and expenses incidental to remedying defects will be for the sole account of Supplier.

**Step-in right.** If Buyer decides that the timing or impact of the corrective measures will be prejudicial to its interests or if Supplier fails to promptly correct any defective goods or redeliver services in accordance with its obligations, Buyer may, subject to informing the Supplier in writing and allowing 24 (twenty four) hours for the Supplier to propose an alternative solution acceptable to Buyer, undertake Supplier's responsibilities for such corrective measures, which may include engaging a third party to carry out remedial work and may either deduct from any amount due to Supplier or recover from Supplier all costs reasonably and directly incurred by Buyer in undertaking the corrective measures, subject to production of appropriate receipts and evidence.

**Extension of warranty.** Following Supplier's remedy of a defect and/or re-delivery, a new warranty period of the same length as the original warranty

period shall apply provided that it shall not extend beyond 36 (thirty-six) months from the commencement of the original warranty period.

**Overcharging under a PO.** Supplier shall at Buyer's request, assist Buyer and/or any third party auditor appointed by Buyer in any review of charges for the goods and/or services delivered. In the event that Supplier has overcharged Buyer, Supplier shall refund any overcharged amount plus interest from the relevant date(s) of (either directly or through a deduction from any amount due or becoming due). In the event that such overcharge comprises more than 3 (three) percent of the goods and/or services under a relevant PO, Supplier shall also be liable for the reasonable costs of the third party auditor.

**Damages.** The Parties shall be liable for any direct damages arising out of or relating to the performance or non-performance of their respective obligations under the Agreement or applicable POs in accordance with the general principles of English law. Such losses shall inter alia comprise direct additional operational and administrative cost and expenses, direct costs related to the purchase of alternative goods and services and direct charges or other fees relating to other goods or services or costs rendered unnecessary as a result of any default by the Supplier.

**Complete delivery.** Unless otherwise provided in the PO, delivery shall not be deemed to have taken place until the goods and/or services have been received in full and in conformance with the timeline and milestones set out in the PO and with all certificates of approval, test certificates and other certification or necessary documentation required according to this Agreement or at law.

**Total loss.** In the event that Buyer's premises (including the Facility) becomes a total loss (which includes a constructive, arranged and/or comprised total loss as well as loss due to expropriation) this Agreement shall automatically be considered terminated without notice as from the moment of the incident directly leading to the total loss occurred and except for Buyer's obligation to pay Supplier any amounts due for Goods and Services performed prior to the termination neither Party shall have any claims whatsoever towards the other in connection with the termination.

## 14. Indemnity

**13.1 Definitions and interpretation.** The following definitions and interpretation are to be used for determining the applicable indemnity regime:

"**Offshore**" means in, on or above the sea, including alongside or in harbour, whether on a sea-going vessel or not, or suspended by a crane from a sea-going vessel, whether over land or not. For the purpose of this definition, sea-going vessels shall include ships, lighters, boats, rigs or other similar sea-going craft; and "**Onshore**" means on or over dry land, unless suspended from a device affixed to a sea-going vessel, which shall be considered Offshore. In the event that an incident occurs where it is unclear if it is covered by an Onshore or Offshore indemnity regime, then Buyer shall in its sole discretion determine the same, based on where the main part or purpose of the relevant activity giving rise to an incident was to be carried out.

**13.2 Offshore Indemnification ("Knock-for-Knock").** When services or goods under any PO are delivered, performed or supplied Offshore, then Clause 13.6 shall not apply.

Each Party shall be responsible for and shall save, indemnify, defend and hold harmless the other Party and its Group from and against all claims, losses, damages, costs (including legal costs) expenses and liabilities in respect of:

- loss of or damage to property of its Party's Group whether owned, hired, leased or otherwise provided by its Party's Group, arising from, relating to or in connection with the performance or non-performance of this Agreement and/or any PO; and
- personal injury including death or any form of illness, disorder or disease whatsoever (mental, physical or otherwise), to any person employed by that Party or its Group arising from, relating to or in connection with the performance or non-performance of this Agreement; and
- personal injury including death or disease or loss of or damage to the property of any third party to the extent that any such injury, loss or damage is caused by the negligence or breach of duty (whether statutory or otherwise) of that Party. For the purposes of this clause "third party" shall mean a party which is not a member of Buyer Group or Supplier Group.

**13.3 Pollution by Supplier.** Supplier shall save, indemnify, defend and hold harmless Buyer Group from and against any claim of whatever nature arising from pollution and/or contamination occurring on the premises of Supplier's Group or originating from the property and equipment of Supplier's Group (including marine vessels and any goods and/or services provided by Supplier Group prior to risk and title passing to Buyer).

**13.4 Pollution by Buyer.** Save for Supplier's negligence Buyer shall save, indemnify, defend and hold harmless the Supplier's Group from and against any claim of whatever nature arising from any other pollution and/or contamination, originating from the reservoir, well, drilling unit and property of Buyer's Group.

**13.5 Basis for indemnification.** All exclusions and indemnities given under this clause 14 (save for those under clause 13.2(c) and 13.4) shall apply irrespective of cause and notwithstanding the

# General Purchasing Conditions

negligence, breach of duty (whether statutory or otherwise) gross negligence, wilful misconduct, or other failure of any nature of the indemnified party or any other entity or party and shall apply irrespective of any claim in tort, under contract or otherwise at law.

**13.6 Onshore liability.** In the event that goods and/or services are delivered or supplied in whole or in part Onshore, then the terms of this clause 13.6 shall apply for the Onshore part (and clauses 13.2-13.4 shall not apply). Each Party and the parties to a PO shall be liable to pay damages in accordance with the applicable rules of English law.

**13.7 Consequential Losses.** Neither Party shall be liable to the other for any Consequential Losses whatsoever arising out of or in connection with the performance or non-performance of this Agreement and any PO, nor shall each Party protect, defend and indemnify the other from and against all such claims from its respective Group.

**13.8 Intellectual property indemnity.** Supplier shall defend, indemnify and hold harmless Buyer's Group from and against all claims resulting from any proceeding brought against Buyer's Group based on a claim that any goods or services or their use in the manner intended by Supplier infringe any patent or other Intellectual Property Right. Supplier shall pay any judgment awarded as a result of any such proceeding against Buyer's Group. If the use of any such goods or services as intended by Supplier is prohibited, Supplier shall at its own expense either obtain for Buyer's Group the right to continue using such goods or services, replace it with a non-infringing good, modify it so it becomes non-infringing or remove such good or service and refund the purchase price and all transportation and/or installation costs.

## 15. Force Majeure

A Party shall not be responsible for any failure to fulfil any term or condition of the PO caused by an unforeseen, extraordinary and serious event (not including economic hardship or adverse weather conditions, except for extraordinary weather conditions) not within its control and not caused by its default or error and which it could not reasonably have provided against by exercising due diligence and/or applying reasonable additional resources. If such event continues for 30 (thirty) consecutive days, Buyer may terminate the PO and neither Party shall have any further claim against the other, except to the extent that actual delivery has been made under such PO, where the Buyer shall pay the Supplier a fair value of the delivered goods and/or services in accordance with this Agreement and as agreed between the Parties. The Party invoking force majeure shall, as soon as possible, notify the other Party hereof in writing.

## 16. Liability

Supplier shall be liable for direct losses arising out of or relating to breach including expenses and cost relating to covering purchase of alternative goods and services and any additional costs arising therefrom. Notwithstanding any other provision of this Agreement and to the extent not otherwise decided by mandatory law, nothing in this Agreement shall exclude or limit either party's liability under or in connection with (i) fraud or fraudulent misrepresentation, (ii) death or personal injury resulting from the negligence of that party, (iii) breach of any actual or implied terms of transfer of title of the goods and/or services, (iv) for any other matter for which liability cannot by applicable law be limited or excluded, (v) breach of its obligations of confidentiality under clause 11; and (vi) any claim under the indemnities in clause 14.

## 17. Insurance

**Scope of insurance coverage.** Supplier shall have and maintain insurance coverage in accordance with good international industry practices and applicable law, including Workman's Compensation/Employer's Liability, All Property Risk, Commercial General Liability including Contractual liability, All Risk cover for all goods and services provided by Supplier, Comprehensive Automobile Liability Insurance as well as other insurance which Supplier deems appropriate in connection with fulfilling the duties under these Conditions e.g. Professional Liability, Product Liability, Transport/Cargo Insurance, Maintenance and Construction All Risk for the specific period, at its expense with a reputable insurance company, properly safeguarding Supplier against its liability hereunder. Such insurance policies must include provisions whereby full coverage is afforded also offshore when the services/deliveries entails offshore activities and with freedom to enter into knock-for-knock liability regimes as appropriate at Supplier's discretion and in such case if requested to do so by Buyer arrange co-insurance of Buyer and its Group, as customary within offshore.

**Renunciation of recourse.** To the extent pursuant to Suppliers obligations under the Agreement Supplier shall ensure that its insurers waive all rights of recourse including in particular any rights of subrogation against Buyer and its Group as defined in accordance with this Agreement or any PO.

## 18. Assignment

**APMM's right to assign rights and obligations.** APMM and Buyer is entitled to assign, subcontract or otherwise transfer its rights and obligations under the Agreement and any PO in whole or in part to any APMM Group Entity. APMM or Buyer shall within reasonable time of such assignment notify Supplier in writing hereof.

**Supplier's right to assign rights and obligations.** Supplier shall not be entitled to assign or otherwise transfer any rights or obligations under the Agreement or any PO without the prior written consent of APMM. Any such attempted assignment shall be void.

## 19. Sub-contractors

**Use and liability.** Supplier shall be entitled to use sub-contractors in the delivery or performance of the goods and services however Supplier shall be liable for all acts and omissions of its sub-contractors (including any sub-sub-contractors) to the same extent as Supplier is itself liable to Buyer.

## 20. Law, Jurisdiction and Disputes

**English law applies.** The Agreement and any non-contractual obligations arising out of or in connection herewith shall be governed, construed and enforced in accordance with the laws of Mexico and Wales to the exclusion of any other law and without regard to any conflict of law principles.

**Mediation.** Any dispute arising out of or in connection with the Agreement or any PO including any dispute regarding the existence, validity or termination thereof shall be settled by mediation arranged by International Chamber of Commerce (ICC), International Chamber of Commerce (ICC) in accordance with the rules on mediation adopted by the ICC and in force at the time when such proceedings are commenced. Mediation shall not affect the right of a party to initiate arbitration proceedings in accordance with the provisions below or to take any other legal steps in relation to the dispute.

**Arbitration.** If the mediation proceedings are terminated without a settlement the dispute shall be subject to arbitration arranged by International Chamber of Commerce (ICC) in accordance with the rules of procedure adopted by ICC in force at the time when such proceedings are commenced. The venue for arbitration shall be London and the proceedings shall be conducted in the English language. The arbitral award shall be final and conclusive and binding on the parties.

## 21. Waiver

**Failure to exercise a right.** The failure or delay of a Party to insist upon performance of any provision herein or part hereof or a PO or the failure or delay of a Party to exercise any right or remedy to which it is entitled shall not constitute a waiver thereof and shall not cause a diminution of the obligations created by the Agreement or PO.

**Subsequent defaults.** A waiver of any breach of the Agreement or PO by a Party or Buyer shall not constitute a waiver of any other breach (of the same term or of any other term) of the Agreement or PO.

## 22. Entire Agreement and Miscellaneous

**Entire agreement.** The Agreement together with the documents referred to in it constitute the entire agreement and understanding between the parties of the matters dealt with in them and supersedes any previous agreement between them or the parties to a PO notwithstanding the terms of any previous agreement or arrangement.

**Representations etc.** Each of the Parties acknowledges and agrees that in entering into the Agreement and any PO it does not rely on and will have no remedy in respect of any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether Party to the Agreement or any PO or not) other than as expressly set out in this Agreement. The only remedy available to it for breach of the warranties will be as provided under this Agreement for breach of warranty.

**APMM Group.** Any Buyer and beneficiary APMM Group entity may enforce the terms of this Agreement against Supplier subject to and in accordance with the provisions of the Agreement and the Contracts (Rights of Third Parties) Act 1999. Furthermore, in the event of Buyer selling or transferring the Goods/Services to any third party or beneficiary APMM Group entity in any bona fide transaction, Buyer shall be entitled to assign the rights and benefits of existing warranties and other representations and covenants hereunder in favour of any such third party buyer or beneficiary APMM Group entity. Except as provided in the foregoing, no term of the Agreement is intended to confer a benefit on or to be enforceable by any person who is not a Party to the Agreement. The Parties may by agreement rescind or vary the Agreement or any term of the Agreement without the consent of any person who has the right to enforce this Agreement or the term in question notwithstanding that such rescission or variation may extinguish or alter that person's entitlement under that right.

## 23. Survival of Agreement

**Survival.** Any release, indemnity or any obligation of confidence under this Agreement is independent and survives termination of this Agreement. Any other term and condition that by its nature is intended to survive termination of this Agreement survives termination of this Agreement unaffected by anything that might have the effect of prejudicing, releasing, discharging or affecting in any other way the liability of the party giving the indemnity.