

Kinder-Janes Engineers Limited - Terms & Conditions of Sale

(Based on the Oil & Gas Industry Supply Chain model LOGIC General Conditions of Contract, Edition 2 (Dec 2005) – Para B8 Variation in italics)

SECTION A GENERAL

A1. Definitions

"AFFILIATE" shall mean any subsidiary or parent or holding company of any company or any other subsidiary of such parent or holding company. For the purpose of this definition, "subsidiary" and "holding company" shall have the meaning assigned to them under Section 736, Companies Act, 1985, as amended by Section 144, Companies Act 1989.

"COMPANY" shall mean the person, persons, firm or company named in the PURCHASE ORDER to purchase GOODS hereinafter defined and shall include the COMPANY's legal personal representatives, successors and assigns.

"COMPANY GROUP" shall mean the COMPANY, its CO-VENTURERS, its and their respective AFFILIATES and its and their respective directors, officers and employees (including agency personnel), but shall not include any member of the CONTRACTOR GROUP.

"CONTRACTOR" shall mean the person, persons, firm or company named in the PURCHASE ORDER to supply GOODS hereinafter defined and shall include the CONTRACTOR's legal personal representatives, successors and assigns.

"CONTRACTOR GROUP" shall mean the CONTRACTOR, its subcontractors, its and their AFFILIATES, its and their respective directors, officers and employees (including agency personnel), but shall not include any member of the COMPANY GROUP.

"CO-VENTURER" shall mean any other entity with whom the COMPANY is or may be from time to time a party to a joint operating agreement or utilisation agreement or similar agreement relating to the operations for which the GOODS are being provided and the successors in interest of such CO-VENTURER or the assignees of any interest of such CO-VENTURER.

"DELIVERY DATE" shall mean the date(s) upon which the GOODS shall be delivered as specified in the PURCHASE ORDER.

"GOODS" shall mean the goods to be provided in accordance with this PURCHASE ORDER.

"PURCHASE ORDER" shall mean the contract formed by the acceptance of this PURCHASE ORDER and shall incorporate these Purchase Order Terms and Conditions as may be amended by any special conditions referred to in this PURCHASE ORDER.

A2 . Interpretation

All instructions, notices, agreements, authorisations, approvals and acknowledgements shall be in writing. All such documentation together with all correspondence and other documents shall be in the English language.

Nevertheless if for any reason, it is considered necessary by the COMPANY to give an instruction to the CONTRACTOR orally in the first instance, the CONTRACTOR shall comply with such instruction. Any such oral instruction shall be confirmed in writing as soon as is possible under the circumstances, provided that, if the CONTRACTOR confirms in writing any such oral instruction which is not contradicted in writing by the COMPANY without undue delay, it shall be deemed to be an instruction in writing by the COMPANY.

Any reference to statute, statutory provision or statutory instrument shall include any re-enactment or amendment thereof for the time being in force.

Unless the context otherwise requires, words importing the singular shall include the plural, and words importing the masculine gender shall include the feminine and neuter genders, and vice versa.

A3. Invalidity and Severability

If any provision of this PURCHASE ORDER shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability shall not affect the other provisions of this PURCHASE ORDER and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The COMPANY and the CONTRACTOR agree to attempt to substitute, for any invalid or unenforceable provision, a valid or enforceable provision which achieves to the greatest possible extent, the economic, legal and commercial objectives of the invalid or unenforceable provision.

SECTION B THE CONTRACTOR'S COMMITMENT TO THE COMPANY

B1. Terms

The CONTRACTOR will sell the GOODS to the COMPANY on the terms set out in the PURCHASE ORDER.

B2. Delivery

The CONTRACTOR will deliver or make the GOODS available to the COMPANY at the place specified in the PURCHASE ORDER, on the DELIVERY DATE.

In the event that the CONTRACTOR is unable to deliver the GOODS on the DELIVERY DATE the CONTRACTOR shall notify the COMPANY at the earliest possible opportunity. The COMPANY and the CONTRACTOR shall endeavour to agree a mutually acceptable revised DELIVERY DATE. However, in the event that the COMPANY and the CONTRACTOR cannot agree, the COMPANY shall have the right to terminate the PURCHASE ORDER and recover from the CONTRACTOR the direct losses sustained as a result of the delay up to an amount not to exceed the value of the PURCHASE ORDER.

B3. Inclusive Price

The price which the COMPANY has agreed to pay for the GOODS is set out in the PURCHASE ORDER and is exclusive of VAT but includes all other taxes, duties or other charges as applicable.

B4. Access

The CONTRACTOR will allow the COMPANY to expedite, inspect and test the GOODS during manufacture at the CONTRACTOR's premises on reasonable prior notice. Any expediting, inspection, testing or any failure to do so shall in no way relieve the CONTRACTOR of its obligations as specified in the PURCHASE ORDER.

B5. Specifications

The CONTRACTOR will ensure that the GOODS will meet the COMPANY's requirements with regard to any quality, fitness for purpose, quantity or specifications, which are set out in the PURCHASE ORDER.

B6. Defects Correction

The CONTRACTOR will repair, replace or rectify any of the GOODS (or any replacement) which are defective. The CONTRACTOR's obligation shall apply only when the GOODS are used in accordance with the CONTRACTOR's specification or if no such specification exists, used in accordance with their ordinary purpose. The CONTRACTOR's obligation shall cease 18 months from delivery or 12 months from putting into service, whichever the sooner. Title and risk in the GOODS or any part thereof which do not comply with the requirements of the PURCHASE ORDER and which are rejected by the COMPANY shall rest in the CONTRACTOR on return to the CONTRACTOR.

B7. Packing

The CONTRACTOR will ensure that the GOODS are properly packed, secured and labelled in accordance with accepted good industry practice and to meet the COMPANY's requirement as specified in the PURCHASE ORDER.

B8. Documentation

The CONTRACTOR will provide to the COMPANY by the due date(s), all drawings, certificates or other documentation in the specified format and quantities as detailed in the PURCHASE ORDER.

B9. Hazardous Materials

The CONTRACTOR will ensure that the GOODS will comply with the requirements of all applicable law and, to the extent that they contain toxic, corrosive or hazardous materials, the CONTRACTOR will ensure that a notice to that effect accompanies each consignment, together with appropriate care and handling instructions.

GOODS supplied under the PURCHASE ORDER, which are contaminated beyond use, at the time of delivery, shall be regenerated or disposed of by the CONTRACTOR. The title and risk of the contaminated GOODS will remain with the CONTRACTOR, who will bear all expenses for the said processes.

In the event that COMPANY contaminates the GOODS, the COMPANY will liable for the processes of regeneration or disposal.

B10. Title and Risk

Title and Risk in the GOODS will pass from the CONTRACTOR to the COMPANY at delivery in accordance with the COMPANY's requirements under the PURCHASE ORDER.

B11. Patent Indemnity

The CONTRACTOR shall save, indemnify, defend and hold harmless the COMPANY GROUP from all claims, losses, damages, costs (including legal costs), expenses, and liabilities of every kind and nature for, or arising out of, any alleged infringement of any patent or proprietary or protected right arising out of or in connection with the performance of the obligations of the CONTRACTOR under the PURCHASE ORDER except where such infringement necessarily arises from the job specification and/or the COMPANY's instructions.

However, the CONTRACTOR shall use its reasonable endeavours to identify any infringement in the job specification and/or the COMPANY's instructions of any patent or proprietary or protected right, and should the CONTRACTOR become aware of such infringement or possible infringement then the CONTRACTOR shall inform the COMPANY immediately.

The COMPANY shall save, indemnify, defend and hold harmless the CONTRACTOR GROUP from all claims, losses, damages, costs (including legal costs), expenses, and liabilities of every kind and nature for, or arising out of, any alleged infringement of any patent or proprietary or protected right arising out of or in connection with the performance of the obligations of the COMPANY under the CONTRACT or the use by the CONTRACTOR of the job specification or materials or equipment supplied by the COMPANY.

B12. Spares

The CONTRACTOR shall give sufficient notice to the COMPANY of its intention to cease supply of GOODS, component parts or replacements, to enable the COMPANY to purchase such GOODS, component parts or replacements.

SECTION C THE COMPANY'S COMMITMENT TO THE CONTRACTOR

C1. Terms

The COMPANY will buy the GOODS from the CONTRACTOR on the terms set out in this PURCHASE ORDER.

C2. Acceptance

Acceptance shall be from the time when a duly authorised employee or representative of the COMPANY accepts the GOODS, delivered or collected, and where such GOODS are not defective or damaged in any way and comply with the PURCHASE ORDER. In the event that a defect in or damage to the GOODS or any breach of the PURCHASE ORDER is identified by the COMPANY, it shall be deemed not to have accepted the GOODS until such time as such defect, damage or breach is remedied by the CONTRACTOR.

Such acceptance shall be within a reasonable time of delivery or collection, but shall be without prejudice to the CONTRACTOR's liability for any defect in or damage to the GOODS or any breach of the PURCHASE ORDER which is not identified by such duly authorised employee or representative of the COMPANY at the time of acceptance.

C3. Use

The CONTRACTOR will not be liable for any loss or damage resulting from the failure of the COMPANY to use the GOODS in accordance with any specific operating conditions set out in the PURCHASE ORDER.

C4. Risk

The COMPANY will be responsible for risk of loss or damage to the GOODS with effect from the DELIVERY DATE.

C5. Price Payment

The COMPANY will pay for the GOODS against the CONTRACTOR's invoice in the amounts specified in the PURCHASE ORDER within thirty (30) days of receipt of the CONTRACTOR's proper Value Added Tax invoice, the receipt not being earlier than the delivery unless otherwise stated in the PURCHASE ORDER.

If the COMPANY disputes any items on any invoice in whole or in part or if the invoice is prepared or submitted incorrectly in any respect, the COMPANY shall notify the CONTRACTOR of the reasons and request the CONTRACTOR to issue a credit note for the

unaccepted part or whole of the invoice as applicable. Upon receipt of such credit note the COMPANY shall be obliged to pay the undisputed part of a disputed invoice.

On settlement of any dispute, the CONTRACTOR shall submit an invoice for sums due and the COMPANY shall make the appropriate payment in accordance herewith.

Interest shall be payable for late payment of correctly prepared and supported invoices.

The amount of interest payable shall be based on the then current annual Bank of England 'Base Rate' plus the annual percentage stated in the PURCHASE ORDER and shall be calculated pro rata on a daily basis. In the absence of such percentage, the amount of interest payable shall be based on the then current annual Bank of England 'Base Rate' plus three percent (3%) per annum and shall be calculated pro rata on a daily basis. Interest shall run from the date on which the sum in question becomes due for payment in accordance with the provisions of Clause C5 until the date on which actual payment is made. Any such interest to be claimed by the CONTRACTOR shall be invoiced separately and within ten (10) working days of payment of the invoice to which the interest relates. Payment of the invoice claiming interest shall be in accordance with the provisions of Clause C5 hereof.

C6. Patent/Design Rights

All designs, drawings and other technical information relating to the GOODS or services, including any software provided solely by the CONTRACTOR under the PURCHASE ORDER, and the intellectual property rights therein made or acquired solely by the CONTRACTOR prior to or during the preparation of the proposal or tender or in the course of work on the PURCHASE ORDER shall be and remain the CONTRACTOR's property unless otherwise set out in the PURCHASE ORDER.

C7. Termination for Convenience

The COMPANY may at any time give written notice to the CONTRACTOR to terminate the PURCHASE ORDER forthwith and in such event the COMPANY shall pay, and the CONTRACTOR shall accept in settlement of all claims under the PURCHASE ORDER, such sums as shall reasonably compensate it for all work done and obligations assumed by it in performance of the PURCHASE ORDER prior to its termination and for all work reasonably done by the CONTRACTOR in giving effect to such termination. The value of any material, payment for which has been made by the COMPANY but which is left with, and can be put to use by, the CONTRACTOR, shall be taken into account when calculating such losses but such sum shall in no event exceed the price set out in the PURCHASE ORDER unless otherwise previously agreed.

C8. Status of COMPANY

The COMPANY enters into the PURCHASE ORDER for itself and as agent for and on behalf of the other CO-VENTURERS. Without prejudice to the provisions of Clause D12 and notwithstanding the above:

- (a) the CONTRACTOR agrees to look only to the COMPANY for the due performance of the PURCHASE ORDER and nothing contained in the PURCHASE ORDER will impose any liability upon, or entitle the CONTRACTOR to commence any proceedings against any CO-VENTURER other than the COMPANY; and
- (b) the COMPANY is entitled to enforce the PURCHASE ORDER on behalf of all CO-VENTURERS as well as for itself. For that purpose the COMPANY may commence proceedings in its own name to enforce all obligations and liabilities of the CONTRACTOR and to make any claim which any CO-VENTURER may have against the CONTRACTOR.

SECTION D OUR COMMITMENTS TO EACH OTHER

D1. Indemnity Arrangements

D1.1 The CONTRACTOR shall be responsible for and shall save, indemnify, defend and hold harmless the COMPANY GROUP from and against all claims, losses, damages, costs (including legal costs) expenses and liabilities in respect of:

- (a) loss of or damage to property of the CONTRACTOR GROUP whether owned, hired, leased or otherwise provided by the CONTRACTOR GROUP arising from, relating to or in connection with the performance or non-performance of the PURCHASE ORDER; and
- (b) personal injury including death or disease to any person employed by the CONTRACTOR GROUP arising from, relating to or in connection with the performance or non-performance of the PURCHASE ORDER; and
- (c) subject to any other express provisions of the PURCHASE ORDER, 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 the CONTRACTOR GROUP. For the purposes of this Clause D1.1 (c) "third party" shall mean any party, which is not a member of the COMPANY GROUP or the CONTRACTOR GROUP.

D1.2 The COMPANY shall be responsible for and shall save, indemnify, defend and hold harmless the CONTRACTOR GROUP from and against all claims, losses, damages, costs (including legal costs) expenses and liabilities in respect of:

- (a) loss of or damage to property of the COMPANY GROUP whether
 - (i) owned by the COMPANY GROUP, or
 - (ii) leased or otherwise obtained under arrangements with financial institutions by the COMPANY GROUParising from, relating to or in connection with the performance or non-performance of the PURCHASE ORDER, but excluding the GOODS prior to delivery; and
- (b) personal injury including death or disease to any person employed by the COMPANY GROUP arising from, relating to or in connection with the performance or non-performance of the PURCHASE ORDER; and
- (c) subject to any other express provisions of the PURCHASE ORDER, 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 the COMPANY GROUP. For the purposes of this Clause D1.2 (c) "third party" shall mean any party which is not a member of the CONTRACTOR GROUP or the COMPANY GROUP.

D1.3 All exclusions and indemnities given under this Clause D1 (save for those under Clauses D1.1(c), D1.2(c) and Clause D2 shall apply irrespective of cause and notwithstanding the negligence or breach of duty (whether statutory or otherwise) 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.

D1.4 If either party becomes aware of any incident likely to give rise to a claim under the above indemnities it shall notify the other and both parties shall co-operate fully in investigating the incident.

D2. Consequential Loss

For the purposes of this Clause D2 the expression "Consequential Loss" shall mean:

- (i) consequential or indirect loss under English law; and
- (ii) loss and/or deferral of production, loss of product, loss of use, loss of revenue, profit or anticipated profit (if any), in each case whether direct or indirect to the extent that these are not included in (i), and whether or not foreseeable at the date of the PURCHASE ORDER.

Notwithstanding any provision to the contrary elsewhere in the PURCHASE ORDER and except to the extent of any agreed liquidated damages (including without limitation any predetermined termination fees) provided for in the PURCHASE ORDER, the COMPANY shall save, indemnify, defend and hold harmless the CONTRACTOR GROUP from the COMPANY GROUP's own Consequential Loss and the CONTRACTOR shall save, indemnify, defend and hold harmless the COMPANY GROUP from the CONTRACTOR GROUP's own Consequential Loss, arising from, relating to or in connection with the performance or non-performance of the PURCHASE ORDER.

D3. Insurance

The COMPANY and the CONTRACTOR shall maintain levels of insurance sufficient to cover their respective liabilities and obligations under the PURCHASE ORDER and at law.

D4. Confidentiality

The COMPANY and the CONTRACTOR shall keep the PURCHASE ORDER and any information, which either party learn about the other in strict confidence and will not disclose the same to any third party without the prior written consent of the other party.

D5. Variations

With reasonable prior notice, the COMPANY and the CONTRACTOR shall discuss variations to the PURCHASE ORDER and agree with each other resulting changes to any of the details shown in the PURCHASE ORDER.

D6. Force Majeure

Neither the COMPANY nor the CONTRACTOR shall be responsible for any failure to fulfil any term or condition of the PURCHASE ORDER if and to the extent that fulfilment has

been delayed or temporarily prevented by a force majeure occurrence, as hereunder defined, which has been notified in accordance with this Clause D6 and which is beyond the control and without the fault or negligence of the party affected and which, by the exercise of reasonable diligence, the said party is unable to provide against. For the purposes of this PURCHASE ORDER only the following occurrences shall be force majeure:

- (a) Riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not), acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power;
- (b) Ionising radiations or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- (c) Pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
- (d) Earthquake, flood, fire, explosion and/or other natural physical disaster, but excluding weather conditions as such, regardless of severity;
- (e) Strikes at a national or regional level or industrial disputes at a national or regional level, or strikes or industrial disputes by labour not employed by the affected party its sub-contractors or its suppliers and which affect a substantial or essential portion of the GOODS;
- (f) Maritime or aviation disasters;
- (g) Changes to any general or local Statute, Ordinance, Decree, or other Law, or any regulation or bye-law of any local or other duly constituted authority or the introduction of any such Statute, Ordinance, Decree, Law, regulation or bye-law.

D7. Transfer of PURCHASE ORDER

Neither the COMPANY nor the CONTRACTOR shall at any time sub-contract or assign any part of their respective rights or obligations under this PURCHASE ORDER to any other person, without first obtaining the other party's prior consent which shall not unreasonably be withheld or delayed.

D8. Dispute Resolution

If either party is dissatisfied with the performance of the other in relation to the GOODS or this PURCHASE ORDER, the parties shall meet as soon as possible in good faith with each other to try to resolve the matter in an amicable way.

If no agreement is reached the parties may attempt to settle the dispute by a form of Alternative Dispute Resolution to be agreed between the parties.

In the absence of any agreement being reached on a particular dispute either party may take appropriate action in the English Courts to resolve the dispute at any time.

D9. Cancellation

The CONTRACTOR or the COMPANY may terminate the PURCHASE ORDER in the event that:

- (a) the other party is in breach of a condition of the PURCHASE ORDER; or
- (b) the other party becoming bankrupt or making a composition or arrangement with its creditors or a winding-up order being made or (except for the purposes of amalgamation or reconstruction) a resolution for its voluntary winding-up being passed or a provisional Liquidator, Receiver, Administrator or Manager of its business or undertaking being appointed or presenting a petition or having a petition presented applying for an administration order to be made pursuant to Section 9 Insolvency Act 1986, or possession being taken by or on behalf of the holders of any debenture secured by a Floating Charge of any property comprised in or subject to the Floating Charge, or any equivalent act or thing being done or suffered under any applicable law,

In such an event, the only remaining commitment will be for the COMPANY to pay for GOODS already delivered by the CONTRACTOR but not yet paid for.

D10. Proper Law and Language

The PURCHASE ORDER shall be construed and take effect in accordance with English Law excluding those conflict of law rules and choice of law principles which would deem otherwise, and subject to the provisions of Clause D8, shall be subject to the exclusive jurisdiction of the English Courts.

The ruling language of the PURCHASE ORDER shall be the English Language.

D11. Special Terms

The CONTRACTOR and the COMPANY agree that any special conditions set out in the PURCHASE ORDER will take precedence over the general terms and conditions set out herein.

D12. Contracts (Rights of Third Parties) Act

D12.1 Subject to Clause D12.3, the parties intend that no provision of the PURCHASE ORDER shall, by virtue of the Contracts (Rights of Third Parties) Act 1999 ("the Act") confer any benefit on, nor be enforceable by any person who is not a party to the PURCHASE ORDER.

D12.2 For the purposes of this Clause D12, "Third Party" shall mean any member of the COMPANY GROUP (other than the COMPANY) or CONTRACTOR GROUP (other than the CONTRACTOR).

D12.3 Subject to the remaining provisions of the PURCHASE ORDER, Clause B11, Clause D1, D2 and D3 are intended to be enforceable by a Third Party by virtue of the Act.

D12.4 Notwithstanding Clause D12.3, the PURCHASE ORDER may be rescinded, amended or varied by the parties to the PURCHASE ORDER without notice to or the consent of any Third Party even if, as a result, that Third Party's right to enforce a term of this PURCHASE ORDER may be varied or extinguished.

D12.5 The rights of any Third Party under Clause D12.3 shall be subject to the following:-

- (a) any claim, or reliance on any term of the PURCHASE ORDER by a Third Party shall be notified in writing in accordance with the requirements of Clause D1.4 by such Third Party as soon as such Third Party becomes aware that an event is likely to give rise to such a claim and such notification shall contain the following information as a minimum:
 - (i) details of the occurrence giving rise to the claim; and
 - (ii) the right relied upon by the Third Party under the PURCHASE ORDER,
- (b) the provisions of Clause D8 shall apply in respect of any claim by a Third Party in that the relevant parties agree to resolve any dispute between them in a prompt and amicable manner by adopting the provisions of Clause D8,
- (c) the Third Party's written agreement to submit irrevocably to the jurisdiction of the English Courts in respect of all matters relating to such rights.

D12.6 In enforcing any right to which it is entitled by virtue of the Act and the provisions of this PURCHASE ORDER, the remedies of a Third Party shall be limited to damages.

D12.7 A Third Party shall not be entitled to assign any benefit or right conferred on it under this PURCHASE ORDER by virtue of the Act.