

## TERMS AND CONDITIONS OF SALE

All sale of Goods and agreements to sell Goods between Probe Oil Tools Limited, a company registered under the Companies Acts (Company Number 01168238) and having its registered address at Ferryside, Ferry Road, Norwich, Norfolk, NR1 1SW (hereinafter called the "Company") and the Buyer, each a "Party" and collectively the "Parties", are subject to these terms and conditions (hereinafter the "Terms") which shall form the Contract between the Parties along with any Purchase Order.

The Terms hereinafter set out shall exclude all other terms and conditions. All additions thereto and variations thereof shall be of no effect unless agreed to by the Managing Director of the Company in writing. No employee, representative or agent shall have the authority to vary, alter or amend the Terms in any way whatsoever.

1. **Definitions:**

"Acceptance" has the meaning assigned to it in Clause 4.2;

"Affiliate" means any subsidiary, parent or holding company of any tier, and any company directly or indirectly controlled by such company. For the purpose of this definition the expression "controlled" means the ownership of fifty per cent (50%) or more of the issued share capital, or the legal power to direct or cause the direction of the general management of the company, partnership or other entity in question, whether by share ownership, contract or otherwise;

"Buyer" means the legally registered entity designated as the Buyer upon the relevant Purchaser Order.

"Buyer Group" means the Buyer, its clients and co-venturers, if any, and its and their Affiliates, and its and their Personnel.

"Company Group" means the Company, its Subcontractors, its and their Affiliates and its and their respective Personnel;

"Confidential Information" means all business, commercial, economic, financial, operational, technical, administrative, marketing, planning and staff information and data relating to a Party whether in digital, written, or any other form and all information, data, know-how, specifications, trade secrets, drawings, processes,

formulae, designs, photographs, Intellectual Property Rights (as defined hereinafter), samples and any other material disclosed by a Party to the other Party in connection with the Contract and all copies of such information. Without limitation of the generality of the foregoing, reference to Confidential Information shall include those parts of all analyses, compilations, studies, interpretations and other documents prepared by a Party or any of its directors, employees or professional advisers which contain or are derived from such information, discussions and negotiations relating to the Contract.

“Consequential Loss” means: i) consequential or indirect loss under English law; and ii) loss and/or deferral of production, loss of product, loss of use (where loss of use shall mean, without limitation, spread costs, loss of use or the cost of use of property, equipment, materials and services including without limitation, those provided by contractors or subcontractors of every tier or by third parties), loss of or deferment of revenue, profit or anticipated profit (if any), losses associated with business interruption including wasted overheads and loss of anticipated savings loss of bargain, contract, expectation or opportunity any loss, claim or expense which arises out of or is connected with the sale, disposal, exchange or use of, or the transportation or processing of, any production, any increase in operating or other costs, except as specifically provided for elsewhere in this Contract, and in each case whether direct or indirect and whether or not foreseeable at the date of the Purchase Order;

“Contract” means the Purchase Order, The Terms and any Variations applicable thereto as agreed under Clause 9.

“Days” means calendar days;

“Delivery” means that the Goods are handed over, made available or delivered at the Delivery Location and “Delivered” shall be construed accordingly;

“Delivery Location” means the location where Delivery takes place as indicated upon the Purchase Order.

“Force Majeure” means the following occurrences:

- (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) Ionizing radiations or contamination by radioactivity 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-consultants or its suppliers and which affect a substantial or essential portion of the services provided in the supply 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”.

“Goods” means the articles, documentation, materials, and/or equipment to be purchased by the Buyer, as the case may be, identified in and in accordance with the Purchase Order;

"Intellectual Property Rights" means all intellectual property rights, including but not limited to patents, utility models, designs and models (whether registered or not and all applications for any of the foregoing), trademarks, service marks, applications for any of the foregoing (and the rights to apply for any of the foregoing), design rights, ownership of inventions, proprietary information and/or technical know-how, copyright, authorship, whether patentable or not and any other intellectual property rights of a similar or corresponding nature whenever and howsoever arising for the full term thereof and all renewals and extensions thereof which may now or in the future subsist.

“Group” means either Buyer Group or Company Group as may be inferred from the Terms.

“Personnel” means the directors, officers, employees, agents and subcontractors of a Party;

“Party” means the Company or the Buyer and “Parties” means the Company and the Buyer collectively;

“Price” means the total consideration payable by the Buyer for the supply of the Goods by the Company, as stated in the Purchase Order, but excluding value added or similar indirect taxes. Company reserves its right to amend that price in any event should the written confirmation of an order not be received by the Company within seven Days from the quotation of the original price;

"Purchase Order" means the written order for the Goods to be provided by the Buyer to the Company and to which the Terms are included by reference;

“Representatives” means the Parties, their Affiliates, and their respective employees, officers or directors and professional advisers.

“Terms” means the foregoing Company’s standard terms and conditions pursuant to which the Goods shall be provided and which shall not be amended or modified without the express written consent of the Company;

“Variation” means a formal document to be signed by both Parties that details any agreement reached in accordance with Clause 9. All Variations are subject to the Terms.

## **2 Acceptance of Purchase Order**

- 2.1 The Contract shall apply between the Parties and represent the whole agreement between them in respect of the provision of Goods and supersede all previous and other agreements or representations between the Parties relating to the subject matter.
- 2.2 In the event of any conflict or inconsistency between the Purchase Order and the Terms, the Terms shall prevail. For the avoidance of doubt, any amendment to the foregoing Terms shall be conducted by means of Variation in accordance with Clause 9.
- 2.3 The Purchase Order will constitute a valid contract between the Parties but shall be subject to the Company receiving a Purchase Order in writing (including via email) on a properly constituted order form from the Buyer.
- 2.4 For the avoidance of doubt, Company shall at no times be under any obligation to accept a Purchase Order from the Buyer.

## **3 Payment Terms**

- 3.1 Unless stated otherwise, the Price is exclusive of VAT (or equivalent taxes) but includes all other taxes, tariffs, duties and charges as applicable. Notwithstanding this, where withholding tax is applicable, the Buyer shall be responsible for payment of same to the relevant authorities.
- 3.2 Buyer shall pay Company invoices within thirty (30) Days of the date of invoice. If Buyer disputes the invoice, either in whole or in part, it shall notify Company within seven (7) days of the date of invoice, and provide reasoning for doing so. If Buyer fails to provide the said written notification within the time stipulated, the invoice shall be deemed to be accepted by Buyer in full. If such written notification is received by the Company, the Company shall issue a credit note for the unaccepted part or whole of the invoice as applicable. Upon receipt of such credit note, the Buyer shall be obliged to pay the undisputed part of the disputed invoice and the disputed part shall be reimbursed after a dispute is settled in accordance with Clause 11.

3.3 On any occasion when for any reason any due payments are not received by Company in accordance with Clause 3.2, the Company shall have the right (to be exercised solely at its discretion) to make an interest surcharge against the Buyer on the late payment of correctly prepared invoices. Interest shall run between the date of actual Delivery and the date on which actual payment is received by Company. The amount of interest shall be calculated at the Bank of England base rate plus four percentage points (4%) on the full amount outstanding and shall be calculated on a daily basis. Any such interest to be claimed by Company shall be invoiced separately and within thirty (30) Days of payment of the invoice to which the interest relates.

#### **4 Delivery and Transfer of Title and Risk.**

4.1 The Company undertakes to use reasonable endeavors to execute Company accepted Purchase Order and to effect Delivery in a reasonable time but does not guarantee that Delivery will take place on any given date when Delivery is prevented by any circumstances whatsoever which are not within the control of the Company. The Company shall not be liable for any failure to perform any part of the Contract if performance is being delayed hindered or prevented by any circumstances whatsoever which are not within the control of the Company and are not preventable by reasonable diligence on its part. Without prejudice to the generality of the foregoing, the Company shall not be liable for any delays caused by any event of Force Majeure.

4.2 The Goods will be accepted or deemed accepted by the Buyer once the Goods are Delivered at the Delivery Location (the "Acceptance"). Upon Delivery, the Company shall accordingly be entitled to invoice the Buyer for the Goods.

4.3 The Company shall retain full legal title to the Goods until payment of the Price is received. The risk in the Goods shall pass to the Buyer on Delivery and the Buyer, if required, shall store the Goods in such a way as to identify them as the Company's property. The Buyer shall be liable for all reasonable storage charges for all Goods ready for delivery where Delivery of the Goods is refused by the Buyer.

4.4 Where the Buyer arranges for the Goods to be Delivered otherwise than by the Company's transport, the Buyer shall be responsible for the risk in the Goods from the moment the Goods are loaded onto the Buyer's chosen transport, but shall not have title to said Goods until Clause 4.2 above is satisfied. In the event of the Goods being carried by the Company's transport, the Company will not be responsible for any damage howsoever caused unless it can be proved that such damage arose through the negligence of the Company Group.

4.4.1 Notwithstanding Buyer's further rights under Clause 10, if the Buyer makes default in any payment or becomes insolvent or files for bankruptcy or enters into liquidation (other than for the purposes of reconstruction or amalgamation) or if the

Buyer enters into any deeds or arrangement or competition with the Buyers creditors, the Company may at its option without notice to the Buyer withhold or cancel further deliveries or re-take possession of the Goods, the ownership of which remains with the Company, and Company shall have a lien for any amount outstanding against the Goods, any property of the Buyer which may remain in the possession of the Company, or its agents.

4.5 If the Goods are to be Delivered by the Company, no liability for non-delivery of or for shortage or damage to the Goods occurring in transit is accepted by the Company unless the following conditions are observed:

a) In the case of non-delivery, notice is given by the Buyer in writing to the Company and the carrier (if different from the Company) within fourteen (14) Days of circumstances arising whereby the Buyer became aware or should have become aware of the non-delivery. The Company's liability in relation// to this Clause 4.6(a) shall be limited to the value of the Goods not delivered in accordance with the Purchase Order, but not to exceed the liability accepted by a carrier.

b) In the case of shortage or damage:

- i. Exact details of the damage or shortage alleged as specified by Buyer on the sheet presented by the carrier or the Company's representative as the case may be before the Goods are signed for upon Delivery; and
- ii. Notice is given by the Buyer in writing to the Company and the carrier (if different from the Company) within fourteen (14) Days of the date on which the Buyer became aware or should have become aware of the shortage or damage.

The Company's liability in relation to this Clause 4.5(b) shall be limited to the value of the Goods not delivered in accordance with the Purchase Order, but not to exceed the liability accepted by a carrier.

4.6 If the Goods are ready for Delivery to be made to the Buyer, and the Company has provided written notification to the Buyer to this effect, the Company shall be entitled to deem this to be Acceptance of Delivery of the Goods and invoice the Buyer for the full Price value of the Goods accordingly in the event that the Company has used all reasonable endeavours to effect Delivery in a reasonable time, and delay of Delivery is due to the Buyer, fourteen (14) Days after Buyer's receipt of such written notification.

## **5 Indemnity**

- 5.1 Buyer 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) any personal injury, death, loss of or damage to property whatsoever (other than death or personal injury to Company Group Personnel) arising out of the performance or non-performance of the Contract, or in the course of the use or sale of the Goods howsoever caused and even if caused by the negligence or breach of duty (statutory or otherwise) of the Company Group;
  - (b) any pollution emanating from the reservoir or from any property arising out of the performance or non-performance of the Contract or in the course of the use or sale of the Goods howsoever caused and even if caused by the negligence of duty of the Company Group;
  - (c) any alleged or actual infringement of any patent or proprietary or protected right, arising out of or in connection with the use or sale of the Goods.
- 5.2 Notwithstanding any provision to the contrary in the Purchase Order, neither Party shall be liable to the other for any Consequential Loss it or any of its Group has incurred or suffered and each Party shall at all times indemnify, defend and hold harmless the other and its Group against its and its Group's own Consequential Loss, irrespective of the negligence and/or breach of duty (statutory or otherwise) of the Party to be indemnified.
- 5.3 Buyer and Company shall each indemnify the other from and against all claims, losses, damages, costs, expenses and liabilities in respect of 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 their respective negligence or breach of duty (statutory or otherwise). For the purposes of this Clause "third party" shall mean third parties which are not part of the Buyer Group or Company Group.
- 5.4 All exclusions and indemnities contained in these Clauses 5.1 and 5.2 will apply irrespective of cause and notwithstanding the negligence, breach of contract, breach of duty of care or of strict liability or of other premises liability, unseaworthiness, unairworthiest, and breach of statutory duty of the indemnified party or any other entity or party and will apply irrespective of any claim in tort, under contract or otherwise at law.

## **6 Representations, Warranties & Liability**

- 6.1 The Company will use all due care to ensure that the Goods delivered to the Buyer will materially correspond to the description by which they were sold. Notwithstanding this, responsibility shall at all times rest with the Buyer to ensure that the Goods are suitable for the Buyers requirements and Company shall accept no liability in this regard. The Company will accept no responsibility for ensuring that the Goods are suitable for any particular use or uses or purpose or purposes.

The Company reserves the right to replace the Goods agreed to be sold with Goods of a comparable quality and at a similar price. In the event of the Company being unable to replace the Goods with comparable Goods, then the Buyer shall have an option either to terminate the Contract or alternatively and where available, to pay for the Goods of a higher quality at a price to be agreed between the Company and the Buyer.

- 6.2 All conditions and warranties implied or expressed statutorily or otherwise in relation to the Goods are hereby excluded.
- 6.3 Unless otherwise stated in writing, the Company shall not be liable for any recommendation, advice, options or statements given by or made by the Company Group in respect of the suitability of any Goods for any particular use or uses or purpose or purposes.
- 6.4 If the Company provides a test certificate with the Goods, this is only an indication of the date when the certificate was issued and the Goods tested and not a warranty by the Company that the Goods now conform to the description of the certificate.
- 6.5 Notwithstanding the other provisions of this clause 6 or the Terms, the Buyer and Company recognise that to satisfactorily manufacture its Goods Company requires to rely upon the completeness and accuracy of certain information ("Rely Upon Information") supplied by or via Buyer. All technical information, data, diagrams, maps and similar documents provided by the Buyer shall be considered Rely Upon Information and Buyer agrees that Company shall not be liable whether under the Terms, in contract, in tort or otherwise at law for its use or reliance upon any Rely Upon Information.

## **7. Intellectual Property Rights and Confidentiality**

- 7.1 All Intellectual Property Rights in the Goods, including but not limited to any designs, reports, drawings, data and other technical information relating to and derived from the Goods shall remain the Company's exclusive property.
- 7.2 Confidential Information shall not without the prior written consent of the disclosing party be divulged by the recipient to any person or corporation (other than Representatives who need to know such Information for the purposes of this Contract and are bound by similar obligations of non-disclosure), or used for any purpose not connected with this Contract. Said recipient shall use its reasonable endeavours to ensure the compliance by its employees with this obligation.

## **8 Insurance**

- 8.1 The Buyer shall take out and shall maintain employer's liability insurance and general liability insurance in adequate amounts to cover all claims arising from or



in connection with its performance of the Contract. The Buyer shall provide the Company with copies of its insurance certificates upon request.

## **9. Variations**

- 9.1 The Company may, at any time and at its discretion, inform Buyer of any change (either required, instructed by Buyer or arising from an event) to the supply of Goods. In the event the Company anticipates that such changes will affect the Price (whether by way of increase or decrease), the Parties shall meet and discuss in good faith an equitable and proportionate adjustment to the Price. Once in agreement, the Parties shall enter into and sign a formal Variation.
- 9.2 If the Parties wish to amend any of these Terms, such notice shall be given in writing by one Party to the other Party. Any such amendments shall be subject to Variation and must be agreed in writing between both Parties prior to becoming effective.

## **10. Termination**

- 10.1 The Company may terminate the Purchase Order by written notice to the Buyer if:
- a) the Buyer is in breach of the Purchase Order; and the Buyer fails to remedy said breach within five (5) Days of receipt of the Company's written notice to that effect; or
  - b) the Buyer enters into liquidation or has a receiver appointed over any of its assets or becomes subject to an administration order or any other insolvency proceedings or, (being an individual or partnership) becomes apparently insolvent, bankrupt or makes any agreement with its creditors or ceases or threatens to cease to carry on business.
  - c) The Buyer's liability to the Company in the event of such termination shall be limited to payment for the full price of the Goods, whether or not Delivered, along with any costs and expenses incurred by Company.
- 10.2 The Company may, at any time, give written notice to the Buyer to terminate the Purchase Order forthwith and in such event the Buyer shall pay, and the Company shall accept, in settlement of all claims under the Purchase Order, the Price for the Goods (or relevant parts thereof) Delivered and any costs and expenses incurred or suffered by the Company.

## **11 Governing Law and Disputes**

- 11.1 These Terms shall in all respects be construed and have effect according to English Law and any dispute or difference arising between the Company and the

Buyer arising out of or in connection with this Contract shall be resolved by means of the following procedure:

- (a) the dispute shall initially be referred to the Director of the Buyer and the Director of the Company who shall discuss the matter in dispute and make all reasonable efforts to reach an agreement;
- (b) if no agreement is reached under Clause 11.1(a), the dispute shall be finally settled by arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce then in effect ("Rules"). The arbitration shall be held, and the award shall be rendered, in London, England, in the English language. There shall be three (3) arbitrators: the claimant and the respondent shall each select one (1) in accordance with the Rules, and the two named arbitrators shall nominate the third arbitrator within thirty (30) Days of the nomination of the second arbitrator. If any such arbitrator has not been named within the time limits specified herein and in the Rules, such appointment shall be made by the International Court of Arbitration of the International Chamber of Commerce ("ICC") upon the written request of any Party within thirty (30) Days of such request.

## **12. Force Majeure**

- 12.1 Neither the Company nor the Buyer shall be responsible for any failure to fulfil any term or condition of the Contract if and to the extent that fulfilment has been delayed or temporarily prevented by a Force Majeure occurrence, 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.

Notwithstanding the above, no event of Force Majeure however occurring shall affect the obligation of any Party to make a valid payment under the Contract when such payment falls due.

## **13 General Provisions**

- 13.1 None of the Terms of this Contract shall be considered to be waived by either Party unless a waiver is given in writing. No failure by either Party to enforce any of the terms of this Contract shall constitute a waiver of such terms.
- 13.2 This Contract constitutes the entire agreement between the Parties and supersedes all prior negotiations, representations or agreement, either written or oral. No amendments to this Contract shall be effective unless evidenced in writing and signed by authorized representatives of the Parties.
- 13.3 Both Parties shall take reasonable steps to mitigate any loss resulting from any breach of this Contract by the other Party.

- 13.4 Should any provision of this Contract be held invalid, void or unenforceable for any reason whatsoever (which reasons are waived to the fullest extent permitted by law) by any arbitration panel or court of competent jurisdiction such provision shall not affect the validity or enforceability of the remainder of the provision or this Contract, which shall be construed and interpreted as if such invalid, void or unenforceable provision was not a part hereof, it being the intent of the Parties that the remainder of this Contract shall remain valid, binding and enforceable on the Parties to the fullest extent permitted by law. The Parties shall use their best endeavors to substitute for any provision so declared to be illegal, void or unenforceable a provision which shall be as closely as possible of a similar nature but which shall be legally enforceable.
- 13.5 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. The headings to clauses of this Contract shall not affect its construction or interpretation.
- 13.6 Any notice to be given by either Party to the other will be in writing and addressed to the Party at the address stated in the front of the Purchase Order. Notices will be deemed given and effective (i) if personally delivered, upon Delivery, (ii) if sent by an overnight service with tracking capabilities, upon receipt; (iii) if sent by electronic mail, at such time as the Party which sent the notice receives confirmation of receipt by the applicable method of transmittal; or (iv) if sent by certified or registered mail, within five (5) Days of deposit in the mail.
- 13.7 Except for the Company Group under Clause 5.1, no party or person who is not a party to the Purchase Order shall be entitled by virtue of the Contracts (Rights of Third Parties) Act 1999 to enforce any provision of the Purchase Order or these Terms.
- 13.8 Nothing in this Contract is intended to or shall be deemed to constitute a partnership or joint venture of any kind between the Parties.
- 13.9 No Party shall act in any way that gives or may give rise to a liability under, violates or may violate any laws, regulations and/or other legally binding requirements or determinations in relation to bribery, corruption, fraud, money-laundering, terrorism, sanctions, collusion or anti-trust, human rights violations (including slavery, servitude, forced or compulsory labour and human trafficking), use of Conflict Minerals or similar activities which are applicable to either Party or to any jurisdiction in which any work under these Terms is performed and which shall include (without limitation): (i) the United Kingdom Bribery Act 2010, (ii) the United Kingdom Modern Slavery Act 2015, (iii) the United States Foreign Corrupt Practices Act 1977, (iv) any related enabling legislation pursuant to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and (v) any United States, United Nations, Canadian or European Union sanctions. For these purposes "Conflict Minerals" means gold,

tin, tantalum, tungsten and their derivatives, as well as any other mineral or mineral derivative determined by the U.S. Secretary of State or the European Union to be involved in the financing of the conflict in the Democratic Republic of Congo (DRC) or an adjoining country.

- 13.10 The Parties place prime importance on health, safety and environment (hereinafter “HS&E”) issues and both parties warrant that they subscribe to and actively pursues the highest standards of HS&E performance.

Each Party shall take full responsibility for the adequacy, stability and safety of all its operations and methods necessary for the performance of the Services. Failure of a party to satisfy the other party’s reasonable requirements with regard to the control of HS&E risks in any material respect will be regarded as due cause for the other party giving notice to terminate all of any part of the Contract in accordance with Clause 10.

- 13.11 Company shall exercise the control, management and direction of the supply of Goods to and shall have the status of an independent contractor. In no event shall the relationship of the parties be construed to be that of principal and agent or master and servant.

Nothing in this Contract shall render any employee of the Company an employee, agent or partner of the Buyer and no employee of Company shall hold themselves out as such.

#### **14 Limitation of Liability**

- 14.1 Notwithstanding anything to the contrary contained in this Contract, but excluding the provisions of Clause 5 herein, Company’s total aggregate liability to the Buyer arising out of or in relation to the performance of the Contract, including but not limited to liability for, delay, default, rework or re-performance or replacement, or termination, under any cause of action whether in contract, tort or otherwise at law shall not exceed a sum equivalent to fifteen percent (15%) of the affected Purchase Order Price above which sum Buyer shall save, defend, indemnify and hold harmless the Company Group, regardless of cause and whether any such liability arises by reason of negligence or breach of duty (statutory or otherwise) on the part of the Company.