

1. INTERPRETATION

1.1 Definitions. The following definitions apply:

**Business Day:** a day (other than a Saturday, Sunday or a statutory holiday) when banks in Dublin are open for business.

**Commencement Date:** has the meaning set out in clause 2.2.

**Contract:** the contract between OpenHydro and the Supplier for the purchase of Goods and/or Services in accordance with the terms and conditions contained herein.

**Deliverables:** all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Goods / Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

**Goods:** the Goods (or any part of them) to be provided by the Supplier under the Contract as set out in the Order.

**Goods Specification:** any specification for the Goods, including any related plans and drawings that are agreed in writing by OpenHydro and the Supplier.

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, , database right, topography rights, rights in confidential information and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**OpenHydro:** OpenHydro Technology Limited, registered in Ireland under company number 404462.

**OpenHydro Materials:** all materials, equipment, tooling and tools, drawings, specifications and data supplied by OpenHydro to the Supplier.

**Order:** OpenHydro's order for the supply of Goods and/or Services, as set out in OpenHydro's purchase order form, or in OpenHydro's written acceptance of the Supplier's quotation as the case may be.

**Services:** the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification.

**Service Specification:** the description or specification for Services agreed in writing by OpenHydro and the Supplier.

**Supplier:** the person or firm from whom OpenHydro purchases the Goods and/or Services.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by OpenHydro to purchase Goods and/or Services from the Supplier in accordance with the terms and conditions set out in this Contract.

2.2 The Order shall be deemed to be accepted on the earlier of:  
 (a) the Supplier issuing written acceptance of the Order; or  
 (b) any act by the Supplier consistent with fulfilling the Order, at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 The parties agree that the terms of this Contract between the Supplier and OpenHydro are contained solely in this Contract, which shall take effect in substitution for and supersede all previous undertakings and agreements, written, oral or implied between the Supplier and OpenHydro and any terms proposed or sought to be incorporated by the Supplier.

2.4 These Conditions shall apply to the supply of both goods (i.e. Goods) and Services

3. SUPPLY OF GOODS

3.1 The Supplier shall ensure that the Goods shall:  
 (a) correspond with their description and any applicable Goods Specification; and  
 (b) be of satisfactory quality set out in the relevant specification, QR25 and fit for any purpose held out by the Supplier or made known to the Supplier by OpenHydro, where applicable, be free from defects in design, materials and workmanship, and comply with all applicable statutory and regulatory requirements relating to the manufacture, and delivery of the Goods including REACH (Registration, Evaluation, Authorisation and Restriction of Chemical Substances).

3.2 The Supplier shall ensure that at all times it has and maintains all the resources, licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract and in support of OpenHydro's "Code of conduct for Suppliers" in respect of the Goods.

3.3 OpenHydro shall have the right to inspect, test the Goods and request the Supplier signs the OpenHydro CSR policy at any time before delivery.

3.4 If following such inspection or testing OpenHydro considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 3.1, OpenHydro shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance at its sole expenses

3.5 Supplier warranty shall start at the time of delivery and shall remain in full force and effect for a twelve (12) month period of time or as specified in the Goods Specification or relevant request for quotation, whichever is longer. If goods contain any defects or otherwise fail to comply in any respect with the clause 3.1. Supplier shall promptly replace the products (with a renewed warranty period equal to the original products) and bare all costs.

- (a) observe all health and safety rules and regulations including REACH (Registration, Evaluation, Authorisation and Restriction of Chemical Substances) and any other security requirements that apply at any of OpenHydro's premises such as requesting the Supplier to sign the OpenHydro CSR policy;
- (b) hold all OpenHydro Materials in safe custody at its own risk, maintain OpenHydro Materials in good condition until returned to OpenHydro, and not dispose or use OpenHydro Materials other than in accordance with OpenHydro's written instructions or authorisation;
- (c) not do anything to prejudice the name or reputation of OpenHydro or OpenHydro's business interests;
- (d) advise OpenHydro of any possible conflict of interest that may exist prior to undertaking any Services and thereafter immediately upon becoming aware of any possible conflict of interest.; and
- (e) and not to do or omit to do anything which may cause OpenHydro to lose any licence, authority, permits consent or permission on which it relies for the purposes of conducting its business.

4. DELIVERY OF GOODS

4.1 The Supplier shall ensure that:  
 (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition; and  
 (b) each delivery of the Goods must be accompanied by a delivery note which shows the date of the Order, the Order number, the type and quantity of the Goods and certificate of conformance.

4.2 The Supplier shall deliver the Goods:  
 (a) on the date specified in the Order and time will be of the essence;  
 (b) to OpenHydro's premises at the address and Incoterms 2010 set out in the Order or as instructed by OpenHydro before delivery (**Delivery Location**);  
 (c) during OpenHydro's normal hours of business, or as instructed by OpenHydro.

4.3 Delivery and transfer of title of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location and after OpenHydro has had an opportunity to inspect the Goods and ensure that they conform to the Order. Upon delivery, OpenHydro shall sign a delivery slip as Proof of Delivery (POD). This shall confirm delivery of Goods but shall not constitute acceptance of the Goods

4.4 OpenHydro may at its sole discretion reject the Goods, if they fail inspection and / or testing as per clause 3.4 and any rejected Goods shall be returnable at the Supplier's risk and expense.

4.5 The Supplier shall endeavour not to deliver the Goods in instalments without OpenHydro's prior consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately.

4.6 Failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle OpenHydro to the Remedies set out in Clause 6.

4.7 The Supplier shall inform OpenHydro immediately in writing of any delay in delivery that is expected and shall at its own expense take all additional action required to ensure proper execution of the Order.

5. **SUPPLY OF SERVICES**
- 5.1 The Supplier shall from the Commencement Date and for the duration of this Contract provide the Services to OpenHydro in accordance with the terms of the Contract.
- 5.2 The Supplier shall meet any performance dates for the Services specified in the Order or notified to the Supplier by OpenHydro.
- 5.3 In providing the Services, the Supplier shall:
- (a) co-operate with OpenHydro in all matters relating to the Services, and comply with all instructions of OpenHydro;
  - (b) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry;
  - (c) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any applicable purpose and free from defects;
  - (d) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
  - (e) obtain and at all times maintain all necessary licences, permits and consents in support of OpenHydro's "Code of conduct for Suppliers", and comply with all applicable Irish laws and regulations;
  - (f) observe all health and safety rules and regulations including REACH (Registration, Evaluation, Authorisation and Restriction of Chemical Substances) and any other security requirements that apply at any of OpenHydro's premises such as requesting the Supplier to sign the OpenHydro CSR policy;
  - (g) hold all OpenHydro Materials in safe custody at its own risk, maintain OpenHydro Materials in good condition until returned to OpenHydro, and not dispose or use OpenHydro Materials other than in accordance with OpenHydro's written instructions or authorisation;
  - (h) not do anything to prejudice the name or reputation of OpenHydro or OpenHydro's business interests;
  - (i) advise OpenHydro of any possible conflict of interest that may exist prior to undertaking any Services and thereafter immediately upon becoming aware of any possible conflict of interest; and
  - (j) not to do or omit to do anything which may cause OpenHydro to lose any licence, authority, permits consent or permission on which it relies for the purposes of conducting its business.
- 5.4 The Supplier warranty shall start at the time of delivery of the Service and shall remain in full force and effect for a twelve (12) month period of time or as specified in the Services Specification or relevant request for quotation, whichever is longer. If services or any deliverable contain any defects or otherwise fail to comply in any respect with the clause 5.3. Supplier shall promptly remedy such defect and bare all costs.
6. **OPENHYDRO REMEDIES**
- 6.1 If the Supplier fails to deliver the Goods and/or perform the Services by the applicable date, OpenHydro shall, without limiting its other rights or remedies, have one or more of the following rights:
- (a) to terminate the Contract by giving thirty (30) days written notice to the Supplier;
  - (b) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
  - (c) to recover from the Supplier any costs incurred by OpenHydro in obtaining substitute Goods and/or services from a third party; and
  - (d) to claim damages for additional costs, loss or expenses incurred by OpenHydro which are in any way attributable to the Supplier's failure to meet such dates.
- 6.2 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 3.1, then, without limiting its other rights or remedies, OpenHydro shall have one or more of the following rights, whether or not it has accepted the Goods:
- (a) to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
  - (b) to terminate the Contract by giving thirty (30) days written notice to the Supplier;
  - (c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the any payments made in respect of the rejected Goods;
  - (d) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make; and
- (e) to recover from the Supplier any expenditure incurred by OpenHydro in obtaining substitute Goods from a third party.
- 6.3 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement Goods supplied by the Supplier.
- 6.4 OpenHydro's rights under this Contract are in addition to its rights and remedies implied by Irish law.
7. **OPENHYDRO'S OBLIGATIONS**
- OpenHydro shall:
- (a) provide the Supplier with reasonable access at reasonable times to OpenHydro's premises for the purpose of providing the Services and delivery of the Goods;
  - (b) provide such information as the Supplier may reasonably request for the provision of the Services and OpenHydro considers reasonably necessary for the purpose of providing the Services and supply of Goods; and
  - (c) pay the Supplier in accordance with clause 8 of this Contract.
8. **CHARGES AND PAYMENT**
- 8.1 The price for the Goods:
- (a) shall be the price set out in the Order, or the price that is agreed by the parties at the Commencement Date; and
  - (b) shall be inclusive of the costs of packaging, insurance and carriage of the Goods, unless otherwise agreed in writing by OpenHydro. No extra charges shall be effective unless agreed in writing and signed by OpenHydro.
- 8.2 In respect of Goods, the Supplier shall invoice OpenHydro on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice OpenHydro on completion of the Services.
- 8.3 In consideration of the supply of Goods and/or Services by the Supplier, OpenHydro shall pay the invoiced amounts within 30 days end of month of the date of receipt of a correctly rendered invoice to a bank account nominated in writing by the Supplier.
- 8.4 The Supplier shall add VAT to the price at the prevailing rate as applicable and OpenHydro shall pay the VAT to the Supplier following receipt of a valid VAT invoice.
- 8.5 Any terms and conditions included in the Suppliers invoice shall be deemed solely for the convenience of the Supplier and shall not be binding on OpenHydro.
9. **BILLING DETAILS**
- 9.1 All invoices shall be sent to our Financial Shared Services Centre in Greenore:  
Email address: invoice@openhydro.com  
Postal address: Accounts Payable Team, OpenHydro Group, Greenore Port, Greenore, Co. Louth, A91 AOV1
- 9.2 All other account related correspondence such as statements or queries shall be emailed to: finance@openhydro.com
10. **INTELLECTUAL PROPERTY RIGHTS**
- 10.1 Supplier hereby confirms its agreement that, from the outset, OpenHydro owns and shall own all rights (including all Intellectual Property rights) in all work Supplier carries out or creates on OpenHydro's behalf, and Supplier shall, if required, promptly co-operate fully with OpenHydro in doing such acts or signing such documents as may lawfully be required in order to perfect any such rights or title, at the Suppliers expense. Supplier shall not use or recreate any work carried out on OpenHydro's behalf for any other company engaged in any way in marine energy development. Ownership of the Goods themselves remains the property of OpenHydro and Supplier agrees not to use this information, design or knowledge for any purpose other than for the manufacture of Goods for OpenHydro.
- 10.2 All OpenHydro Materials are the exclusive property of OpenHydro and this Contract shall not be construed as the assignment to the Supplier of any intellectual property rights therein.
11. **INDEMNITY AND INSURANCE**
- 11.1 The Supplier shall keep OpenHydro indemnified in full against all direct costs, expenses, damages and losses (whether direct or indirect) including any interest, penalties, and legal and other

professional fees and expenses awarded against or incurred or paid by OpenHydro as a result of or in connection with:

- (a) any claim made against OpenHydro by a third party arising out of, or in connection with, the supply of the Goods or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and
- (b) any claim made against OpenHydro for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services.

11.2 For the duration of the Contract and for a period of 12 months thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance at a value of €5 million minimum, product liability insurance at a value of €6.5 million minimum, employers liability insurance €5 million minimum and public liability insurance at a value of €6.5 million minimum to cover the liabilities that may arise under or in connection with the Contract and shall, at OpenHydro's request produce the insurance certificates in respect of such insurance policies.

11.3 This clause 11 shall survive termination of the Contract.

**12. CONFIDENTIALITY**

12.1 A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 12 shall survive termination of the Contract.

12.2 Notwithstanding the provisions of Clause 11.1 above, the Receiving Party may disclose Confidential Information to the extent required by law, or other competent authorities having jurisdiction over the Receiving Party, including upon the ruling of any court of competent jurisdiction and to regulatory bodies and pursuant to the rules of a recognised stock exchange provided however that the Receiving Party shall give to the Disclosing Party written notice (and where reasonably practicable, prior written notice) of and the reasons for such disclosure and that such disclosure shall be limited to that strictly required for the purposes of the relevant compliance. The Receiving Party may also disclose Confidential Information: (i) which at any time is or comes into the public domain, other than in breach of the terms of this Contract; (ii) which was lawfully in the possession of the Supplier prior to disclosure; or (iii) which at any time after this Contract commences comes lawfully into the Supplier's possession from a third party without obligations of confidentiality owed to OpenHydro.

**13. TERMINATION**

13.1 Without limiting its other rights or remedies, OpenHydro may terminate the Contract with immediate effect by giving written notice to the Supplier if:

- (a) in the opinion of OpenHydro, the Supplier commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of receipt of notice in writing of the breach, OpenHydro shall be entitled to recover as a liquidated debt, all monies then paid to Supplier, with accrued interest thereon at the EURIBOR base rate plus 5%; and
- (b) the Supplier being a company ceases to carry on business in the normal course or enters into liquidation, whether compulsory or voluntary other than for the purposes of amalgamation or reconstruction, or compounds with its creditors generally or has a receiver or liquidator appointed over all or any of its assets or if a petition is presented or a meeting is convened for the purpose of considering a resolution for winding up or suffers execution or distress or takes or suffers any similar action in consequence of debt or becomes unable to pay its debts as they fall due (within the meaning of Section 214 of the Companies Act 1963, as such legislation may be amended or replaced) or events analogous to any of the foregoing occur.

13.2 Without limiting its other rights or remedies, OpenHydro may terminate the Contract at any time:

- (a) in respect of the supply of Services, by giving the Supplier 30 days' written notice; and
- (b) in respect of the supply of Goods, with by giving thirty (30) days written notice to the Supplier, in which case OpenHydro shall pay the Supplier fair and reasonable compensation for any work in progress on any other Goods at the date of termination but such compensation shall not include loss of anticipated profits, revenue, goodwill, business or opportunity or any other indirect or consequential loss.

13.3 In any of the circumstances in these terms and conditions in which OpenHydro may terminate the Contract, where both Goods and Services are supplied, OpenHydro may instead terminate part of the Contract in respect of the Goods, or in respect of the Services, and the Contract shall continue in respect of the remaining supply.

**14. CONSEQUENCES OF TERMINATION**

On termination of the Contract or any part of it for any reason:

- (a) where the Goods supply and/or Services are terminated, the Supplier shall immediately deliver to OpenHydro all Deliverables, whether or not then complete, and return all OpenHydro Materials. If the Supplier fails to do so, then OpenHydro may without limiting its other rights or remedies enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract; and
- (b) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

**15. GENERAL**

15.1 Force majeure: Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under the Contract if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable. If such event or circumstances prevent the Supplier from supplying the Goods and/or Services for more than 30 days, OpenHydro shall have the right, without limiting its other rights or remedies, to terminate this Contract with immediate effect by giving written notice to the Supplier.

15.2 Assignment and subcontracting: The Supplier shall not assign, delegate, sub-contract or otherwise transfer this Contract without the prior written consent of OpenHydro. OpenHydro may assign, novate or otherwise transfer this Contract at any time.

**15.3 Notices:**

- (a) Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing addressed to that party at its registered office.

15.4 Whenever under this Contract any sum of money shall be recoverable from or payable by the Supplier, and the Supplier has not paid the sum due to OpenHydro within a reasonable time the same may be deducted from any sum due to the Supplier under this or any other contract with OpenHydro.

15.5 The parties agree that all written communications between the parties and all documents supplied shall be in the English language and all calculations will be based on the metric system of weights and measures.

15.6 In the event that any provision of this Contract is declared by any judicial or other competent authority including but not limited to the Competition Authority to be void, voidable, illegal or otherwise unenforceable or indications of the same are received by either of the parties from any relevant authority the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality or it may be severed from this Contract and the remaining provisions shall remain in full force and effect.

15.7 Nothing in this Contract is intended to, shall, or shall be construed as creating or constitution a partnership or relationship of agency between the parties.

15.8 Waiver and cumulative remedies:

- (a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default.
  - (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 15.9 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 15.10 Variation: Any variation to the Contract, including any additional terms and conditions, shall only be binding when agreed in writing and signed by the Parties and follow applicable OpenHydro variation procedures.
- 15.11 Disputes: All disputes between the Parties in connection with or arising out of the existence, validity, construction, performance and termination of the Contract (or any terms thereof), which the Parties are unable to resolve between themselves within a period of thirty (30) days following the filing of a request for amicable settlement by one Party to the other, shall be finally settled by arbitration. The arbitration shall be held in Dublin in accordance with the Rules of Arbitration of Engineers Ireland. The language of arbitration shall be the English Language.
- 15.12 Governing law: The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, Irish law.