

TERMS AND CONDITIONS FOR PURCHASE

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Pulse Structural Monitoring
Terms and Conditions for Purchase
9501-PRO-1009-01/CB
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1 PREAMBLE

These Conditions may only be varied with the written agreement of the Purchaser. No terms or conditions put forward at any time by the supplier shall form any part of the Contract.

2 DEFINITIONS

"Affiliates" means a legal entity that (a) is owned or controlled by a Party, directly or indirectly, (b) owns or controls a Party, directly or indirectly or (c) is owned or controlled, directly or indirectly, by a legal entity that owns or controls a Party, directly or indirectly. For the purpose of the foregoing definition, ownership or control means the ownership, directly or indirectly, of fifty percent (50%) or more of the shares, voting rights, or interest in a legal entity and their heirs and successors present or future.

"Buyer" means any company, partnership, public authority, individual or any other legally constituted body, personal representatives, servants, agents or employees that issues the Order to Seller.

"Buyer" means Pulse Structural Monitoring Limited, a Company registered in England (Registration Number

07432819) with a registered address at Ferryside, Ferry Road, Norwich, Norfolk, NR1 1SW, United Kingdom.

"Buyer Group" means individually, and in any combination, Buyer, Buyer's Co-Ventures (if any), its and their Affiliates, and its and their sub-sellers of any tier, and its and their directors, agents, representatives, employees and insurers.

"Buyer's Representative" means such person as is nominated from time to time by Buyer to represent Buyer in connection with the Contract;

"Clause" means a clause of these Terms and Conditions

"Confidential Information" means the contents of the Contract and any information and data concerning either Party and either Party's commercial proposals or affairs learned by the other Party in the course of its activities under the Contract.

"Consequential Loss" shall include but not be limited to (a) indirect or consequential loss defined under applicable law; (b) wasted overheads or the removal costs of equipment, loss and/or deferral of production, loss of product, damage to well wellbore and/or reservoir, pollution, loss of use and loss of revenue profit or anticipated profit (if any) whether direct or indirect to the extent that these are not included in (a) above; and (c) exemplary or punitive damages of any nature, whether or not foreseeable at the date of execution of the Contract.

"Contract" means these Terms and Conditions any Order issued by Buyer together with such other documents as are agreed in writing between authorised signatories of the Parties and referenced as such.

"Contract Price" means the total remuneration payable to Seller by Buyer as defined in the Order;

"Force Majeure" shall include but not be limited to riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not), acts of terrorism, piracy, civil war, rebellion,



revolution, military invasion, insurrection of military or usurped power; or ionizing radiations or contamination by radio-activity from any nuclear waste, or radio-active, toxic, explosive or other hazardous properties of any explosive, nuclear assembly or nuclear component thereof (other than arising out of any radiation source used by the Seller in relation to the manufacture of the Goods); perils of the sea or earthquake, flood, or any other natural disaster; or strikes at national or state level or industrial disputes at a national level, or strikes or industrial disputes by labour not employed by the affected Party or its sub-sellers and which affects a substantial or essential portion of the manufacture of the Goods; or fire or explosion (being fire or explosion not caused by the negligence of the affected Party or its sub-Sellers); or acts of Government which could not have been reasonably anticipated or controlled which makes performance impossible or impracticable.

“Framework Agreement” means a separate agreement between two parties which stipulates contractual obligations that take precedence over any standard terms and conditions of sale or purchase as presented by the Buyer or by the Seller within the timeframe stipulated within the Framework Agreement

“Goods” means the subsea monitoring equipment together with such activities and supporting equipment, materials, and infrastructure necessary for the manufacture thereof; being the subject of the Order.

“Order” means a formal acceptance by Buyer of a Proposal communicated to them by Seller.

“Party” or “Parties” means Seller or Buyer or both as the case dictates and “Party Group” shall be construed accordingly.

“Perils of the Sea” means loss of or damage to goods carried on or in a vessel which could not be guarded against as foreseeable incidents of the intended voyage to include but not be limited to perils consequent on, or incidental to jettisons, barratry of the master and / or crew, contact with uncharted objects or mines that have slipped their moorings or other discarded or unexploded ordnance, and taking heed of navigational buoys (other than negligence) that have slipped their moorings.

“Proposal” means an offer describing the nature of the work and detailing the terms on which Seller is prepared to offer the work.

"Seller Group" means individually, and in any combination, Seller, its Affiliates, its and their joint owners and co-ventures, if any, and its and their sub-Sellers of any tier, and its and their directors, agents, representatives, employees and insurers.

"Seller's Representative" means such person as is nominated from time to time by Seller to oversee the manufacture of the Goods.

"Services" means activities provided by Seller to Buyer other than those involved with Goods that include but are not limited to consultancy, offshore installation and/or retrieval, research and development, verification, commissioning support, and post-deployment data analysis,

"Software" means all computer code (including firmware) necessarily installed within the Goods for them to be able to perform their function.

3 ACCEPTANCE

Any Proposal and the issue by Buyer of an Order is on the condition that Seller accepts these Terms and Conditions unless stated otherwise as part of the Order and agreed by Buyer in writing. Seller must acknowledge acceptance of PSM contract including terms and conditions within 3 working days of receipt. This Contract shall supersede all prior agreements, whether written or oral, relating to the Goods and forms the Contract with the exception of any pre-existing non-disclosure and confidentiality agreement and any framework agreement contracts proposed by Buyer and agreed by Seller. The Order takes precedence in case of conflicting terms or disputes between it and these Terms and Conditions and the terms of any proposal, project description, initial or draft quotation or other document submitted by Seller or Buyer and incorporated by reference into the Order except where a framework agreement is in place.

4 COST

Unless otherwise stated prices stated in Purchase Order are Pounds Sterling per unit item and include delivery and packaging to Pulse Structural Monitoring address as stated on the Purchase Order. Any shipping or delivery costs requested from Supplier that are not included in the unit costs, must be quoted separately and agreed by Pulse Structural Monitoring prior to order placement.

5 DELIVERY DATE

Time is of the essence with respect to all provisions (Including but not limited to Products, Documentation, Software and any other goods and services stipulated within the Purchase Order or Specification Documents) within this Agreement. Any delay in performance shall constitute a material breach of this Agreement. In the event of a delay as per the Contract Schedule for which Seller is solely responsible, Seller shall pay Buyer Liquidated Damages at a rate of a quarter of a percent (0.25%) per day of delay, subject to a maximum of ten percent (10%) of the Initial Contract Price.

Such Liquidated Damages shall be deemed to be a genuine pre-estimate of the foreseeable damages incurred by Company due to delay and shall be Company's sole recourse for late performance by Contractor under the Contract.

6 COMMUNICATION

All communication, if advising Buyer of any changes of any Purchase Order conditions must be communicated in writing to Buyers Purchasing Department.



7 BUYER RESPONSIBILITIES

Buyer shall provide information that may be necessarily required, in a timely manner, as may be requested by Seller from time to time. Seller undertakes to make reasonable efforts to identify any deficiencies, omissions, contradictions or ambiguities in the information provided by Buyer but accept no liability for the accuracy or completeness thereof or delays caused as a consequence.

8 WARRANTY

Unless other terms stipulated in Purchase Order Contract Seller warrants that the Goods shall be free from material defects for a period of 12 (twelve) months from delivery. If during this warranty period any error, omission or defect is identified by the Buyer, then the exclusive remedy shall be for Seller at its sole cost and discretion to rectify the error, omission or defect on a return-to-manufacturer basis or provide a replacement item.

Where Buyer contracts Seller to develop software to Buyers' specification title, ownership, copyright and intellectual property will belong to Buyer.

9 INTELLECTUAL PROPERTY AND NON COMPETE

- 9.1** All rights of title to, copyright in and ownership of any items created under the Contract, including but not limited to, drawings, specifications, calculations, other documents, computer tapes, discs and other essential recording material, or provision of services shall vest in or remain with Buyer.
- 9.2** Neither Party shall have the right of use, other than for the purposes of the Contract, whether directly or indirectly, of any patent copyright, proprietary right or confidential know how, trademark or process provided by the other Party.
- 9.3** All rights to potential patent or other right that is capable of registration, in any country in the world, resulting from developments by Buyer, shall vest in Buyer.
- 9.4** The Seller warrants to the Buyer that the seller will not enter into competition with the Buyer or discloses any proprietary information or documents received from the Buyer.

10 VARIATIONS

All variations, modifications, additions, or amendments to the Goods, Contract Price or the anticipated delivery date shall only be valid and binding if agreed between the Parties in writing.

11 TERMINATION & SUSPENSION

- 11.1** The Buyer shall have the right, by giving notice in writing, to terminate or suspend all or any part of the Contract, at such time or times as the Buyer may consider necessary for any or all of the following reasons:
- a) to suit the convenience if Buyer; or
 - b) in the event of Seller becoming bankrupt or a winding up order of Seller being made or (except for the purposes of amalgamation or reconstruction) a resolution for its voluntary winding-up passed or a provisional liquidator, receiver, administrator or

manager of its business appointed or presenting a petition or having a petition presented applying for an administration order to be made pursuant to the Insolvency Act 1986 (as amended), or possession being taken by or on behalf of the holders of any debenture secured by a floating charge, or any equivalent act or thing being done or suffered under any applicable law; or

c) in the event of a material default by Seller.

11.2 In the event of the Buyer giving Seller notice of termination or suspension under Clause 11.1(a) or either Party giving notice under Clause 16.1, Seller shall (if applicable) immediately cease manufacture of the Goods or such part thereof as may be specified in the notice and shall be entitled to payments as may be set out in the Order, or such other payments to cover all costs reasonably incurred by Seller as a result of such termination or suspension.

11.3 In the event of the Buyer giving Seller notice of termination or suspension under Clause 11.1(c), Seller shall only be entitled to claim payment for those elements that are unaffected by the material default. Buyer shall afford Seller of the opportunity to immediately commence and thereafter continue to rectify the material default at no further cost to Buyer after which Buyer may choose to continue or to terminate this Contract.

11.4 In the event of any suspension, the Buyer and Seller shall meet at not more than fourteen (14) day intervals with a view to agreeing a mutually acceptable course of action during the suspension. If the period of any suspension exceeds 6 calendar months Seller may serve a termination notice on the Buyer and recover additional costs as defined under Clause 10.3

12 SUB-CONTRACTING

Seller must gain permission from Buyer if seller intends to sub-contract any or all elements of the manufacture of the Goods as they deem necessary. Buyer reserves the right to inspect and approve Seller's sub-contractor. Seller must ensure Buyer has permission to visit Sub Contractor for the purpose of approval of sub-contractor, and for inspection and / or progress of sub-contractor as buyer requires. This shall not diminish any guarantees or warranties that Seller may extend to Buyer.

13 LIABILITIES AND INDEMNITIES

13.1 Seller shall be responsible for and shall indemnify and hold harmless the Buyer Group from all claims, losses, damages, costs (including legal costs), expenses and liabilities of every kind and nature resulting from: -

Personal injury including fatal injury and disease to any officer, employee or agent of Seller including (but not limited to) any personnel hired by Seller as consultants or through an employment agency and from loss of or damage to any such persons respective personal property, arising out of or in connection with the performance of this Contract and whether or not contributed to or caused by the negligence or breach of duty (statutory or otherwise) of the Buyer Group.

- 13.2** Buyer shall be responsible for and shall indemnify and hold harmless Seller Group from all claims, losses, damages, costs (including legal costs), expenses and liabilities of every kind and nature resulting from:-

Personal injury including fatal injury and disease to any officer, employee or agent of the Buyer Group including (but not limited to) any personnel hired by the Buyer as consultants or through an employment agency and from loss of or damage to any such persons respective personal property and loss of or damage to or loss of use of the Buyer Group's equipment or property and all equipment or property owned, hired or being used by the Buyer Group arising out of or in connection with the performance of this Contract and whether or not contributed to or caused by the negligence or breach of duty (statutory or otherwise) of Seller Group.

- 13.3** Each Party shall indemnify and hold the other Party Group free and harmless from and against all losses or expenses (including without limitation attorney's fees) arising from the injury to or death of any third party person and/or the destruction of or damage to any third party property, but only to the extent such injury, death, destruction or damage is attributable to the fault, negligent acts or omissions of the indemnifying Party.

- 13.4** All exclusions and indemnities given under this clause 13 (save in respect of clause 13.3) 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.

- 13.5** Notwithstanding any provision to the contrary elsewhere in the Contract, Seller shall save, indemnify, defend and hold harmless the Buyer Group from Seller's own Consequential Loss arising under or in relation to this Agreement and the Buyer Group shall save, indemnify, defend and hold harmless Seller Group from the Buyer's own Consequential Loss arising under or in relation to this Agreement.

14 **QUALITY**

When specified in the Purchase Order Certificate of Conformity shall be supplied.

Pulse Structural Monitoring reserves the rights to conduct quality assurance audits on suppliers who are not certified to ISO 9001

15 **INSURANCES**

Seller confirms it holds current and valid policies for Third Party Legal and/or Contractual Liabilities, Employers Liability, Professional Indemnity, and Personal Property Insurance and shall maintain them in full force for the term of this Contract.

16 **FORCE MAJEURE**

- 16.1** Neither Party hereto shall be liable for delay nor failure to perform the manufacture of the Goods as described in the Contract due to causes of force majeure; provided that each Party shall promptly notify the other of the occurrence of any cause of force majeure. The Party prevented from performing due to Force Majeure shall promptly, and in any case within 24 hours, notify the other Party of the nature and anticipated duration thereof and shall use all reasonable endeavours to resume performance of this Contract as soon as reasonably possible. The Party prevented from performing due to any such cause shall, in addition, furnish the other Party with

such information in respect of such cause as the other Party may reasonably require; and if such event impedes it from performing its contractual obligations successively for a period of more than 60 days, either Party hereto may terminate the Contract in accordance with Clause 11.2

16.2 During the period of Force Majeure each Party shall meet their own costs. Payments that fell due prior to the declaration of Force Majeure shall not be subjected to delay.

17 PAYMENTS

17.1 Unless otherwise stated in the Order, all prices are in UK pounds sterling and are exclusive of VAT, which will be charged at the appropriate rate.

17.2 Payments shall be made in the currency of the Order and paid via the BACS (Bank Automated Clearing System) in the United Kingdom or by a secure method of automatic electronic funds transfer if paid from outside the United Kingdom and into a bank account nominated by Seller. Payment terms are strictly 60 days from the end of the month of the date of invoice.

18 TAXES/DUTIES

18.1 The Contract Price is exclusive of all local and withholding taxes that may be levied in the area of operations where the Goods are to be manufactured and at Buyers invoice address.

19 CONFIDENTIALITY

19.1 Each Party shall keep in strict confidence, and shall ensure that all of its directors, employees, agents and sub-Sellers keep in strict confidence, all the Confidential Information. Neither Party shall at any time disclose, or permit the disclosure of all or any part of the Confidential Information to any third party or make use of any Confidential Information for any purpose other than as required to fulfil its obligations in terms of this Contract.

19.2 The restrictions referred to in Sub-clause 18.1 shall not apply with respect to:

- a) Information which at the time of disclosure is generally available to the public;
- b) Information which after disclosure becomes generally available to the public through no fault of the Party receiving the information;
- c) Information which was in the possession of the Party receiving the information prior to its disclosure and of which documented proof exists and which was not acquired directly or indirectly from the other Party;
- d) information which the Party receiving the information received without any obligations of confidentiality and of which documented proof exists and which was not acquired directly or indirectly from another Party;
- e) information which the Party receiving the information has demonstrably developed or generated independently of the information received from the other Party.



19.3 The confidentiality obligations of this Clause shall survive the termination of the Contract for a period of five (5) Years.

20 APPLICABLE LAW

20.1 Unless otherwise agreed the Order will be governed by English Law and the Parties submit to the exclusive jurisdiction of the English Courts.

20.2 If any clause or provision of this Contract shall be held to be invalid or unenforceable by a judgement or decision of any court of competent jurisdiction or any authority, the same shall be deemed severable and the remainder of this Contract (including the remainder of the affected provision) shall remain valid and enforceable to the fullest extent permitted by law. In any such case, the Parties will negotiate in good faith with a view to agreeing one or more provisions which may be substituted for such invalid or unenforceable provision in order to give effect, so far as practicable, to the spirit of these terms and conditions.

21 NOTICES

Any notice given under the Contract shall be deemed delivered on the first working day after delivery by hand, or by registered or certified mail for which a signature of receipt and record of delivery is available to the sender, or sent by facsimile or email and for which an acknowledgement of receipt is obtained. Notices shall be addressed to the Parties at their respective addresses as identified in the Order or as provided to the other in writing from time to time.

22 RESOLUTION OF DISPUTES

22.1 Any dispute between the Buyer and Seller in connection with or arising out of this Contract shall be resolved by means of the following procedure:

- a) the dispute shall initially be referred to the Buyer Representative and the corresponding Seller Representative who shall discuss the matter in dispute and make all reasonable efforts to reach an agreement;
- b) If no agreement is reached under Clause 21.1(a) the dispute shall be referred to the appropriate senior management of the Buyer and Seller.

- 22.2** If no agreement is reached under Clause 21.1 (b) above, the dispute will be referred to a member of the Chartered Institute of Arbitrators based in England and resolution will be settled and agreed based on Arbitrators' findings. Costs associated with Arbitration will be shared equally between Buyer and Seller. Other costs associated by either party will be borne by that party.
- 22.3** In the absence of any agreement being reached on a particular dispute either party may take appropriate action in the Courts to resolve the dispute at any time.
- 22.4** It shall be a condition precedent to the referral of a dispute to the Courts that the party which intends to commence proceedings in relation to the dispute first uses its reasonable endeavours to follow and complete the procedures set out in Clauses 21.1 (a) and (b).
- 22.5** Whilst any matter or matters are in dispute, Seller shall proceed with the execution and completion of this Contract, subject to any suspension under Clause 11, and both Seller and the Buyer shall comply with all the provisions of the Contract.

23 GENERAL PROVISIONS

- 23.1** All headings contained herein are for reference only and are not to be construed otherwise.
- 23.2** Any terms that contain a gender shall be construed to also include the opposite gender.
- 23.3** All terms that contain a singular description or meaning shall include the plural thereof and vice versa as the case may be.
- 23.4** None of these terms and conditions shall be considered to be waived by either Party unless a waiver is given in writing by one Party to the other. No failure on the part of either Party to enforce any of the terms and conditions shall constitute a waiver of such terms.

24 POLLUTION

- 24.1** Seller shall be responsible for pollution and/or contamination occurring on the premises of Seller or originating from the property or equipment of Seller located above the surface of the land or water arising from or relating to the performance of this Contract and shall save, indemnify, release, defend and hold harmless Buyer Group from and against any claim of whatsoever nature arising therefrom.

25 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

A party who is not a PARTY to the CONTRACT has no right under the CONTRACT's (Rights of Third Parties) Act

1999 to enforce any term of this CONTRACT except where expressly stated otherwise (so far as permitted by law).



26 BUSINESS ETHICS AND DISCRIMINATION

- 26.1** The Parties agree that they and their respective Party Group shall comply with all anti-corruption and anti- money laundering laws, rules, regulations, decrees and/or official governmental orders of the United Kingdom, the United States of America and all other jurisdictions where the Work takes place, regardless of whether the Party is otherwise subject to those laws
- 26.2** The Parties agree that they will not, directly or indirectly, receive from, or give or offer to give to any member of the other Party Group, or to other Sellers or suppliers, or to government officials or any other persons anything of material value which would be regarded as an improper inducement.
- 26.3** Any breach of this Clause shall constitute a material breach of this Contract.
- 26.4** If either Party, its shareholders, owner, or Affiliates become designated as a Restricted Party then the other Party may treat it as a breach under Clause 24.3 (For purposes of this Clause, a “Restricted party” is one that is identified from time to time by any government or legal authority under applicable trade sanctions, export controls, anti-money laundering, non-proliferation, anti-terrorism and similar laws as one with whom trade or financial dealings and transactions by either Party and/or its Affiliates are prohibited or restricted).
- 26.5** Neither Party shall unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in age, colour, disability, family or marital status, gender, origin, race, religion or belief, sexual orientation, or otherwise); and shall take all reasonable steps to secure the observance of the same from their respective Party Group.
- 26.6** Pulse requires supplier to observe the highest standards of ethical propriety in its business conduct and to comply with specific ethical standards in relation to working and environmental conditions, health and safety and human rights as dictated by local Laws of country of origin

27 ORIGIN

Pulse Structural Monitoring shall have the right at any time to call upon the Supplier for evidence or origin of raw materials and parts of the Work.