

Group Operating System

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General Conditions for Minor Purchases of Goods Group Supply Chain procedure

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1. DEFINITIONS

BUYER:

The company stated as such in the PURCHASE ORDER or its successors or permitted assignees.

BUYER INFORMATION:

Drawings, documents, specifications, technical information, computer programs and other information owned or to which BUYER obtains ownership according to article 14, or provided by BUYER to SELLER for performance of WORK under a PURCHASE ORDER

BUYER GROUP:

BUYER and its parents, subsidiaries and affiliated companies, BUYER's other suppliers and contractors of any tier, to the extent they are involved in the project to which the PURCHASE ORDER relates, CLIENT, and the officers, directors, employees, agents, and representatives of such.

CLIENT:

A third party with whom BUYER has a contract with to provide the WORK.

COMPLETION:

The date of issue of BUYER's written acceptance of the WORK, in which BUYER confirms that all and any WORK is complete and in accordance with the requirements of the PURCHASE ORDER. Such acceptance does not relieve SELLER of any guarantee or warranty obligations, or other obligations and liabilities in relation to the PURCHASE ORDER.

DELIVERY:

The transfer of risk for the GOODS to BUYER as further defined in the PURCHASE ORDER and Article 6.

DELIVERY DATE(S):

The date of SELLER's DELIVERY of the WORK as stated in the PURCHASE ORDER.

DOCUMENTS:

Drawings, documentation, calculations, certificates, manuals, datasheets and all other technical, commercial or other documentation and data to be supplied by SELLER under the PURCHASE ORDER on media specified therein.

FORCE MAJEURE:

Defined in Article 11.

GOODS:

All equipment, items and materials to be delivered by SELLER pursuant to the PURCHASE ORDER other than the DOCUMENTS.

INTELLECTUAL PROPERTY:

Any and all tangible and intangible: (i) rights associated with works of authorship, including copyrights, moral rights, neighbouring rights, and derivative works thereof, (ii) trademark and trade name rights, (iii) trade secret rights, (iv) patents, design rights, and other industrial property rights, (v) know how and trade secrets, and, (vi) all other intellectual property rights (of every kind and nature however designated) whether arising by operation of law, treaty, contract, license, or otherwise, together with all registrations, initial applications, renewals, extensions, continuations, divisions or reissues thereof.

PARTY/PARTIES:

SELLER and BUYER or either of them as the context dictates.

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PURCHASE ORDER:

The separate contract document describing the WORK ("PURCHASE ORDER") together with any SPECIAL CONDITIONS, these General Conditions for Minor Purchases of Goods and any appendices and attachments thereto and any signed amendments and variations to said documents

PURCHASE ORDER PRICE:

The total price specified in the PURCHASE ORDER which shall constitute full compensation to SELLER for the WORK, including all costs, expenses, taxes (including VAT), duties, fees or charges of any kind incurred by or levied on SELLER GROUP related to the performance of the PURCHASE ORDER and the provision by SELLER of the WORK.

SELLER:

The company or person stated as such in the PURCHASE ORDER or its successors or permitted assignees.

SELLER GROUP:

SELLER and its parent, subsidiaries and affiliated companies, and SELLER's suppliers and contractors of any tier, to the extent they are involved in the project to which the PURCHASE ORDER relates, and the officers, directors, employees, agents, and representatives of such SELLER's parent, subsidiary, affiliate, supplier and contractor.

SERVICES:

All activities that SELLER is required to carry out and/or deliver under the PURCHASE ORDER, which are not GOODS or DOCUMENTS.

SPECIAL CONDITIONS:

The document attached to the PURCHASE ORDER which expressly varies these Intercompany General Conditions for Minor Purchases of Goods and which is signed by a duly authorized member of BUYER and SELLER.

TAXES:

Includes all compulsory charges imposed pursuant to the authority of a country, or political subdivision thereof, to levy taxes or fees on an entity or activity. Taxes include, but are not limited to, income taxes, employment taxes, franchise taxes, sales and use taxes, value added taxes ("VAT"), VAT applicable to non-residents, industry and commerce tax, property, ad valorem and excise taxes. Taxes do not include import/ export customs duties or fees and stamp duties unless specifically provided for.

WARRANTY PERIOD:

48 months from COMPLETION of the WORK (or the satisfactory passing of any inspections and prescribed tests if later), or 30 days after the BUYER's warranty obligations expire towards its CLIENT, whichever is later in time.

WORK:

All activities that SELLER is required to carry out under the PURCHASE ORDER including provision of the SERVICES, GOODS and DOCUMENTS as well as everything necessary for the provision of such in accordance with the PURCHASE ORDER.

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2. INTERPRETATION

- 2.1. In the event of any conflict between the provisions of the PURCHASE ORDER, the various contract documents shall be given priority in the following order:
- (a) Any SPECIAL CONDITIONS agreed between the PARTIES and constituted in writing.
 - (b) These General Conditions for Minor Purchases of Goods.
 - (c) The Purchase Order form.
 - (d) Appendices to the PURCHASE ORDER in the order they are listed, unless stated otherwise.
- 2.2. The governing language of the PURCHASE ORDER shall be the English language.
- 2.3. In the event that SELLER fails to return a signed PURCHASE ORDER to BUYER prior to or upon commencement of the WORK, said commencement of WORK by SELLER shall be deemed to constitute acceptance by SELLER of the PURCHASE ORDER issued by BUYER.

3. GENERAL OBLIGATIONS OF SELLER

- 3.1. SELLER shall ensure that the WORK is performed strictly in accordance with the terms of the PURCHASE ORDER and, with respect to the GOODS, in accordance with the DOCUMENTS furnished by SELLER and accepted by BUYER as detailed in the PURCHASE ORDER.
- SELLER shall further ensure that the WORK is performed in accordance with high standards of engineering practice and workmanship and that the GOODS, DOCUMENTS and other deliverables are of a satisfactory quality as reasonably perceived by BUYER.
- 3.2. SELLER represents and warrants it has examined the PURCHASE ORDER and will examine other data supplied by BUYER from time to time. SELLER's failure to examine the PURCHASE ORDER and/or other data or to become knowledgeable about or to discover matters which SELLER ought to have known or discovered in the performance of its examination and which affect the WORK shall not relieve SELLER from its obligations under this PURCHASE ORDER
- 3.3. SELLER shall comply with and shall ensure SELLER GROUP complies with all applicable laws, rules and regulations of any governmental, judicial or regulatory body having jurisdiction over the WORK or any site where the WORK is performed, including without limitation laws, rules and regulations pertaining to health, safety and the environment, non-discrimination of the workforce, organisation of labour, engineering codes and standards. SELLER shall defend, indemnify and hold BUYER GROUP harmless from and against all claims, losses, damages, costs and expenses (including legal fees) arising out of SELLER's or SELLER GROUP's failure to comply with the aforesaid laws, rules and regulations.

4. PURCHASE ORDER PRICE

The PURCHASE ORDER PRICE shall be considered as fixed and firm unless expressly agreed to the contrary.

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5. TERMS OF PAYMENT AND SECURITY

- 5.1. BUYER shall make payment within 60 days following the receipt of a correctly rendered invoice, provided that SELLER's obligations under the PURCHASE ORDER have been fulfilled. BUYER may withhold payment of any disputed or insufficiently documented amounts.
- 5.2. SELLER shall submit a final invoice within 45 days of COMPLETION. The final invoice shall include all claims, fees, and sums owed pursuant to the PURCHASE ORDER. Anything not included in the final invoice cannot be submitted at a later date by SELLER and, after the expiry of this time period, SELLER hereby waives its right to make any further claims for additional payment pursuant to the PURCHASE ORDER.

6. DELIVERY

- 6.1. DELIVERY of the WORK shall take place according to the agreed terms of DELIVERY and DELIVERY DATE(S) contained in the PURCHASE ORDER
- 6.2. Unless expressly agreed otherwise by the PARTIES, the relevant Incoterms rule for DELIVERY and passing of risk shall be DDP at the location stated in the PURCHASE ORDER or if not stated, BUYER's premises as stated in the PURCHASE ORDER. Risk for loss or damage to the GOODS shall pass to the BUYER at the time of DELIVERY unless otherwise agreed in writing between BUYER and SELLER.

7. TITLE

Title to and ownership of the WORK, including the GOODS, DOCUMENTS and all materials intended for incorporation into the GOODS, shall pass to BUYER as soon as such GOODS or any materials or DOCUMENTS have been created, procured, incorporated into or used in the performance of the WORK, or upon DELIVERY, or when paid for by BUYER, whichever occurs first.

8. DELAY

- 8.1. As soon as SELLER believes, or has grounds for believing, that the DELIVERY or any part thereof will be delayed past the DELIVERY DATE(S), SELLER shall immediately notify BUYER in writing of the delay, the cause thereof and the measures SELLER will initiate at its own cost in order to minimize the delay.
- 8.2. If SELLER's delivery is delayed and deviates from any of the DELIVERY DATE(S), BUYER is entitled to liquidated damages amounting to 0.5% of the total PURCHASE ORDER PRICE, per commenced calendar day. The liquidated damages shall not exceed 20% of the total PURCHASE ORDER PRICE. BUYER AND SELLER hereby agree that the liquidated damages are a genuine reasonable pre-estimate of the losses which may be sustained by BUYER in the event that SELLER fails in its obligations under the PURCHASE ORDER and shall not be claimed or construed as a penalty or other unenforceable sum.

9. WARRANTY AND GUARANTEE

- 9.1. SELLER warrants and guarantees that, for the duration of the WARRANTY PERIOD, (i) it has performed and shall perform the WORK in accordance with the provisions of the PURCHASE ORDER, (ii) that the WORK will be free from any defects, (iii) the WORK shall be capable of achieving the performance standards set forth in the PURCHASE ORDER. In the event that within the WARRANTY PERIOD the WORK is found to be defective, inadequate or otherwise fails to meet the requirements of the PURCHASE ORDER, then SELLER shall forthwith, on written notice

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from the BUYER, rectify or replace the WORK and carry out all necessary work associated with such rectification or replacement at SELLER's sole cost.

- 9.2. If SELLER makes rectifications according to article 9.1, the provisions of this Article 9 shall then apply to said corrections for the greater of a period of twenty four (24) months from the completion of such corrections or the end of the basic WARRANTY PERIOD, whichever is later in time.

10. TERMINATION AND SUSPENSION

- 10.1. BUYER may terminate or suspend this PURCHASE ORDER for any reason and at any time by written notification to SELLER and SELLER shall comply with such direction immediately or as directed.
- 10.2. In the event of termination at BUYER's convenience, BUYER shall pay the unpaid balance due to SELLER for that part of the WORK performed satisfactorily up to the date of termination.
- 10.3. In the event of suspension at BUYER's convenience, SELLER shall maintain, store and protect the WORK and shall be entitled to compensation only for documented and necessary expenses in connection with demobilisation and mobilisation of personnel and for other substantiated costs reasonably incurred by SELLER as a direct consequence of the suspension.
- 10.4. An 'Event of Default' shall occur when SELLER fails in any way to fulfil its obligations pursuant to the PURCHASE ORDER, is liable for the maximum of any limitation of liability hereunder, becomes insolvent or otherwise stops its payments.
- 10.5. If an Event of Default occurs, BUYER may choose one or more of the following alternatives:
- a) Demand DELIVERY of the wholly or partially completed WORK and have it completed, at option of BUYER, by SELLER or a third party nominated by BUYER, at SELLER's sole cost
 - b) in case of Event of Default caused by breach of material obligation terminate the PURCHASE ORDER for default; and/or
 - c) Claim compensation for losses directly related to the Event of Default, including all costs to complete the WORK and related to any termination.

11. FORCE MAJEURE

- 11.1. Neither of the PARTIES shall be considered in breach of an obligation to the other under the PURCHASE ORDER to the extent that the PARTY can establish that fulfilment of the obligation has been prevented by FORCE MAJEURE.

The PARTY invoking FORCE MAJEURE shall, as soon as possible, notify the other PARTY in writing of the FORCE MAJEURE situation, the cause of delay and the presumed duration thereof.

- 11.2. For the purposes of the PURCHASE ORDER, a FORCE MAJEURE situation shall include, but not be limited to:
- a) Riot, war, invasion, acts of foreign enemies, acts of terrorism, acts of piracy, 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 radio-active, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component hereof,

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- c) Unusually severe natural physical disasters that could not be reasonably anticipated, including earthquakes, floods, fires, explosions, hurricanes, typhoons, but excluding weather conditions less severe than the aforementioned,
- d) Strikes or industrial disputes at a national or regional level, excluding strikes and industrial disputes related to the activity of SELLER GROUP,
- e) Maritime or aviation disasters.

Provided always that the occurrence is beyond the control of the PARTY affected and that such PARTY could not reasonably have foreseen such occurrence at the time of entering into the PURCHASE ORDER and could not reasonably have avoided or overcome it or its consequences.

- 11.3. Each PARTY is entitled to terminate the PURCHASE ORDER by written notice to the other PARTY if the FORCE MAJEURE situation continues, or it is obvious that it will continue, for more than 60 days. In such case BUYER may require the WORK to be delivered in the condition it is in at the date of termination upon paying a pro rata part of the PURCHASE ORDER PRICE. SELLER is entitled to the unpaid balance due to SELLER for that part of the WORK already performed prior to the occurrence of the FORCE MAJEURE situation and SELLER shall ensure that BUYER has full unrestricted title for the same.
- 11.4. In the case of FORCE MAJEURE, each PARTY shall cover its own costs resulting from the FORCE MAJEURE situation.

12. LIABILITY AND INSURANCES

- 12.1. SELLER shall defend, indemnify and hold BUYER GROUP harmless from and against any claim, howsoever arising, concerning:
- (a) Personal injury to or loss of life of any member of SELLER GROUP,
 - (b) Loss of or damage to the WORK prior to the passing of risk therein to the BUYER, and loss or damage to the WORK or BUYER GROUP property or CLIENT property occurring thereafter to the extent attributable to the acts or omissions of the SELLER GROUP, and/or
 - (c) Loss of or damage to any property of SELLER GROUP.

This applies regardless of any form of liability, whether strict or by negligence, in whatever form, on the part of BUYER GROUP.

- 12.2. BUYER shall defend, indemnify and hold SELLER GROUP harmless from and against any claim concerning:
- (a) Personal injury to or loss of life of any member of BUYER GROUP, and
 - (b) Loss of or damage to any property of BUYER GROUP except as otherwise provided in Article 12.1 above and in so far as the same are related to or used in connection with the PURCHASE ORDER.

This applies regardless of any form of liability whether strict or by negligence, in whatever form, on the part of SELLER GROUP.

- 12.3. SELLER shall defend, indemnify, and hold BUYER harmless from any and all liability, claims, losses, damages, costs and expenses (including legal fees) arising from death, disease or injury to any third party and loss of or damage to any third party property which arise out of the WORK.

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- 12.4. Notwithstanding anything herein to the contrary, BUYER shall defend, indemnify and hold SELLER GROUP harmless from BUYER GROUP's own Indirect Loss, and SELLER shall defend, indemnify and hold BUYER GROUP harmless from SELLER GROUP's own Indirect Loss. This applies regardless of any liability, whether strict or by negligence, in whatever form, on the part of either PARTY. Indirect Losses are defined herein as any indirect or consequential loss, any loss of production, loss of product, loss of use, loss of revenue, loss of profit or anticipated profit, and similar losses and damages, regardless of whether such losses or damages were reasonably foreseeable at the time of entering into the PURCHASE ORDER or at the commencement of the WORK.
- 12.5. SELLER shall procure and maintain at SELLER's expense, and for the duration of the PURCHASE ORDER until the end of the WARRANTY PERIOD, all necessary insurances required for and adapted to the operations for the performance of the WORK.

13. VARIATIONS

- 13.1. BUYER may order variations to the WORK as in BUYER's opinion are desirable. Variations may include an increase or decrease in the quantity, character, quality, kind of execution of the WORK as well as variations to the DELIVERY DATE(S). Variations to the WORK shall be ordered through variation orders.
- 13.2. When BUYER requests a variation pursuant to Art.13.1 or prior to issuing a written variation order requests SELLER to provide an estimate of the effects of such variation, SELLER shall as soon as possible and at the latest within 10 days following BUYER's request submit a written confirmation or estimate containing a description of the effects the variation will have on the execution of the WORK (including the PURCHASE ORDER PRICE and DELIVERY DATE(S)). If SELLER does not issue such estimate or written confirmation within the aforesaid time limit, the variation shall be deemed not to have any effect on the PURCHASE ORDER. SELLER shall not initiate any variation WORK until BUYER has issued the variation order in writing.
- 13.3. If SELLER is of the opinion that it is entitled to a variation order, due to an instruction by BUYER or other circumstances resulting in an increase or decrease in the quantity, character, quality, kind or execution of the WORK as well as changes to the DELIVERY DATES(S), then SELLER shall issue a written request for a variation order without delay and at the latest within 10 days after SELLER became aware or ought to have become aware of such situation. If SELLER has not presented a request for a variation order without delay, or at the latest within 10 days after SELLER became aware or ought to have become aware such situation has occurred, then SELLER shall lose the right to a variation order and/or the right to adjust the PURCHASE ORDER PRICE, scope of the WORK and/or the DELIVERY DATE(S). Variations must be approved by BUYER by means of a written variation order before SELLER initiates the variation work.
- 13.4. Any possible adjustment to the rates, costs and prices due to variation orders shall be determined either by using the rates, cost or prices described in the PURCHASE ORDER, or if no comparable rates, costs or prices have been set, the PARTIES shall agree on a price that reflects the general level of pricing described in the PURCHASE ORDER. If a variation entails cost saving for SELLER, BUYER shall be credited accordingly.
- 13.5. A variation order shall not be allowed when the variation, revision, act of BUYER or occurrence is attributable to SELLER's breach of its performance obligations herein, or if minor revisions are required for recently completed WORK or WORK in progress. Disagreement as to effects with regards to a variation order shall not entitle SELLER to delay or withhold SELLER's DELIVERY and SELLER shall implement the variation without awaiting the final outcome of the dispute. The disagreement shall be stated in writing and confirmed by both PARTIES prior to SELLER's execution of the variation work.

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14. INTELLECTUAL PROPERTY RIGHTS

- 14.1. Subject to 14.2 and 14.4, all INTELLECTUAL PROPERTY in and related to the WORK, including the DOCUMENTS, which is developed by SELLER GROUP in connection with the WORK or otherwise arising out of the WORK shall be the property of BUYER.
- 14.2. The PARTIES agree that all INTELLECTUAL PROPERTY owned by a PARTY prior to entering into the PURCHASE ORDER will remain the property of that PARTY.
- 14.3. All INTELLECTUAL PROPERTY in BUYER INFORMATION shall remain at all times the property of BUYER or CLIENT. BUYER INFORMATION shall not be used by SELLER other than for the purpose of the WORK and shall, upon written request by BUYER, be returned to BUYER when the WORK is completed.
- 14.4. SELLER shall maintain ownership of inventions, developments and enhancements of SELLER INTELLECTUAL PROPERTY, in addition to INTELLECTUAL PROPERTY produced independently of the PURCHASE ORDER, unless any of such are based in whole or in part on BUYER INFORMATION, in which event they shall be owned by BUYER.
- 14.5. SELLER shall notify BUYER of any INTELLECTUAL PROPERTY which BUYER shall obtain ownership of, or rights to, hereunder, and SELLER shall provide the necessary assistance to enable BUYER to acquire such rights. BUYER shall pay SELLER for all reasonable costs in connection with such assistance in accordance with applicable law.
- 14.6. SELLER shall provide and grant to BUYER and CLIENT and to anyone authorised by BUYER and CLIENT an irrevocable, perpetual, transferable, royalty-free, world-wide, non-exclusive license to all INTELLECTUAL PROPERTY owned by SELLER hereunder to the extent necessary for BUYER, CLIENT or their transferees to utilise the WORK and the DOCUMENTS, including the engineering, procurement, construction, installation, operation, maintenance, modification, adaptation and repair of such. Said license may be freely assigned to any end user of the WORK.
- 14.7. SELLER shall indemnify and hold harmless BUYER GROUP against any actual or alleged claims and proceedings, including legal fees, by BUYER GROUP or third parties with regard to infringement or violation of any INTELLECTUAL PROPERTY rights, in any jurisdiction, in connection with the WORK.

15. CONFIDENTIALITY

SELLER shall keep confidential all BUYER INFORMATION and all information arising out of the PURCHASE ORDER, including the terms of the PURCHASE ORDER, and shall only use BUYER INFORMATION for the purpose of the performance of the WORK. SELLER shall not divulge to a third party the said information without the written consent of BUYER, unless such information:

- (a) Is already known to SELLER at the time the information was received, and/or
- (b) Is or becomes part of the public domain (except by default of SELLER or its personnel), and/or
- (c) Is rightfully received from a third party without an obligation of confidentiality, and/or
- (d) Is required to be disclosed by law.

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16. MISCELLANEOUS

- 16.1. The PURCHASE ORDER constitutes the entire agreement and understanding between the PARTIES in respect of the matters dealt with in it and supersedes all prior agreements, promises, correspondence, discussions, representations and understandings relating to the WORK, except those expressly set forth herein.
Other conditions shall not apply to the PURCHASE ORDER unless BUYER has accepted these in writing.
- 16.2. BUYER is entitled to assign, novate or otherwise transfer his rights and obligations under the PURCHASE ORDER, fully or partly, to any affiliates or any third parties. SELLER may not assign his rights and obligations under the PURCHASE ORDER without BUYER's prior written consent.
- 16.3. Except as expressly provided in the PURCHASE ORDER it is agreed that the PURCHASE ORDER is not intended to and does not give any person who is not a party to this PURCHASE ORDER any rights to enforce any provision contained herein.
- 16.4. No waiver by BUYER of any breach of any of the terms and conditions of the PURCHASE ORDER shall be construed as a waiver of any subsequent breach whether of the same or of any other term or condition hereof. No waiver shall be validly made unless made in writing.

17. GOVERNING LAW AND RESOLUTION OF DISPUTES

- 17.1. Unless expressly agreed otherwise by the PARTIES, the PURCHASE ORDER shall be governed by and interpreted in accordance with Norwegian law.
- 17.2. Disputes arising in connection with or as a result of the PURCHASE ORDER, and which are not resolved by mutual agreement, shall be settled by court proceedings. Unless expressly agreed otherwise by the PARTIES, any court proceeding shall be brought before Oslo District Court.

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18. CHANGES

Version	Comments
00	No text or numbers has been changed from version 1/2014. The procedure has changed lay-out and document number and Chapter 18 "Changes" have been added.
01	Change table added
	Changed text in Change table for version 00 to include "from version 1/2014".
	Change chapter have been taken out of the Article numbering.
02	On first page changed the header text from Subsea Operating system to Group Operating System On first page change in the footer, Aker Subsea have been replaced with Aker Solutions
03	Formatting changes First page – table of content moved to page two Added document owner: Group Supply Chain Management Corrected minor typos