

STANDARD TERMS OF BUSINESS

1. INTERPRETATION

1.1 In these Terms, the following definitions apply:

Business Day: means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Charges: means the charges payable by the Customer for the supply of Products or Services in accordance with Term 5.

Contract: means the contract between SAIL and the Customer for the supply of Services in accordance with these Terms.

Customer: the person or firm who purchases Products or Services from SAIL.

Data means raw data collected by the Decimus®(s), data transmitted by and received from the Decimus®(s) and data resulting from filtering, conversion and/or analysis of such data.

Data Reporting Services: means the collection, filtering and conversion of the raw data collected by the Decimus®(s) into data suitable for analysis by those having the requisite technical knowledge, analysis of the resulting data and reporting on it to the Customer in the context of the Project.

Deliverables: the Reports and other the deliverables referred to in the Order produced by SAIL for the Customer.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) 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 SAIL or equivalent rights or forms of protection in any part of the world.

Order: the Customer's offer for the purchase Products or Services, or the Customer's written acceptance of SAIL's proposal and/or quotation, or, the Customer's purchase order form, as the case may be, in each case with any specification(s) or document(s) referred to and incorporated therein.

Decimus®: means the marine passive acoustic monitoring device deployed by SAIL in the performance of the Services.

Purpose: means the project or purpose for which the Customer requires the Product or Services as described in the Order.

Reports: means the reports, collations of and/or interpretation of information in whatever format, including without limitation maps, statistics, figures, written and drawn information in all forms, whether with reference to the Data Reporting Services or otherwise, and any Data provided by SAIL to the Customer as part of the Services.

Services: the services, including the Deliverables, supplied by SAIL to the Customer as set out and/or referred to in the Order.

Sites: means the Sites at which the Decimus®(s) will be deployed as specified in the Contract.

SAIL: St Andrews Instrumentation Limited, incorporated in Scotland, number SC413998.

SAIL Equipment: has the meaning set out in Term 1.14.1(i).

Terms: means these terms and conditions as amended from time to time in accordance with Term 2.5.

1.2 In these Terms, the following rules of interpretation apply:

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- (a) a **person** includes a natural person, corporate or unincorporated body (including a Partnership or Consortium, whether or not having separate legal personality);
- (b) a reference to a party includes its successors or permitted assignees;
- (c) a reference to a statute or statutory provision is such statute or statutory provision as amended or re-enacted and includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) a reference to **writing** or **written** includes faxes and e-mails.

2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Customer to purchase Products or Services in accordance with these Terms.
- 2.2 The Order shall only be deemed to be accepted when SAIL issues written acceptance of the Order at which point and on which date the Contract shall come into existence.
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of SAIL which is not set out in the Contract.
- 2.4 Any, drawings, descriptive matter or advertising issued by SAIL, and any descriptions or illustrations contained in SAIL's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Products and Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 These Terms apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing and may only be amended with the written agreement of SAIL.

3. SUPPLY OF PRODUCTS AND SERVICES

- 3.1 SAIL shall supply the Product and Services to the Customer in accordance with the Order, in all material respects.
- 3.2 SAIL shall use all reasonable endeavours to meet any performance dates specified in the Contract but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 Where the Services include delivery of Decimus@(s), SAIL's obligation is to deliver the Decimus@(s), without moorings, to the agreed dockside, following which the Decimus@(s) are at the Customer's risk and deployment is the responsibility of the Customer.
- 3.4 SAIL shall have the right to make any changes to the Product or Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and SAIL shall notify the Customer in any such event.
- 3.5 SAIL undertakes to the Customer that the Product and Services will be provided using reasonable care and skill.

4. CUSTOMER'S OBLIGATIONS

- 4.1 The Customer shall:
 - (a) Ensure that the terms of the Order and any information it provides to SAIL are complete and accurate;
 - (b) Co-operate with SAIL in all matters relating to the Services including the deployment of Decimus@(s) and the provision of suitable vessels and crews;

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- (c) Provide SAIL with such information and materials as SAIL may reasonably require in order to supply the Product and Services, and ensure that such information is accurate in all material respects;
- (d) Deploy the Decimus®(s) to the Sites, including at its own cost supplying and affixing suitable moorings, supplying required vessels and crew and taking all other steps required for deployment including preparing the Sites and, where Decimus®(s) are to be affixed to or incorporated into equipment belonging to the Customer and/or any third party, procuring that all practical and legal arrangements are made to allow the Decimus®(s) to be so affixed or incorporated;
- (e) SAIL may (at its discretion and at its own cost and risk) send an observer to oversee deployment, and the Customer will procure that all reasonable directions of such observer regarding safe and effective deployment of Decimus®(s) are complied with;
- (f) Obtain, pay for and maintain all necessary licences, permissions and consents which may be required regarding deployment and operation of the Decimus®(s);
- (g) Not open, disassemble or attempt to maintain or repair any Decimus® save in accordance with these Terms or with the prior written agreement of SAIL;
- (h) Free and relieve SAIL of any liability for third party claims arising out of the presence of the Decimus®(s) at the Sites provided such claims do not arise due to any defect in construction or operation of the Decimus®(s);
- (i) Keep all Decimus® equipment and/or other equipment, materials, documents and property of SAIL (SAIL Equipment) safe and secure, and not dispose of or use any SAIL Equipment other than in accordance with SAIL's written instructions or authorisation;
- (j) Insure against the risk of loss of or damage to the Decimus®(s) for the full replacement value thereof, and against the risk of the third party claims referred to in Term 4.1(h), noting SAIL's interest on the policies therefor;
- (k) Regarding Decimus®(s): clean the hydrophone heads and solar panels when directed to do so by SAIL; check and, if necessary, secure the moorings at least once a year (or more frequently if so required by local laws); as regards Decimus® in waters liable to icing in winter, remove and safely store the Decimus®(s) over winter and redeploy them in spring; and otherwise carry out such checks, maintenance and repair as are reasonably directed by SAIL from time to time to keep the Decimus®(s) in an operational state sufficient to let SAIL perform the Data Reporting Services;
- (l) Return the Decimus®(s) (minus moorings) to dockside at the end of the Contract, in a condition consistent with performance of the Customer's obligations under these Terms, for collection by SAIL, giving SAIL reasonable prior notice of when the Decimus®(s) will be available for collection and ensuring the Decimus®(s)' safe storage pending collection.

4.2 If SAIL's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):

- (a) SAIL shall without limiting its other rights or remedies, have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays SAIL's performance of any of its obligations;

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- (b) SAIL shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from SAIL's failure or delay to perform any of its obligations as set out in this Term 1.14.2; and
- (c) The Customer shall reimburse SAIL on written demand for any costs or losses sustained or incurred by SAIL arising directly or indirectly from the Customer Default.

5. CHARGES AND PAYMENT

- 5.1 The Charges for the Products or Services shall be calculated and payable in accordance with the Contract.
- 5.2 SAIL shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom SAIL engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by SAIL for the performance of the Services, and for the cost of any materials.
- 5.3 Time for payment shall be of the essence of the Contract.
- 5.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Contract by SAIL to the Customer, the Customer shall, on receipt of a valid VAT invoice from SAIL, pay to SAIL such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.5 Without limiting any other right or remedy of SAIL, if the Customer fails to make any payment due to SAIL under the Contract by the due date for payment (Due Date), SAIL shall have the right to charge interest on the overdue amount at the rate of 4 per cent per annum above the then current Bank of England base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after decree or judgment, and compounding quarterly.
- 5.6 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against SAIL in order to justify withholding payment of any such amount in whole or in part. SAIL may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by SAIL to the Customer.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1 Save as otherwise specifically agreed in writing by SAIL, all Intellectual Property Rights in the Deliverables and/or arising out of or in connection with the Services shall be owned by SAIL.
- 6.2 All SAIL Equipment and the Intellectual Property Rights therein, are and shall remain the exclusive property of SAIL.
- 6.3 Regarding use of Reports by the Customer:
 - (a) the Customer shall take notice of the whole contents of the Reports, and in particular any qualifications or limitations regarding any information, statement, recommendation or opinion forming part of the Reports, so as to ensure that any use of the Reports by the Customer or anyone else to whom the Reports are exhibited does not misrepresent any part of the Reports when taken in the context of the whole of the Reports, whether by omission or otherwise; and
 - (b) the Customer has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to any Data comprised in the Reports, in whole or in part, or to re-use such Data in whole or in part in connection with the Customer's business out with the Project and all reproduction rights for use by any third parties are expressly excluded without the prior written consent of SAIL.

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7. CONFIDENTIALITY

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 shall survive termination of the Contract.

8. LIMITATION OF LIABILITY

8.1 Nothing in these Terms shall limit or exclude SAIL's liability for:

- (a) Death or personal injury caused by its, or its employees', agents' or subcontractors' negligence;
or
- (b) Fraud or fraudulent misrepresentation.

8.2 Subject to Term 8.1:

- (a) SAIL shall under no circumstances whatever be liable to the Customer, whether in contract, delict (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (a) SAIL's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the payments received by SAIL under the Contract.

8.3 Except as set out in these Terms, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

8.4 This Term 8 shall survive termination of the Contract.

9. TERMINATION

9.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) The other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing of the breach;
- (b) The other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due, or (being a consortium or partnership) has any consortium member or partner to whom any of the foregoing apply;
- (c) The other party (being an individual) is the subject of a bankruptcy petition or order;
- (d) A resolution is passed, or an application is made to court, or an order is made, for the appointment of a liquidator or administrator to the other party or (being a consortium or (being a consortium or partnership) has any consortium member or partner to whom any of the foregoing apply
- (e) A floating charge holder over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver or (being a consortium or partnership) has any consortium member or partner to whom any of the foregoing apply;
- (f) Any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or SAIL to any of the events mentioned in Term 9.1.

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- (g) The other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
 - (h) The other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 9.2 Without limiting its other rights or remedies, SAIL may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 9.3 Without limiting its other rights or remedies, SAIL shall have the right to suspend provision of the Services under the Contract if the Customer becomes subject to any of the events listed in Term 9(b) to Term 9(i), or SAIL reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

10. CONSEQUENCES OF TERMINATION

- 10.1 On termination of the Contract for any reason the Customer shall immediately pay to SAIL all of SAIL's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, SAIL shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 10.2 The Customer shall return all of SAIL Equipment and any Deliverables which have not been fully paid for. If the Customer fails to do so, then SAIL may enter the Site and/or the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- 10.3 The accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination, including the right to claim damages in respect of any breach of the Contract shall not be affected by termination.

11. FORCE MAJEURE

- 11.1 For the purposes of the Contract, Force Majeure Event means an event beyond the reasonable control of SAIL including but not limited to: strikes, lock-outs or other industrial disputes, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 11.2 SAIL shall not be liable to the Customer as a result of any delay or failure to perform its obligations under the Contract as a result of a Force Majeure Event.
- 11.3 If a Force Majeure Event prevents SAIL from providing any of the Services for more than four weeks, SAIL shall, without limiting its other rights or remedies, have the right to terminate the Contract immediately by giving written notice to the Customer.

12. ASSIGNATION AND SUBCONTRACTING

The Customer shall not, without the prior written consent of SAIL, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract. SAIL shall be entitled to delegate assign and/or subcontract any of the Services as provided in the Contract.

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13. NOTICES:

13.1 Any notice or other communication required to be given to a party in connection with the Contract shall be in writing and shall be delivered to the other party personally or by commercial courier or sent by prepaid first-class post, recorded delivery, at its registered office or principal place of business, or sent by fax or email to the other party's main fax number and/or email address.

13.2 Any notice or other communication shall be deemed to have been duly received if delivered personally or by commercial courier, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if sent by email or fax, on the next Business Day after transmission.

14. WAIVER: No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise.

15. THIRD PARTIES: A person who is not a party to the Contract shall not have any rights in connection with it.

16. GOVERNING LAW AND JURISDICTION: 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, Scots Law.

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