

Terms and Conditions for Sale of Goods and Services - Subsea Connect

NOTICE: Sale of any Goods or Services is expressly conditioned on Buyer's assent to these Terms and Conditions. Any acceptance of Seller's offer is expressly limited to acceptance of these Terms and Conditions, to the exclusion of any other terms and conditions and Seller expressly objects to any additional or different terms proposed by Buyer. No form or undertaking shall modify these Terms and Conditions even if signed by Seller's representative. Any Order to perform work and Seller's performance of work shall constitute Buyer's assent to these Terms and Conditions. Unless otherwise specified in the quotation, Seller's quotation shall expire 30 days from its date and may be modified or withdrawn by Seller before receipt of Buyer's conforming acceptance.

1. PREAMBLE
These Standard Conditions for Sales, After Sales & Support shall apply for all Services and Goods provided by Subsea Connect, and/ or any affiliated entity within the Subsea Connect Group," following expiry of Subsea Connect warranty obligations subject to a previous sales contract or otherwise for services and supplies outside the scope of a previous sales contract. To the extent the terms contained herein are conflicting or inconsistent with the terms of the Service Rates document issued by Seller; the terms of the latter shall prevail.
2. DEFINITIONS
2.1. In these conditions:
"Buyer" means the person or entity Ordering Services or Goods from Seller
"Contract" means the contract entered into between Seller and the Buyer for the specific Services and Goods and which shall be effective only to the extent confirmed by an Order Confirmation from Seller. This comprises the Order, the Conditions and any Specification or Special Terms for the purchase of the Goods and/or the supply of the Services.
"Contract Price" means the sum to be paid for the performance of the Work, which may be increased or decreased in accordance with the provisions of the Contract, including license fees for computer software, if applicable.
"Force Majeure Event" means any event beyond our reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including Your failure to be present to accept delivery of the Items at the agreed time and place for delivery, Our inability, despite their reasonable endeavors, to contact You to agree a time for delivery, strikes, lock-outs, or other industrial disputes (whether involving their own workforce or a third party's), failure of transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.
"Goods" means the Goods (including any installment of the Goods or any parts for them) which the Seller is to supply in accordance with these Conditions and any Goods supplied in substitution for or in replacement of or in addition to such Goods.
"Intellectual Property" ("IP") means all work of authorship, designs, inventions and discoveries, samples, models, tools, and, in each case, in all forms, formats, languages and versions.
"Intellectual Property Rights" ("IPR") means all right, title and interest in and to any Intellectual Property, in all territories, under all applicable bodies of law (including, without limitation, under the laws of copyright, patent, trademark, trade usage and trade secrets), and all applications, registrations, renewals, extensions, restorations and resuscitations relating to any of the foregoing.
"Order" means the Buyer's Order for the supply of Goods and/or Services including but not limited to a verbal Order which is confirmed in writing by the Seller, or the Buyer's acceptance of the Seller's quotation, or the Buyer's written acceptance of the Seller's quotation and/or any written specification and/or any special terms and conditions agreed in writing between the parties.
"Proprietary Information" means all technological, financial, commercial or other information or data of a proprietary or confidential nature in any form or format (e.g., written, electronic, visual, oral, or otherwise).
"Purchase Price" means the price the Goods and/or the supply of the Services to be paid for the performance of the work. The price may increase or decrease in accordance with the provisions of the contract. The purchase price includes any applicable Value Added Tax, Transport Costs, Computer software and export fees.
"Quotation" means an offer from Seller to perform certain Goods and Services and which shall not be binding on Seller until confirmed by an Order Confirmation from Seller.
"Refurbished" is an item that has been previously used, and its functionality has been tested to ensure it is in good working condition.
"Scope of Work" means the scope of Goods and Services to be performed by Seller pursuant to the Contract as specified in the Quotation or in the Order Confirmation.
"Seller" means the legal entity that is supplying the Goods and/or the supply of the Services. This shall be Subsea Connect, and or any affiliated entity within the Subsea Connect Group for the purposes of these terms and conditions. This is the entity who is party to the contract with the Buyer.
"Services" means the services agreed to be implemented by the Seller in accordance with the Contract as amended from time to time in writing by the Seller.
"Site" means the shipyard or offshore or onshore installation or vessel where the Work shall be delivered, installed, or otherwise performed.
"Standard Conditions" means these Standard Terms & Conditions for Sales, After Sales & Support.
"Technical Specifications" shall, if applicable, mean the contract document specifying the technical specifications for the Work to be performed by Seller.
"Time for Performance" means unless otherwise explicitly stated in writing, the time for which Seller shall commence performance of the Work under the Contract.
"Transport Costs" means charges for transport and packing
"Work" means all Goods and Services to be performed by Seller pursuant to the Contract.
"Writing" includes physical documentation, facsimile transmission or email.
2.2. Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
2.3. The headings in these Conditions are for convenience only and shall not affect their interpretation.
3. BASIS OF THE SALE
3.1. These Conditions shall apply to the Contract and govern the Contract to the exclusion of any other terms and conditions which you may purport to apply under any purchase Order, confirmation of Order or similar document.
3.2. All Orders for Items shall be deemed to be an offer by the Buyer to purchase Items pursuant to these Conditions.
3.3. No Order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed by the Seller's authorized representative or the Seller doing any act consistent with fulfilling the Order, at which point the Contract will come into existence.
3.4. No variation to these Conditions shall be binding unless agreed in Writing by the Seller.
3.5. Any typographical, clerical or other error or omission in any quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on our part.
3.6. The Work shall be performed by us in accordance with the written Order
4. TERMS OF DELIVERY
4.1. Delivery of the Goods or Services Shall Be Made In Accordance With The Terms Of The Order Within Normal Working Hours.
4.2. Time for delivery shall not be of the essence unless the parties subject to the contract have agreed time for delivery will be of the essence. We shall not be liable for any failure or delay in delivering the Items to the extent that such failure or delay is caused by a Force Majeure Event. The Items may be delivered by us in advance of the quoted delivery date upon giving reasonable notice to you.
4.3. If Seller is aware that there will be a delay in the performance of the Work, then Seller shall notify the Buyer of such delay as soon as is reasonably practicable.
- 4.4. If the Buyer fails to take delivery of the Goods as agreed or fails to give the Seller adequate delivery instructions at the time stated for delivery then, without prejudice to any other right or remedy available to the Seller, the Seller may store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage.
4.5. Subject to clause 4.6 below and unless otherwise agreed in Writing, the Buyer will be responsible for the Items and the risk of damage or loss will pass to the Buyer:
4.5.1. from the time and date agreed for collection; or
4.5.2. At the time of delivery; or
4.5.3. in the case of Items delivered by a carrier of the Buyer's choosing, and that carrier was not offered by the Seller, at the time that the Items are passed to the carrier of the Buyer choosing.
4.6. The Buyer must therefore make appropriate arrangements to insure the Items from the time agreed for collection or during transit.
4.7. If however the Buyer receives the items without the Buyer's agreement to purchase the items, for example on approval, the Seller will be responsible for insuring the items.
4.8. Warranty cannot be provided for Goods that are hand-carried.
5. PAYMENT
5.1. The Seller will be entitled to invoice the Buyer on, or any time after, delivery of the Goods or performance of the Services, as the case may be, and each invoice will quote the number of the Order.
5.2. Seller is entitled to invoice the Buyer for the price of the Goods before, on, or after the Time for Performance; and for the price of the Services either monthly in arrears or immediately upon performance of all or any part of the services, at Seller's discretion.
5.3. Terms of payment are net 30 days.
5.4. Payment shall be made by wire transfer to Seller's nominated bank account. Payment shall not be deemed effected before Seller's account has been fully and irrevocably credited.
5.5. All prices are exclusive of Value Added Tax unless otherwise agreed in writing. 5.6 Work beyond the scope of the Contract shall be performed according to Seller's standard service rates.
5.6. Payment will be due in the same currency as the price stated in the Order Confirmation.
5.7. Seller shall without liability be entitled to stop or suspend its performance until correct payment is received in full.
5.8. Seller is entitled to claim interest with 1.5% per month on overdue payment.
5.9. Buyer shall ensure that Seller receives the Contract Price in full without deductions of any kind such as withholding tax or the like.
5.10. The Work remains the property of Seller until correct payment is received in full.
6. VARIATIONS
6.1. The Buyer may in writing request variations to the Work or Time for Performance.
6.2. Seller shall have no obligation to carry out requested variations until agreement in writing is concluded by means of Order Confirmation or otherwise on the adjustments to the Work, Contract Price, or other terms of the Contract.
6.3. The supplied Work will be in accordance with Seller's standard classification and certification applicable to the Work. Any upgrading of the classification or certification not communicated to Seller in writing prior to Order Confirmation shall be regarded as a request for variation
7. BUYER'S OBLIGATIONS
7.1. The Buyer shall at own cost and risk provide Goods, Services and documentation, information, access to the Site, permits, licenses, transportation to and from offshore installations and such other things which is required or necessary in due time and otherwise within reasonable time so as not to delay Seller's performance of the Work.
7.2. The Buyer shall be solely responsible and bear all risk in connection with the accuracy and completeness of all Goods, Services, documentation, information and other work provided by the Buyer or its subcontractors, and Seller is not responsible to control or correct such work, and for any consequences that may occur as a result of default or errors therein.
7.3. If the Buyer fails to meet his obligations (preparation for delivery, payment, etc.) or the Buyer otherwise delays delivery by request for variations, etc., then Seller is entitled to adjust the Time for Performance and Contract Price resulting here from.
7.4. The Buyer shall compensate Seller for (i) costs and extra work resulting from the delay, (ii) additional costs for storage, (iii) additional costs for travel, board and lodging for Seller's personnel, (iv) additional financing costs and costs of insurance, and (v) other documented costs incurred by Seller as a result of the Buyer's default.
8. WORKING CONDITIONS
8.1. If Seller's personnel are required to visit the Site, then the Buyer shall ensure that appropriate standards of health and safety and for working conditions are followed at the Site.
8.2. The Buyer shall properly inform Seller of all relevant safety regulations in force at the Site; and ensure compliance with all applicable health and safety laws and regulations. Seller's personnel shall be entitled to refuse to perform the Work if the working conditions at the Site are deemed unsafe or dangerous according to standard industry practice in Western Europe. Seller will not be liable for any damages caused by the performance of the Services unless caused by gross negligence or willful misconduct.
8.3. The Buyer shall ensure that Seller's personnel shall be able to obtain suitable and convenient board and lodging. In the event the Buyer provides accommodation or meals on board, Subsea Connect has adopted the following standards for their representatives:
8.3.1. A proper single cabin suitable for sleeping with single bed and clean linen.
8.3.2. Proper facilities for personal hygiene and washing.
8.3.3. A minimum of three full meals a day and access to potable water at all times.
8.4. Buyer will follow internationally accepted standards for industry shipping and offshore with respect to HSE and working conditions. The working conditions in the Netherlands or on a Dutch installation must comply with the Dutch national regulations. These regulations will be the guidelines for a Subsea Connect representative working outside the Netherlands.
8.5. In the event of the representative deems the conditions to be unsafe or harmful to health, Subsea Connect reserves the right for to discontinue the work until the situation is acceptable. Subsea Connect will inform the Buyer and collaborate to sort out the situation.
8.6. The Buyer will be responsible for covering the significant telephone expenses incurred in foreign countries (excluding Europe).
- 8.7. FLIGHTS
To ensure the safety of our employees, a minimum 3-4-5 star world airline star rating is required.
8.8. For flights lasting longer than 6-8 hours a comfort seat standard comfort seats will be booked. During overnight flights, premium economy seating will be arranged.
- 8.9. HOTEL
Hotel is minimum 3-star rating and must meet strict requirements for safety, courtesy, cleanliness, comfort for our representatives.

9. **WARRANTY**
- 9.1. The Buyer shall have an obligation to carry out proper examination of the Work upon receipt, and shall without undue delay notify Seller in writing of any non-compliance discovered. Seller shall have no responsibility for non-compliances which should have been notified to Seller as a result of the Buyer's examination.
- 9.2. Pursuant to this Clause 9, Seller shall remedy defects in the Work resulting from faulty materials or workmanship. Seller's warranty is limited to defects that appear within a period of twelve (12) months from completion of first installation of the Work.
- 9.3. Warranty work shall be performed according to the following allocation of costs and expenses related to the warranty work:
 - Warranty work (time spent) including replacement or remedy of defective Goods, or re-performance of defective Services, in whole or in part, shall be at the account of Seller.
 - Travel, board and lodging, waiting time caused by the Buyer, together with other costs and expenses, shall be at the account of the Buyer.
- 9.4. The Buyer shall notify Seller in writing of any defect including a detailed description thereof without undue delay after its appearance and under no circumstances later than two (2) weeks. If the Buyer fails to notify Seller accordingly, Seller shall have no responsibility to remedy the defect and shall have no liability to the Buyer in relation to such defect.
- 9.5. If the Buyer has notified Seller of a defect, and no defect is found for which Seller is liable, Seller shall be entitled to compensation for the costs it incurs, and time spent as a result of the notice.
- 9.6. If Seller does not initiate and diligently pursue its obligations under this Clause 9 within a reasonable time, the Buyer may, by notice in writing, specify a final time for performance of such obligations. The notice shall be given at least four (4) weeks before such final time.
- 9.7. Seller shall have no liability for defects caused by material or processes prescribed by the Buyer, and the warranty does not cover defects caused by misuse, normal wear and tear, including without limitation, consumables or Goods and Services with a regular operating lifetime not exceeding the warranty period, improper or unexpected storage or working conditions, improper maintenance or repair by the Buyer or third parties, or alterations carried out on the work. Seller is under no circumstances liable for cost relating to any of the following: transportation to and from any vessel or offshore location, board and lodging offshore, lift operation offshore, work below the water line, or docking of a vessel.
- 9.8. If the Goods Ordered from Seller are not installed and/or commissioned by Seller's representatives, no warranty can be provided on the Goods.
- 9.9. The aforementioned terms do not extend to refurbished Goods. Therefore, no warranty will be provided for Refurbished items.
10. **INDEMNITY**
- 10.1. Seller shall indemnify and hold harmless the Buyer with a maximum of \$250,000,00 (two hundred fifty thousand US dollars) his affiliated entities, customers, subcontractors, and their respective agents and employees (the "Buyer group") from and against all claims, damages, losses and expenses in respect of (i) bodily injury, sickness, diseases or death of any employee of Seller group, (ii) loss of or damage to the property of Seller group, except for the work, and (iii) bodily injury, sickness, diseases or death and loss of or damage to the property of any third party caused by the negligence of Seller group; arising from or related to the performance of the contract.
- 10.2. The Buyer shall indemnify and hold harmless Seller, his affiliated entities, Seller's subcontractors, their respective agents and employees (the "Seller group") from and against all claims, damages, losses and expenses in respect of (i) bodily injury, sickness, diseases or death of any employee of the Buyer group, (ii) loss of or damage to the property of the Buyer group, and (iii) bodily injury, sickness, diseases or death and loss of or damage to the property of any third party caused by the negligence of the buyer group; arising from or related to the performance of the contract.
- 10.3. After delivery, the Buyer shall indemnify and hold harmless Seller group, from and against all claims, damages, losses and expenses in respect of (i) bodily injury, sickness, diseases or death of any employee of the Buyer group, (ii) loss of or damage to the property of the Buyer group, and (iii) bodily injury, sickness, diseases or death and loss of or damage to the property of any third party; arising out of, in connection with or caused by the work and the use thereof unless such damage or loss is resulting from Seller group's willful or gross negligent performance of the work.
- 10.4. Subsea Connect possesses offshore liability insurance with global coverage, encompassing USA and Canada. Buyer may request specific coverage details or clauses in writing.
11. **LIMITATION OF LIABILITY**
- 11.1. Except as set out in Clause 10.1 and 10.2 Buyer shall save, indemnify, defend and hold harmless Seller group from Buyer groups own consequential losses and Seller shall save, indemnify, defend and hold harmless Buyer group from Seller groups own consequential losses. This applies regardless of any liability, whether strict or by negligence, on the part of either group and regardless of any other provisions of the contract. Consequential losses according to this clause includes, but are not limited to indirect or consequential losses according to the applicable background law, as well as any loss of earnings, loss of profit, loss of use, loss due to pollution, loss of production and loss of data, whether they be direct or indirect, and whether or not foreseeable at the time the contract was entered into.
- 11.2. Except as set out in clause 10.1, the total aggregate liability of Seller on any claim, whether in contract, tort (including negligence), or otherwise or for any one act, omission, defect, default delay arising from or related to the contract shall not exceed the contract price but shall never exceed the maximum of \$250,000,00 (two hundred fifty thousand US dollars).
- 11.3. The Buyer and Seller acknowledge that their respective rights, obligations and liabilities as provided for in the contract shall be exclusively specified herein and thus exhaustive of the remedies, rights, obligations and liabilities that may arise in respect of or in consequence of a breach of contract or of statutory duty or a tortious or negligent act or omission at statutory and/or common law or equity.
12. **FORCE MAJEURE**
- Either party shall be entitled to suspend performance of its obligations under the Contract for reasons of Force Majeure, which shall mean an event beyond the reasonable control of the party affected, impeding performance or making performance unreasonably onerous, such as (but not limited to) local and general industrial dispute, fire, war (whether declared or not), armed conflict, terrorist activity, extensive military mobilization, insurrection, requisition, seizure, embargo, governmental action, export and import restrictions, restrictions in the use of power and delays or defects in deliveries by subcontractors caused by such circumstances referred to in this provision.
13. **TERMINATION**
- 13.1. The Buyer and or Seller will be entitled to cancel the Order in respect of all or part of the Goods and/or the Services by giving notice to the Seller at least 30 days prior to delivery of the Goods or performance of the Services, in which event the Buyer's sole liability will be to pay the Seller its documented, reasonable and unavoidable out-of-pocket costs, less the disposal value of any Goods resulting from such cancellation, subject always to Buyer's receipt of notice thereof and a detailed invoice therefore being presented within thirty (30) Days of such cancellation.
- 13.2. The notice shall be given in writing.
- 13.3. Each party may terminate the Contract by thirty (30) days prior notice in writing in case the other party:
- 13.4. fails to carry out any of its obligations under the Contract, and fails to make good the failure within a final reasonable period after notice In Writing, which shall not be less than thirty (30) days, or
- 13.5. becomes the subject of bankruptcy, insolvency, liquidation, winding-up, receivership or analogous events.
- 13.6. Seller shall be entitled to full payment for the part of the Work performed to or for the Buyer prior to the notice of termination.
- 13.7. If a cancellation on Order change notice is received by Seller and exceeds 5 days of Seller's Order Confirmation, Seller reserves the right to assess an administration fee of up to 500 EUR per Order confirmation. In addition, if a cancellation or Order change notice is received within 15 days prior to delivery date, stipulated in the Order confirmation, Buyer is subject to a fee of 10% of the Order value or 500 EUR, whichever is higher.
14. **DISPUTES AND GOVERNING LAW**
- 14.1. The Contract shall be governed and interpreted in accordance with the laws of the Netherlands.
- 14.2. Any dispute relating to the Contract shall be sought resolved amicably through negotiations between high-level executives of the parties. If such negotiations are not successful after a period of sixty (60) days from a claim in writing for such negotiations from either party, either party has the right to bring the dispute to final settlement through arbitration pursuant to the applicable Dutch Arbitration Act. The arbitration shall be conducted using one arbitrator if the Contract value is less than one million EURO, and otherwise three arbitrators. The arbitration shall be conducted in the English language at the court of justice in Den Haag, Netherlands.
- 14.3. The above notwithstanding, either party shall be entitled to seek an injunction in any relevant jurisdiction.
15. **SEVERABILITY**
- The parties agree that should any provision of the contract violate any applicable mandatory laws and regulations, such provision shall be deemed severable and modified to the extent necessary for the provision to comply with such applicable mandatory laws and regulations. The modification shall be made so that the revised provision to the greatest extent possible reflects the original intent of the parties. Such modification shall not affect the validity and enforceability of the contract itself and the remaining provisions of the contract.
16. **ENTIRE CONTRACT**
- The Contract constitutes the entire agreement between the parties for the Work and supersedes and replaces any prior written or oral agreement, understanding or the like. Modifications, amendments or extensions to the Contract shall only be valid if made in writing and signed by duly authorized representatives of both parties