

# PURCHASE ORDER TERMS FOR GOODS AND SERVICES

These terms and conditions apply to the CONTRACT between COMPANY and CONTRACTOR, which may be in the form of a purchase order or a work statement (the "CONTRACT"). These terms and conditions are binding between COMPANY and CONTRACTOR and supersede and replace any CONTRACTOR terms and conditions or previous contracts for SCOPE. In the event any special terms are agreed between the parties, the special terms will prevail over terms contained in these terms and conditions. Where these terms and conditions are attached to or incorporated in a CONTRACT issued under an existing contract, the terms and conditions of that existing contract will prevail.

## PART A

### 1. DEFINITIONS

Capitalised words and expressions have the following meanings when interpreting the CONTRACT:

**ACCEPTANCE:** COMPANY accepts SCOPE in writing or is deemed to have accepted SCOPE in the manner specified by the CONTRACT.

**AFFILIATE:** in reference to a PERSON, any other PERSON that: (a) directly or indirectly controls or is controlled by the first PERSON; or (b) is directly or indirectly controlled by a PERSON that also directly or indirectly controls the first PERSON. A PERSON controls another PERSON if that first PERSON has the power to direct or cause the direction of the management of the other PERSON, whether directly or indirectly, through one or more intermediaries or otherwise, and whether by ownership of shares or other equity interests, the holding of voting rights or contractual rights, by being the general partner of a limited partnership, or otherwise. An AFFILIATE of COMPANY is also an AFFILIATE of Royal Dutch Shell, plc.

**AGENCY PERSONNEL:** those CONTRACTOR PERSONNEL who are not direct employees but are working under the direct control and supervision of CONTRACTOR GROUP.

**ANTI-BRIBERY LAWS:** all APPLICABLE LAWS that prohibit the bribery of, or the providing of unlawful gratuities, facilitation payments, or other benefits to, any GOVERNMENT OFFICIAL or any other PERSON, including: (a) the United States Foreign Corrupt Practices Act of 1977; and (b) the United Kingdom Bribery Act 2010.

**APPLICABLE LAWS:** where applicable to a PERSON, property, or circumstance, and as amended from time to time: (a) statutes (including regulations enacted under those statutes); (b) national, regional, provincial, state, municipal, or local laws; (c) judgments and orders of courts of competent jurisdiction; (d) rules, regulations, and orders issued by government agencies, authorities, and other regulatory bodies; and (e) regulatory approvals, permits, licences, approvals, and authorisations.

**BOOKS AND RECORDS:** books, accounts, contracts, records, and documentation, in electronic format or otherwise, in respect of the CONTRACT and performance of SCOPE.

**COMPANY GROUP:** COMPANY and (a) its CO-VENTURERS and JOINT VENTURES; (b) any AFFILIATE of COMPANY, its JOINT VENTURES, or its CO-VENTURERS; and (c) any director, officer, employee, or other individual working under the direct control and supervision of COMPANY, its JOINT VENTURES, or CO-VENTURERS, or the AFFILIATES of COMPANY, its JOINT VENTURES, or CO-VENTURERS.

**COMPANY PROVIDED ITEMS:** items of materials, equipment, services, or facilities, provided by COMPANY to CONTRACTOR to perform SCOPE.

**CONFIDENTIAL INFORMATION:** all technical, commercial, or other information, and all documents and other tangible items that record information, whether on paper, in machine readable format, by sound or video, by way of samples or otherwise, relating to a PERSON's business, including WORK PRODUCT, PERSONAL DATA and SCOPE provided to that PERSON, business plans, property, way of doing business, business results or prospects, the terms and negotiations of the CONTRACT, proprietary software, IP RIGHTS, and business records.

**CONSEQUENTIAL LOSS:** (a) indirect or consequential losses; and (b) loss of production, loss of product, loss of use, and loss of revenue, profit, or anticipated profit, whether direct, indirect, or consequential, and whether or not the losses were foreseeable at the time of entering into the CONTRACT.

**CONTRACT PRICE:** the total amount payable by COMPANY to CONTRACTOR.

**CONTRACTOR EQUIPMENT:** any machinery, plant, tools, equipment, goods, materials, supplies, and other items (including all appropriate associated spare parts, storage containers, packing, and securing) owned or contracted for by CONTRACTOR GROUP, provided title has not passed and will not pass to COMPANY under the CONTRACT.

**CONTRACTOR GROUP:** CONTRACTOR and: (a) its SUBCONTRACTORS, (b) any AFFILIATE of CONTRACTOR or its SUBCONTRACTORS; and (c) any director, officer, employee, other PERSON or AGENCY PERSONNEL employed by or acting for and on behalf of CONTRACTOR, its SUBCONTRACTORS, or the AFFILIATES of CONTRACTOR and its SUBCONTRACTORS.

**CONTRACTOR PERSONNEL:** any individual provided by CONTRACTOR GROUP, whether directly or indirectly, and assigned to work in connection with the performance of SCOPE, whether or not an employee of CONTRACTOR GROUP.

**CO-VENTURER:** any PERSON who is a party to a joint operating agreement, unitisation agreement, or similar agreement: (a) with COMPANY or any of its AFFILIATES; and (b) which JOINT VENTURE or agreement is related to SCOPE performed under the CONTRACT. A reference to CO-VENTURERS includes reference to each CO-VENTURER severally and to its respective successors and permitted assigns.

**FORCE MAJEURE EVENT:** the events qualifying as a force majeure event as expressly set out in the CONTRACT.

**GOODS:** goods, materials, products, and equipment to be supplied by CONTRACTOR under the CONTRACT.

**GOVERNMENT OFFICIAL:** (a) any official or employee of any government, or any agency, ministry, or department of a government (at any level); (b) anyone acting in an official capacity for a government regardless of rank or position; (c) any official or employee of a company wholly or partially controlled by a government (e.g. a state-owned oil company), political party, or any official of a political party; (d) any candidate for political office, or any officer or employee of a public

international organisation (e.g. the United Nations or the World Bank); and (e) any immediate family member (meaning a spouse, dependent child, or household member) of any of the foregoing.

**HSSE STANDARDS:** (a) all HSSE policies, manuals, standards, rules, and procedures, as communicated to CONTRACTOR, designed to manage HSSE risks during performance of SCOPE under the CONTRACT; (b) all APPLICABLE LAWS relating to HSSE; and (c) any other rules and procedures (whether issued by COMPANY GROUP or otherwise) in force at a relevant COMPANY GROUP WORKSITE at the time of performance of SCOPE.

**INDEMNIFY:** release, save, indemnify, defend, and hold harmless.

**INDIRECT TAXES:** any of the following: (a) value added tax; (b) goods and services tax; or (c) sales tax or similar levy.

**INSOLVENCY EVENT:** when a PERSON (a) stops or suspends, or threatens to stop or suspend, payment of all or a material part of its debts, or is unable to pay its debts as they fall due; (b) ceases or threatens to cease to carry on all or a substantial part of its business; (c) begins negotiations for, starts any proceedings concerning, proposes or makes any agreement for the reorganisation, compromise, deferral, or general assignment of, all or substantially all of its debts; (d) makes or proposes an arrangement for the benefit of some or all of its creditors of all or substantially all of its debts; (e) takes any step with a view to the administration, winding up, or bankruptcy of that PERSON; (f) is subject to an event in which all or substantially all of its assets are subject to any steps taken to enforce security over those assets or to levy execution or similar process, including the appointment of a receiver, trustee in bankruptcy, or similar officer; or (g) is subject to any event under the law of any relevant jurisdiction that has an analogous or equivalent effect to any of the INSOLVENCY EVENTS listed above.

**IP RIGHTS:** all patents, copyright, database rights, design rights, rights in CONFIDENTIAL INFORMATION, including know-how and trade secrets, inventions, moral rights, trademarks and service marks (all whether registered or not and including all applications for any of them and all equivalent rights in all parts of the world), whenever and however arising for their full term, and including any divisions, re-issues, re-examinations, continuations, continuations-in-part, and renewals.

**JOINT VENTURE:** any entity in which an AFFILIATE of Royal Dutch Shell plc: (a) has a direct or indirect ownership interest; and (b) is not an AFFILIATE.

**LIABILITIES:** liabilities for all claims, losses, damages, costs (including legal fees), and expenses.

**LIENS:** liens, attachments, charges, claims, or other encumbrances against SCOPE or property of COMPANY GROUP.

**LIQUIDATED DAMAGES:** amounts agreed in the CONTRACT that CONTRACTOR must pay to COMPANY if certain events or performance as specified in the CONTRACT are not timely achieved.

**OTHER CONTRACTOR:** any other contractor engaged by COMPANY to perform WORK at the WORKSITE.

**OTHER PERMITTED BUYER:** (a) JOINT VENTURES; and (b) SHELL CONTRACTORS.

**PERSON:** (a) a natural person; or (b) a legal person, including any individual, partnership, limited partnership, firm, trust, body corporate, government, governmental body, agency, or instrumentality, or unincorporated venture.

**PERSONAL DATA:** any information relating to an identified or identifiable individual, unless otherwise defined under APPLICABLE LAWS related to the protection of individuals, the

processing of such information, and security requirements for and the free movement of such information.

**RESTRICTED JURISDICTION:** countries or states that are subject to comprehensive trade sanctions or embargoes (as may be amended by the relevant governmental authorities from time to time).

**RESTRICTED PARTY:** (a) any PERSON targeted by national, regional, or multilateral trade or economic sanctions under APPLICABLE LAWS; (b) any PERSON designated on the United Nations Financial Sanctions Lists, European Union (EU) or EU Member State Consolidated Lists, US Department of the Treasury Office of Foreign Assets Control Lists, US State Department Non-proliferation Sanctions Lists, or US Department of Commerce Denied Persons List, in force from time to time; or (c) any AFFILIATES of such PERSONS; and (d) any PERSON acting on behalf of a PERSON referred to in the foregoing.

**SCOPE:** all activities and obligations to be performed by or on behalf of CONTRACTOR under the CONTRACT, including those set out in the SCOPE description.

**SERVICES:** services to be supplied by CONTRACTOR under the CONTRACT, including the results of those services.

**SHELL CONTRACTOR:** a PERSON acting as a contractor of an AFFILIATE of Royal Dutch Shell plc.

**SOFTWARE:** any software forming part of SCOPE or necessary for the intended use of SCOPE, including, as applicable, the database and all machine codes, binaries, object codes or source codes, whether in a machine or human readable form, and all improvements, modifications, and updates, flow charts, logic diagrams, passwords, and output tapes, and any future updates, releases, and generally available associated software items, together with the licence to use them or ownership rights in them.

**STANDARDS OF PRACTICE:** the sound standards, principles, and practices that are recognised and generally accepted in the international oil, gas, and petrochemical industry.

**SUBCONTRACT:** any contract between CONTRACTOR and a SUBCONTRACTOR or between a SUBCONTRACTOR and another SUBCONTRACTOR of any tier for the performance of any part of SCOPE, including any call off under framework agreements and supply agreements for materials.

**SUBCONTRACTOR:** any party to a SUBCONTRACT, other than COMPANY and CONTRACTOR, including any employers of AGENCY PERSONNEL (except as explicitly provided otherwise).

**TAXES:** all taxes, duties, levies, import, export, customs, stamp or excise duties (including clearing and brokerage charges), charges, surcharges, withholdings, deductions, or contributions that are imposed or assessed by any competent authority of the country where SCOPE is performed or any other country in accordance with APPLICABLE LAWS.

**TRADE CONTROL LAWS:** all APPLICABLE LAWS concerning the import, export, or re-export of goods, software, or technology, or their direct product, including: (a) applicable customs regulations, Council Regulation (EC) No. 428/2009; (b) any sanction regulations issued by the Council of the European Union; (c) the International Traffic in Arms Regulations ("ITAR"); (d) the Export Administration Regulations ("EAR"); and (e) the regulations and orders issued or administered by the US Department of the Treasury, Office of Foreign Assets Control in relation to export control, anti-boycott, and trade sanctions matters.

**VARIATION:** a modification or alteration of, addition to, or deletion of, all or part of SCOPE.

**VARIATION ASSESSMENT:** a proposal prepared by CONTRACTOR in respect of a VARIATION in which it provides full detail of the following: (a) the impact of the proposed

VARIATION on SCOPE; (b) a detailed schedule for the performance of adjusted SCOPE; (c) the effect on the CONTRACT PRICE (if any), determined in accordance with the CONTRACT; and (d) any other information COMPANY concludes is necessary for its evaluation.

**VARIATION ORDER:** a written order for a VARIATION authorised by COMPANY.

**WORK PRODUCT:** any and all information, reports, data, drawings, computer programs, source and object codes, program documentation, spread sheets, presentations, analyses, results, conclusions, findings, solutions, calculations, studies, concepts, codes, manuals, inventions, business models, designs, prototypes, magnetic data, flow charts, recommendations, working notes, specifications or other information, documents, or materials, which arise out of or are made, created, or generated for COMPANY, directly or indirectly, in the course of performance of SCOPE, or which are made, created, or generated from or using COMPANY GROUP'S CONFIDENTIAL INFORMATION or COMPANY GROUP'S IP RIGHTS.

**WORKSITE:** lands, waters, and other places on, under, in, or through which SCOPE or activities in connection with SCOPE are to be performed, including manufacturing, fabrication, or storage facilities, offshore installations, floating construction equipment, vessels, offices, workshops, camps, or messing facilities. WORKSITE does not include any lands, waters, or other places used during transportation to and from WORKSITES.

## **2. REQUIREMENTS PERTAINING TO SCOPE**

(a) This CONTRACT is non-exclusive and carries no requirement for COMPANY to place any orders or purchase any minimum quantities. COMPANY may acquire same or similar SCOPE from other suppliers.

(b) Time is of the essence for the performance of SCOPE.

(c) Any information supplied by COMPANY is the property of COMPANY and will not be used by CONTRACTOR for any purpose other than for performance of the CONTRACT.

## **3. REQUIREMENTS PERTAINING TO GOODS**

(a) CONTRACTOR warrants that GOODS supplied in connection with the performance of SCOPE will be: (i) without fault, defect, or deficiency; (ii) new on delivery, unless otherwise specified in the CONTRACT; (iii) fit for use for any purpose specified in the CONTRACT; and (iv) in strict conformance with the CONTRACT and any specification, drawing, or other description supplied by COMPANY to CONTRACTOR and agreed to as part of the CONTRACT.

(b) Unless a different period is specified in the SCOPE DESCRIPTION, CONTRACTOR's warranty for GOODS applies to all defects arising within 24 months of COMPANY'S ACCEPTANCE of GOODS.

(c) Following ACCEPTANCE by COMPANY of the GOODS, the warranties set out in this Article are in lieu of all other warranties expressed or implied by statute, common law, custom, usage, or otherwise.

(d) CONTRACTOR retains risk of loss of and damage to the GOODS until delivery is complete in accordance with the INCOTERMS in any case where INCOTERMS are specified, otherwise when COMPANY takes physical possession of the GOODS.

(e) Title to the GOODS will pass to COMPANY at the earlier of: (i) risk of loss of and damage to the GOODS passing to COMPANY; or (ii) as COMPANY makes payment for the GOODS.

(f) CONTRACTOR will pack the GOODS so that they may be transported and unloaded safely. CONTRACTOR represents that, on delivery, the GOODS will have been accurately described, classified, marked, and labelled, in accordance with

the CONTRACT, all APPLICABLE LAWS, and STANDARDS OF PRACTICE.

## **4. REQUIREMENTS PERTAINING TO SERVICES**

### **4.1. SERVICES Warranties**

(a) CONTRACTOR warrants that all SERVICES supplied in connection with the performance of SCOPE will be: (i) performed in accordance with the CONTRACT; (ii) fit for use for any purpose specified in the CONTRACT; and (iii) free from any defect or deficiency.

(b) Unless a different period is specified in the SCOPE description, CONTRACTOR'S warranty for SERVICES applies to all defects arising within 12 months of COMPANY'S ACCEPTANCE of the SERVICES.

(c) Following ACCEPTANCE by COMPANY of the SERVICES, the warranties set out in this Article are in lieu of all other warranties expressed or implied by statute, common law, custom, usage, or otherwise.

(d) CONTRACTOR will supply SERVICES diligently, efficiently, and carefully, in a good and professional manner, and in accordance with the CONTRACT and all STANDARDS OF PRACTICE. CONTRACTOR will furnish all skills, labour, supervision, equipment, goods, materials, supplies, transport, and storage required for SERVICES.

### **4.2. CONTRACTOR PERSONNEL in Connection with SERVICES**

Where required by COMPANY, CONTRACTOR will perform at its own expense security background checks and obtain entry credentials for CONTRACTOR PERSONNEL on COMPANY GROUP WORKSITES.

## **5. COMPENSATION, PAYMENT, AND INVOICING**

(a) COMPANY agrees to pay the CONTRACT PRICE to CONTRACTOR in the currency specified in the Schedule of Prices, and at the times and in the manner specified in this Article. The CONTRACT PRICE is all-inclusive except for value added tax or sales tax.

(b) CONTRACTOR will invoice only after ACCEPTANCE of SCOPE, except as otherwise provided in the CONTRACT.

(c) COMPANY will pay CONTRACTOR any undisputed amount within the time period specified in the CONTRACT after receipt of a correct and adequately supported invoice. An invoice is considered unsupported when COMPANY cannot reasonably verify the legitimacy or accuracy of the invoice using the information provided by CONTRACTOR or if supporting documentation is missing.

(d) Payment of an invoice is not: (i) by itself an accord and satisfaction, or otherwise a limitation of the rights of the parties in connection with the matter; or (ii) evidence SCOPE was performed in accordance with the CONTRACT.

(e) If COMPANY disputes an invoice, COMPANY may withhold payment of any disputed part of an invoice and pay only the undisputed part. COMPANY may, on notice to CONTRACTOR, set off any liabilities between CONTRACTOR and COMPANY arising out of the CONTRACT or any other agreement. Any exercise by COMPANY of its rights under this provision will be without prejudice to any other rights or remedies available to COMPANY.

## **6. QUALITY ASSURANCE**

CONTRACTOR must have quality assurance programs in place adequate to support its performance of SCOPE.

## **7. ACCESS TO COMPANY SYSTEMS, INFORMATION, OR INFRASTRUCTURE**

In the event that performance of SCOPE requires CONTRACTOR or CONTRACTOR PERSONNEL to access COMPANY GROUP'S technical information, information technology, or resources (including COMPANY'S infrastructure), CONTRACTOR will sign and comply with COMPANY'S standard terms and conditions for

access and security, unless other terms applicable to the CONTRACT were agreed on by the parties in writing.

## **8. VARIATIONS**

COMPANY may request, or CONTRACTOR may initiate, a VARIATION ASSESSMENT for reasons of emergency, safety, or other reasonable necessity. CONTRACTOR is not entitled to a VARIATION for matters that were included in SCOPE, or matters that CONTRACTOR agreed to perform or take into account in connection with the CONTRACT. COMPANY may reject or accept the VARIATION ASSESSMENT by issuing a VARIATION ORDER.

## **9. INSPECTIONS, TESTING, AND ACCEPTANCE OF SCOPE**

**(a)** To confirm SCOPE complies with the CONTRACT, CONTRACTOR will perform all tests and inspections required by the CONTRACT, APPLICABLE LAWS and, unless otherwise specified in the CONTRACT, STANDARDS OF PRACTICE.

**(b)** CONTRACTOR will request ACCEPTANCE from COMPANY: i) of GOODS by completion of delivery; or ii) of SERVICES by writing on completion of SCOPE. Other than to start the period for any warranty of limited duration, ACCEPTANCE does not limit or waive any remedies.

## **10. REMEDIAL ACTIONS**

If defects in SCOPE are discovered, CONTRACTOR will provide a plan to remedy the defects and will remedy the defects in an expeditious manner. Without prejudice to other remedies it may have, COMPANY may perform or have others perform some or all of the remedial actions, and CONTRACTOR will pay or promptly reimburse COMPANY for all costs CONTRACTOR would have been liable for under the CONTRACT where: (i) emergency situations or other HSSE risks require the immediate performance of remedial actions; (ii) CONTRACTOR presents a plan which does not provide for expeditious completion of warranty work; or (iii) CONTRACTOR does not timely complete the actions according to the agreed schedule. CONTRACTOR's warranties against defects are assignable, and CONTRACTOR will assign to COMPANY all manufacturers' warranties or will pursue for COMPANY or its assignee all warranties that cannot be assigned.

# **PART B**

## **1. PERFORMANCE**

**(a)** CONTRACTOR will participate in business performance reviews to discuss HSSE performance, CONTRACTOR'S financial condition and other key performance indicators (KPIs).

**(b)** The frequency of business performance reviews will be established by the SCOPE description or alternatively, by COMPANY'S representative.

## **2. TAXES**

### **2.1 CONTRACTOR TAXES**

**(a)** CONTRACTOR will be responsible for payments of all TAXES, and any interest, fines, or penalties for which CONTRACTOR GROUP is liable for: (i) income, profits, assumed profits, capital gains, turnover, or supply arising directly or indirectly from the performance of SCOPE; (ii) wages and salaries (in compliance with the provisions of the German Act on Minimum Wages (Mindestlohngesetz)), and all other remuneration or compensation paid directly or indirectly to CONTRACTOR PERSONNEL in performance of the CONTRACT in the country where applicable, or an equivalent sales tax that is due in connection with the supply of SCOPE, will be clearly identified separately on the invoice. any INDIRECT TAXES.

### **2.3 Withholding**

**(a)** Where required under APPLICABLE LAWS, COMPANY will withhold and pay over to relevant authorities TAXES from

amounts payable to CONTRACTOR. That sum is a corresponding discharge of COMPANY'S liability to CONTRACTOR under the CONTRACT.

**(b)** If CONTRACTOR holds a valid exemption certificate, it will provide copies or further information to substantiate an entitlement to avoid the withholding, which COMPANY may then rely on to apply the exemption.

## **3. LIENS**

CONTRACTOR warrants good and clear title to SCOPE supplied. CONTRACTOR will not permit CONTRACTOR GROUP to place any LIENS or claim any LIENS. CONTRACTOR will immediately notify COMPANY and promptly remove any LINES by CONTRACTOR GROUP.

## **4. SUSPENSION**

**(a)** COMPANY may suspend the CONTRACT or reduce SCOPE for cause by written notice with immediate effect pending COMPANY'S decision on termination where COMPANY concludes it has grounds to terminate the CONTRACT for cause. Where suspending for cause, CONTRACTOR will not be entitled to any VARIATION or other compensation.

**(b)** COMPANY may suspend the CONTRACT or reduce SCOPE for convenience at its own discretion with seven days' prior written notice. CONTRACTOR may seek a VARIATION if actions required by suspension impact the schedule or timing of SCOPE.

**(c)** COMPANY may at any time withdraw by written notice all or part of a suspension and CONTRACTOR will resume performance.

## **5. TERMINATION**

### **5.1. Termination by COMPANY**

**(a)** COMPANY may terminate the CONTRACT or reduce SCOPE for cause by written notice with immediate effect if: (i) in connection with the performance of the CONTRACT, CONTRACTOR breaches its own Business Principles, or if it has no equivalent principles, then Shell's Business Principles; (ii) any member of CONTRACTOR GROUP violates ANTI-BRIBERY LAWS, applicable competition laws, TRADE CONTROL LAWS, other APPLICABLE LAWS, or HSSE STANDARDS or causes COMPANY to be in violation of those laws; (iii) any member of CONTRACTOR GROUP becomes a RESTRICTED PARTY; or (iv) CONTRACTOR is subject to an INSOLVENCY EVENT.

**(b)** COMPANY may terminate the CONTRACT or reduce SCOPE for cause where COMPANY determines CONTRACTOR materially breached a term or condition of the CONTRACT other than those set out in the preceding paragraph. COMPANY will first provide written notice which may require CONTRACTOR to remedy the breach, or COMPANY may terminate the CONTRACT if COMPANY determines the breach is not capable of timely remedy, or it is not subsequently remedied.

**(c)** COMPANY may terminate the CONTRACT or reduce SCOPE for convenience at its own discretion with 30 days' prior written notice.

### **5.2. Termination by CONTRACTOR**

**(a)** CONTRACTOR may terminate the CONTRACT with prior written notice of at least 30 days when: (i) COMPANY fails to pay an undisputed amount to CONTRACTOR that is properly presented, due, and payable for more than 60 days; and (ii) COMPANY fails to cure or provide proper grounds for non-payment during the notice period; or (iii) COMPANY has materially and substantially breached the terms of the CONTRACT.

**(b)** CONTRACTOR'S termination rights do not apply to non-payment in the case of COMPANY'S valid exercise of set off rights.

### **5.3. CONTRACTOR Obligations on Termination**

On any termination, CONTRACTOR will promptly cease performance, give access to SCOPE in progress, avoid unreasonable interference with others, and take reasonable steps to allow COMPANY to complete SCOPE, including turning over all documentation for SCOPE and SOFTWARE which was to be supplied in connection with the CONTRACT.

#### **5.4. Compensation in the Event of Termination**

(a) On any termination, COMPANY will determine and pay (subject to valid set offs) the amounts owed to CONTRACTOR for SCOPE properly performed prior to termination.

(b) If COMPANY terminates the CONTRACT "for convenience" or CONTRACTOR validly terminates for non-payment, COMPANY will also pay reasonable, unavoidable, and auditable demobilisation costs that COMPANY has specifically agreed elsewhere in the CONTRACT to pay on termination for convenience by COMPANY.

#### **6. LIQUIDATED DAMAGES**

Any LIQUIDATED DAMAGES set out in the CONTRACT are genuine pre-estimates of the losses that may be sustained by failure of performance. CONTRACTOR reserves the right to demonstrate that no LIQUIDATED DAMAGES have occurred or that the amount of the damages is smaller than the LIQUIDATED DAMAGES that are set out in the CONTRACT.

#### **7. LIABILITIES AND INDEMNITIES**

(a) Liability for loss of and damage to property and for personal injury, death, or disease to any PERSON, arising in connection with the CONTRACT, will be determined in accordance with APPLICABLE LAW.

(b) Neither party will be liable to the other for that other party's own CONSEQUENTIAL LOSS, REGARDLESS OF NEGLIGENCE OR OTHER FAULT.

(c) Neither party excludes or limits its LIABILITIES to the extent they may not be excluded under APPLICABLE LAW.

(d) Any limitation of liability in this Article will not apply in the case of wilful misconduct or gross negligence, in the case of injuries to life, body and health, in the loss or damage is attributable to an infringement of duties essential to the implementation of the contract, performance of which the parties may therefore rely on, in case of a breach of a guarantee or in case of a breach of the Product Liability Act (Produkthaftungsgesetz).

#### **8. INSURANCE**

Prior to commencement of performance, CONTRACTOR will arrange any insurance required by APPLICABLE LAW, and maintain that insurance in effect throughout the duration of the CONTRACT. Satisfaction of the obligation to procure insurance and perform other actions in connection with this Article will not relieve CONTRACTOR of any other obligations or LIABILITIES.

#### **9. COMPLIANCE WITH APPLICABLE LAWS, BUSINESS PRINCIPLES, AND HSSE STANDARDS**

##### **9.1. APPLICABLE LAWS**

CONTRACTOR will comply with APPLICABLE LAWS, including any applicable provisions of the German Act on Minimum Wages (Mindestlohngesetz), in the performance of the CONTRACT and will notify COMPANY of any material breaches. CONTRACTOR will INDEMNIFY COMPANY GROUP for any LIABILITIES arising from CONTRACTOR GROUP's non-compliance with APPLICABLE LAWS.

##### **9.2. Business Principles**

(a) CONTRACTOR acknowledges that it has actual knowledge of: (i) the Shell General Business Principles, at [www.shell.com/sgbp](http://www.shell.com/sgbp), and Shell's Supplier Principles, at [www.shell.com/suppliers](http://www.shell.com/suppliers); (ii) Shell's Code of Conduct, at [http://www.shell.com/home/content/aboutshell/who\\_we\\_are\\_our\\_values/code\\_of\\_conduct/](http://www.shell.com/home/content/aboutshell/who_we_are_our_values/code_of_conduct/); and (iii) Shell's Global Helpline,

at

[http://www.shell.com/home/content/aboutshell/who\\_we\\_are\\_our\\_values/compliance\\_helpline/](http://www.shell.com/home/content/aboutshell/who_we_are_our_values/compliance_helpline/).

(b) CONTRACTOR agrees that it and each member of CONTRACTOR GROUP will adhere to and notify of violations of the principles contained in the Shell General Business Principles and Shell Supplier Principles (or where CONTRACTOR has adopted equivalent principles, to those equivalent principles) in all its dealings with or on behalf of COMPANY, in connection with this CONTRACT and related matters.

(c) If CONTRACTOR GROUP supplies staff that work on behalf of COMPANY or represent COMPANY, CONTRACTOR commits that the staff will behave in a manner that is consistent with the Shell Code of Conduct.

##### **9.3. Anti-Bribery and Corruption**

(a) CONTRACTOR represents that, in connection with this CONTRACT and related matters: (i) it is knowledgeable about ANTI-BRIBERY LAWS applicable to the performance of SCOPE and will comply with those laws; (ii) CONTRACTOR GROUP has not made, offered, authorised, or accepted, and will not make, offer, authorise, or accept, any payment, gift, promise, or other advantage, whether directly or through any other PERSON, to or for the use or benefit of any GOVERNMENT OFFICIAL or any other PERSON where that payment, gift, promise, or other advantage would: (A) comprise a facilitation payment; or (B) violate the relevant ANTI-BRIBERY LAWS.

(b) CONTRACTOR will immediately notify COMPANY if CONTRACTOR receives or becomes aware of any request from a GOVERNMENT OFFICIAL or any other PERSON that is prohibited by the preceding paragraph.

(c) CONTRACTOR will maintain adequate internal controls and procedures to ensure compliance with ANTI-BRIBERY LAWS, including the ability to demonstrate compliance through adequate and accurate recording of transactions in its BOOKS AND RECORDS.

(d) COMPANY will have the right to confirm compliance with ANTI-BRIBERY LAWS and record keeping by audit. CONTRACTOR will keep BOOKS AND RECORDS available for audit for a period as directed by COMPANY for at least as long as the period for retention of records for financial and performance audit.

(e) CONTRACTOR will INDEMNIFY COMPANY GROUP for any LIABILITIES arising out of CONTRACTOR's breach of ANTI-BRIBERY LAWS or any related undertakings under this Article.

##### **9.4. Export and Trade Controls**

(a) CONTRACTOR will comply with, all applicable TRADE CONTROL LAWS and will provide COMPANY with necessary data to comply with TRADE CONTROL LAWS.

(b) CONTRACTOR will ensure that, except with the prior written consent of COMPANY: (i) COMPANY PROVIDED ITEMS are not exported, provided, or made available to any RESTRICTED JURISDICTION or RESTRICTED PARTIES; (ii) CONTRACTOR PERSONNEL with access to COMPANY GROUP's technical information, information technology resources (including COMPANY GROUP's infrastructure), or COMPANY GROUP WORKSITES, are not RESTRICTED PARTIES or nationals of a RESTRICTED JURISDICTION; and (iii) CONTRACTOR will not utilise SUBCONTRACTORS that are RESTRICTED PARTIES.

##### **9.5. PERSONAL DATA Protection**

(a) CONTRACTOR will implement all appropriate security measures to protect PERSONAL DATA against accidental, unlawful, or unauthorised (i) destruction, (ii) loss, (iii) alteration, (iv) disclosure, or (v) access (including remote access). CONTRACTOR will protect PERSONAL DATA against all other forms of unlawful processing, including unnecessary

collection, transfer, or processing, beyond what is strictly necessary for the performance of SCOPE.

**(b)** CONTRACTOR is not authorized to and will not process COMPANY GROUP PERSONAL DATA, whether or not included in the SCOPE description, unless CONTRACTOR has first entered into a data privacy agreement as instructed by COMPANY.

#### **9.6. Health, Safety, Security, and Environment (“HSSE”)**

In performing SCOPE at COMPANY GROUP WORKSITES, CONTRACTOR will at all times: (i) pursue Shell’s HSSE principle of Goal Zero; (ii) comply with Shell’s “Life Saving Rules”, at <http://www.shell.com/global/environment-society/safety/culture.html>; and (iii) comply with other applicable HSSE STANDARDS.

#### **9.7 Compliance with REACH Regulations**

**(a)** In all cases where applicable due to SCOPE performed, CONTRACTOR agrees to comply with Regulation (EC) No. 1907/2006 (“REACH”), and CONTRACTOR warrants that: (i) any substances, within the meaning of the REACH regulation, in SCOPE have been validly pre-registered or immediately registered (as applicable) in accordance with REACH (and CONTRACTOR will confirm and provide evidence of compliance in writing to COMPANY prior to dispatch of those items); (ii) where substances in SCOPE have been pre-registered, CONTRACTOR will take all necessary steps to ensure that those substances are validly registered in accordance with REACH according to the deadlines set out in REACH); (iii) any registration will cover COMPANY’s uses and applications of the substances (or those of COMPANY’s customers) where they have been notified to CONTRACTOR (or to CONTRACTOR’s “only representative” if appointed and notified to COMPANY) no later than three months before the relevant registration deadline; and (iv) any registration will be kept up-to-date (including any relevant amendment to uses).

**(b)** CONTRACTOR will immediately notify COMPANY in writing if any substance in the GOODS may or has become subject to an authorisation or restriction under REACH or where any circumstance has arisen that would call into question whether any substance in SCOPE is adequately registered.

**(c)** CONTRACTOR will provide COMPANY with a copy of current safety data sheets for GOODS in the format and containing the information required by REACH. CONTRACTOR will send a copy of the safety data sheet in the language and to the address or contact as advised by COMPANY.

#### **9.8 Accountability for Handling of Dangerous Goods and Waste.**

In case that in the context of this CONTRACT Waste/Products/Raw Materials are dispatched according to dangerous goods regulations (Gefahrgutvorschriften) then „Anlage 1 - Verantwortlichkeiten beim Umgang mit Gefahrgütern und Abfällen“ applies.

**9.9 Conscious Management of Energy.** CONTRACTOR obligates itself to use COMPANY provided energy in an environmentally and cost conscious manner (e.g. lightning only were required, use of energy efficient equipment and conscious use of heating, fuel, air, steam etc.)

#### **10. CONFIDENTIAL INFORMATION**

**(a)** CONTRACTOR will not disclose or permit a disclosure to a third party of COMPANY GROUP’s CONFIDENTIAL INFORMATION without the prior written consent of COMPANY and will use COMPANY GROUP’s CONFIDENTIAL INFORMATION only in connection with performance of the CONTRACT.

**(b)** Information that CONTRACTOR can prove at disclosure is public knowledge, in the possession of CONTRACTOR without binder of secrecy, or developed independently of COMPANY’s CONFIDENTIAL INFORMATION is not CONFIDENTIAL INFORMATION. Restrictions on disclosure of COMPANY’s CONFIDENTIAL INFORMATION will cease if CONTRACTOR can

prove that the information had become part of the public knowledge through no fault of CONTRACTOR GROUP or is subsequently disclosed to CONTRACTOR without an obligation of confidentiality by a third party who has the legal right to do so.

**(c)** On COMPANY’s request, CONTRACTOR will return promptly any CONFIDENTIAL INFORMATION and delete it from electronic storage, and delete or destroy all extracts or analyses that reflect any CONFIDENTIAL INFORMATION.

**(d)** Except where the obligation is expressly stated elsewhere in the CONTRACT or through a separate agreement, COMPANY GROUP will not have an obligation of non-disclosure or non-use regarding information provided by CONTRACTOR or any other member of CONTRACTOR GROUP.

**(e)** CONTRACTOR must obtain written approval from COMPANY before proceeding with any external communications in connection with the CONTRACT, disclosure of business relationships, or use of COMPANY’s trademarks.

#### **11. INTELLECTUAL PROPERTY**

**(a)** Except for IP RIGHTS vested in CONTRACTOR as provided below, all ownership rights, title, and interest in and to SCOPE and WORK PRODUCT will vest in COMPANY. This CONTRACT does not grant CONTRACTOR GROUP any rights, title, or interest in or to COMPANY GROUP’s IP RIGHTS, other than those set out in the CONTRACT. IP RIGHTS created by modifications, amendments, enhancements, or improvements (including tailor-made to the specifications of COMPANY) to COMPANY GROUP’s IP RIGHTS, or made using COMPANY GROUP’s CONFIDENTIAL INFORMATION, will vest with COMPANY or its nominee when created.

**(b)** CONTRACTOR, warranting that it is entitled to do so, grants to COMPANY GROUP the irrevocable, non-exclusive, perpetual, worldwide, royalty-free right and licence, with the right to grant sub-licences, to possess, and use any of CONTRACTOR’s IP RIGHTS embodied in SCOPE, including the right to import, export, operate, sell, maintain, modify and repair SCOPE. CONTRACTOR warrants that any possession or use of SCOPE as delivered by CONTRACTOR or of CONTRACTOR’s IP RIGHTS will not infringe the IP RIGHTS of any third party.

**(c)** COMPANY’s ownership rights in SCOPE under this article will not extend to CONTRACTOR’s IP RIGHTS that: (i) pre-existed performance under the CONTRACT; (ii) are developed independently from performance of the CONTRACT; or (iii) are used by CONTRACTOR in connection with or to perform the CONTRACT, but are not based on or arising out of COMPANY GROUP’s IP RIGHTS or CONFIDENTIAL INFORMATION.

**(d)** CONTRACTOR will INDEMNIFY COMPANY GROUP, assignees, transferees, and sublicensees permitted by this CONTRACT for any LIABILITIES resulting from any claim that the possession or use of any SCOPE or WORK PRODUCT infringes or misappropriates the IP RIGHTS of any third party.

#### **12. FINANCIAL AND PERFORMANCE AUDIT**

**(a)** COMPANY will have the right to audit: (i) invoiced charges and proper invoicing; (ii) other BOOKS AND RECORDS; and (iii) the performance of any other of CONTRACTOR’s obligations under the CONTRACT, where capable of being verified by audit.

**(b)** Based on the findings of the audit the parties will settle any amounts charged incorrectly within 45 days of any audit finding; and CONTRACTOR will provide or re-perform any SCOPE where the requirement to do so is identified by any audit within 45 days of any audit finding.

**(c)** CONTRACTOR will keep BOOKS AND RECORDS available for audit for the longer of the following periods: (i) five years following termination of the CONTRACT or any longer period as required by APPLICABLE LAWS; or (ii) two years after the period

expires on any obligation of CONTRACTOR to perform or re-perform any SCOPE.

**(d)** If a longer period is specified in the CONTRACT for retention of relevant records for compliance with ANTI-BRIBERY LAWS, CONTRACTOR will comply with that requirement.

### **13. RELATIONSHIP OF THE PARTIES**

**(a)** CONTRACTOR is an independent contractor in all aspects of performance under the CONTRACT. CONTRACTOR is responsible for the method and manner of performance to achieve the results required by the CONTRACT.

**(b)** Neither the CONTRACT nor its performance creates a partnership or joint venture. No party is appointed as agent of the other. The CONTRACT does not permit CONTRACTOR to make any commitment on behalf of COMPANY GROUP.

**(c)** CONTRACTOR and CONTRACTOR PERSONNEL are not to be considered employees of any member of COMPANY GROUP and are not eligible to participate in any of COMPANY GROUP's employee benefit plans. CONTRACTOR will indemnify COMPANY GROUP for any LIABILITIES related to claims for private or governmental benefits by CONTRACTOR or CONTRACTOR PERSONNEL.

### **14. CONTRACTOR PERSONNEL AND SUBCONTRACTING**

**(a)** CONTRACTOR is responsible for any SCOPE performed by and all activities, omissions, and defaults of any SUBCONTRACTOR and all CONTRACTOR PERSONNEL as if they were the activities, omissions, or defaults of CONTRACTOR.

**(b)** CONTRACTOR may not subcontract any part of its obligations under the CONTRACT except as agreed in writing by COMPANY.

**(c)** CONTRACTOR will ensure that SUBCONTRACTS are in all material respects consistent with the terms and conditions of the CONTRACT.

### **15. ASSIGNMENT**

An assignment or novation by a party of all or part of the CONTRACT requires the written consent of the other party, except that COMPANY may assign and novate all or part of the CONTRACT to an AFFILIATE without the consent of CONTRACTOR by giving written notice to CONTRACTOR.

### **16. FORCE MAJEURE**

**(a)** COMPANY and CONTRACTOR are each excused from performance of the affected part of an obligation of the CONTRACT while performance is prevented by a FORCE MAJEURE EVENT unless the event was contributed to by the fault of the party or was due to circumstances that could have been avoided or mitigated by the exercise of reasonable diligence.

**(b)** Only the following are FORCE MAJEURE EVENTS: (i) riots, wars, blockades, or threats or acts of sabotage or terrorism; (ii) earthquakes, floods, fires, named hurricanes or cyclones, tidal waves, tornadoes, or other natural physical disasters; (iii) radioactive contamination, epidemics, maritime or aviation disasters; (iv) strikes or labour disputes at a national or regional level or involving labour not forming part of CONTRACTOR GROUP or COMPANY GROUP, which materially impair the ability of the party claiming force majeure to perform the CONTRACT; (v) government sanctions, embargoes, mandates, or laws, that prevent performance; (vi) inability of a party to timely obtain licences, permits, or governmental consents required for performance; or (vii) non-performance of a party's SUBCONTRACTOR where the SUBCONTRACTOR has been or is affected by one of the above FORCE MAJEURE EVENTS. However, performance will only be excused under this subparagraph if the parties to the CONTRACT agree that substitute performance by another SUBCONTRACTOR is impracticable under the circumstances.

**(c)** A party whose performance is delayed or prevented will use reasonable endeavours to notify the other party and mitigate the effects of any FORCE MAJEURE.

**(d)** COMPANY may terminate the CONTRACT if any FORCE MAJEURE EVENT results in a delay that exceeds 90 consecutive or 180 cumulative days.

### **17. NOTICES**

All notices or other communications under the CONTRACT must be in English and in writing, and: (i) delivered by hand; (ii) sent by prepaid courier; (iii) sent by registered post; or (iv) sent by email with confirmation receipt requested. Notices and communications are effective when actually delivered at the address specified in the CONTRACT.

### **18. GOVERNING LAW, DISPUTE RESOLUTION AND REMEDIES**

#### **18.1. Governing Law**

This CONTRACT, and any dispute or claim arising out of or in connection with this CONTRACT or its subject matter or formation, including any non-contractual disputes or claims, will be exclusively governed by and construed in accordance with the laws of Germany, excluding conflict of law rules and choice of law principles that provide otherwise. The United Nations Convention on the International Sale of Goods will not apply to this CONTRACT.

#### **18.2. Dispute Resolution**

Any dispute or claim arising out of or in connection with the CONTRACT or its subject matter or formation, whether in tort, contract, under statute, or otherwise, including any question regarding its existence, validity, interpretation, breach, or termination, and including any non-contractual claim, will be finally and exclusively resolved by the courts of Hamburg, Germany.

#### **18.3. Specific Performance**

COMPANY is entitled to specific performance of the CONTRACT.

### **19. ADDITIONAL LEGAL PROVISIONS**

**(a)** The parties retain their rights and remedies under APPLICABLE LAWS, subject to any provisions in the CONTRACT that provide otherwise.

**(b)** A provision of the CONTRACT is not waived unless made in writing by an authorised representative of the waiving party.

**(c)** Provisions that state that they survive or by their nature are intended to survive completion of performance or termination of the CONTRACT do so, along with all remedies attached to them.

**(d)** Amendments to the CONTRACT must be made in writing and signed by the parties' authorised representatives in order to be binding.

**(e)** Members of CONTRACTOR GROUP or COMPANY GROUP not a party to the CONTRACT, but conferred rights in it are entitled to enforce those rights, but are not required to consent to amend or terminate those rights.

**(f)** The CONTRACT sets forth the entire agreement between the parties concerning its subject matter and supersedes any other agreements or statements pertaining to the same subject matter, except those agreements or statements expressly referenced in the CONTRACT as included. Any confidentiality agreement pertaining to the subject matter will remain in effect according to its terms, unless the CONTRACT provides that it is terminated or replaced.