



Terms & Conditions of Services

1. DEFINITIONS

1.1 In these Conditions, the following definitions apply:

“Business Day” means a day (other than a Saturday, Sunday or a public holiday) when banks in Scotland are open for business;

“Conditions” means the terms and conditions set out in this document;

“Contract” means the contract between Oceanscan and the Customer for the supply of Services in accordance with these Conditions;

“Customer” means the person, firm or company who contracts with Oceanscan to supply the Services;

“Customer Default” has the meaning set out in clause 4.2;

“Customer Group” means the Customer, any subsidiary or holding company from time to time of the Customer and any subsidiary from time to time of a holding company of the Customer;

“Force Majeure Event” has the meaning set out in clause 10;

“Intellectual Property Rights” means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

“Oceanscan” means Oceanscan Limited (registered in Scotland with company number SC116255);

“Oceanscan Group” means Oceanscan, any subsidiary or holding company from time to time of Oceanscan and any subsidiary from time to time of a holding company of Oceanscan;

“Oceanscan Materials” has the meaning set out in clause 4.1(h);

“Order” means the Customer’s order for the Services, as set out in the Customer’s purchase order form or the Customer’s written acceptance of Oceanscan’s quotation, as the case may be;

“Scope of Work” means the description or specification of the Services, as set out in the Order;

“Services” means the services supplied or to be supplied by Oceanscan to the Customer, as set out in the Scope of Work; and

“Visa Default” has the meaning set out in clause 5.4.

2. ACCEPTANCE

2.1 The Conditions 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.

2.2 The Order constitutes an offer by the Customer for Oceanscan to supply the Services in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and the Scope of Work are complete and accurate.

2.3 The Order shall only be deemed to be accepted when Oceanscan issues a written acceptance of the Order, at which point the Contract shall come into existence.

2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Oceanscan which is not set out in the Contract.

2.5 Any samples, drawings, descriptive matter, or advertising produced by Oceanscan and any descriptions or illustrations contained in Oceanscan's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Services described in them. None of them shall form part of the Contract or have any contractual force.

2.6 A quotation for the Services given by Oceanscan shall not constitute an offer. A quotation shall only be valid for a period of thirty (30) days from its date of issue and shall also be subject to availability of the relevant equipment.

3. SUPPLY OF SERVICES

3.1 Oceanscan shall supply the Services to the Customer in accordance with the Scope of Work in all material respects.

3.2 Oceanscan shall use reasonable endeavours to meet any performance dates specified in the Order but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.



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- 3.3 Oceanscan shall have the right to make any changes to the Services which are necessary to comply with any applicable law or health and safety requirement, or which do not materially affect the nature or quality of the Services and Oceanscan shall notify the Customer of any such event.

4. CUSTOMER'S OBLIGATIONS

4.1 The Customer shall:

- (a) ensure that the terms of the Order and any information it provides in the Scope of Work are true, complete and accurate;
- (b) co-operate with Oceanscan in all matters relating to the Services;
- (c) provide Oceanscan, its employees, agents, consultants and subcontractors with access to the Customer's premises, office accommodation and other facilities as reasonably required by Oceanscan in order to provide the Services;
- (d) provide Oceanscan with such information and materials as Oceanscan may reasonably require in order to supply the Services and ensure that such information is true, complete and accurate in all material respects;
- (e) prepare the Customer's premises for the supply of the Services;
- (f) ensure that the Customer's premises comply with any applicable law or health and safety requirement;
- (g) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start; and
- (h) keep and maintain all materials, equipment, documents and other property of Oceanscan (**Oceanscan Materials**) at the Customer's premises in safe custody at its own risk, maintain the Oceanscan Materials in good condition until returned to Oceanscan, and not dispose of or use the Oceanscan Materials other than in accordance with Oceanscan's written instructions or authorisation.

4.2 If Oceanscan'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) Oceanscan 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 Oceanscan's performance of any of its obligations;
- (b) Oceanscan shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Oceanscan's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- (c) the Customer shall reimburse Oceanscan on written demand for any costs or losses sustained or incurred by Oceanscan arising directly or indirectly from the Customer Default.

5. QUALITY

5.1 Oceanscan warrants to the Customer that the Services will be provided using reasonable care and skill and undertakes to provide sufficient personnel at all times to ensure the Services are provided in accordance with the Contract.

5.2 Oceanscan shall ensure that all personnel employed in relation to the provision of the Services shall, for the work which they are required to perform, be competent, properly qualified, skilled and experienced in accordance with good industry practice.

5.3 Oceanscan shall ensure that all personnel employed in relation to the provision of the Services shall comply with applicable laws including immigration laws and, where required, shall use reasonable endeavours to ensure that such personnel are in possession of a valid work permit for the duration of the Contract.

5.4 If, notwithstanding Oceanscan's reasonable endeavours, Oceanscan's performance of any of its obligations under the Contract is prevented or delayed as a result of personnel employed in relation to the provision of the Services not being in possession of a valid work permit for the duration of the Contract (**Visa Default**):

- (a) Oceanscan shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Visa Default is remedied, and to rely on the Visa Default to relieve it from the performance of any of its obligations to the extent the Visa Default prevents or delays Oceanscan's performance of any of its obligations; and
- (b) Oceanscan shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Oceanscan's failure or delay to perform any of its obligations as set out in this clause 5.4.

6. CHARGES AND PAYMENT

- 6.1 The charges for the Services shall be either (i) on a time and materials basis and calculated in accordance with Oceanscan's standard fee rates, as set out in the Order; or (ii) the price as set out in the Order.
- 6.2 Oceanscan shall be entitled to charge the Customer for any expenses reasonably incurred by the personnel engaged in the provision of 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 Oceanscan for the performances of the Services.
- 6.3 Oceanscan may, by giving notice to the Customer at any time before commencement of the Services, increase the charges for the Services to reflect any increase in the cost of the provision of the Services that is due to:
- (a) any factor beyond Oceanscan's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (b) any request by the Customer to change the date(s) when the Services are to be supplied or the Scope of Work; or
 - (c) any delay caused by any instructions of the Customer or failure of the Customer to give Oceanscan adequate or accurate information or instructions.
- 6.4 The charges for the Services are exclusive of amounts in respect of value added tax (**VAT**). The Customer shall, on receipt of a valid VAT invoice from Oceanscan, pay to Oceanscan such additional amounts in respect of VAT as are chargeable on the supply of the Services.
- 6.5 Oceanscan may require the Customer to pay for the supply of the Services either in whole or in part prior to performance, but otherwise may invoice the Customer for the Services on or at any time after the performance of the Services.
- 6.6 The Customer shall pay the invoice in full and in cleared funds within thirty (30) days of the date of the invoice. Payment shall be made to the bank account nominated in writing by Oceanscan. Time of payment is of the essence.
- 6.7 If the Customer fails to make any payment due to Oceanscan under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 2.5% per month. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after decree. The Customer shall pay the interest together with the overdue amount.
- 6.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Oceanscan may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by Oceanscan to the Customer.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by Oceanscan.
- 7.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on Oceanscan obtaining a written licence from the relevant licensor on such terms as will entitle Oceanscan to license such rights to the Customer.
- 7.3 All Oceanscan Materials are the exclusive property of Oceanscan.

8. TERMINATION

- 8.1 If the Customer becomes subject to any of the events listed in clause 8.2, or Oceanscan reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to Oceanscan, Oceanscan may cancel or suspend all further work under the Contract or under any other contract between the Customer and Oceanscan without incurring any liability to the Customer and all outstanding sums in respect of the Services performed for the Customer shall become immediately due.
- 8.2 For the purposes of clause 8.1, the relevant events are:
- (a) the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - (b) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
 - (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer (being a company);

- (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Customer (being a company);
- (e) the holder of a qualifying floating charge over the assets of the Customer (being a company) has become entitled to appoint or has appointed an administrative receiver; or
- (f) the Customer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (g) any event analogous to (a) to (f) inclusive, occurs in relation to any other legal jurisdiction; or
- (h) the Customer's financial position deteriorates to such an extent that in Oceanscan's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

8.3 Termination or expiry of the Contract shall not affect any rights, remedies or obligations of Oceanscan that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

9 LIMITATION OF LIABILITY

9.1 Oceanscan shall be responsible for and shall save, indemnify, defend and hold harmless the Customer Group from and against all claims, losses, damages, costs (including legal costs) expenses and liabilities in respect of:

- (a) personal injury including death or disease to any person employed by the Oceanscan Group arising from or relating to the performance of the Services;
- (b) personal injury including death or disease or loss of or damage to the property of any third party to the extent that such injury, loss or damage is caused by the negligence or breach of duty (whether statutory or otherwise) of Oceanscan. For the purposes of this clause 9.1(b), "third party" means any party which is not a member of the Oceanscan Group or the Customer Group; and
- (c) loss of or damage to property of the Oceanscan Group located at the Customer's premises arising from or related to the performance of the Services.

9.2 The Customer shall be responsible for and shall save, indemnify, defend and hold harmless the Oceanscan Group from and against all claims, losses, damages, costs (including legal costs) expenses and liabilities in respect of:

- (a) personal injury including death or disease to any person employed by the Customer Group arising from or relating to the performance of the Services;
- (b) personal injury including death or disease or loss of or damage to the property of any third party to the extent that such injury, loss or damage is caused by the negligence or breach of duty (whether statutory or otherwise) of the Customer. For the purposes of this clause 9.2(b), "third party" means any party which is not a member of the Oceanscan Group or the Customer Group; and
- (c) loss of or damage to property of the Customer Group located at the Customer's premises arising from or related to the performance of the Services.

9.3 All exclusions and indemnities save for those under clause 9.1(b) and clause 9.2(b) given under this clause 9 shall apply irrespective of cause and notwithstanding the negligence or breach of duty (statutory or otherwise) of the indemnified party or any entity or party and shall apply irrespective of any claim in delict, under contract or otherwise at law.

9.4 Oceanscan shall under no circumstances whatsoever be liable to the Customer, whether in contract, delict (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of revenue, loss of business or any indirect or consequential loss arising under or in connection with the Contract, in each case however caused, even if foreseeable.

9.5 Oceanscan's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, delict (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the total sums to be paid by the Customer to Oceanscan for the Services.

10. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or 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.

11. GENERAL

11.1 Assignment and other dealings

- (a) Oceanscan may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of Oceanscan.

11.2 Notices

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.2 (a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

11.3 Severance

- (a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the remainder of the Contract.
- (b) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

11.4 Waiver

A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

11.5 Variation

Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by Oceanscan.

11.6 Governing Law

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. Each party irrevocably agrees that the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).