

AQUADUCTUS



***General Terms and Conditions.
Environmental survey and Environmental Impact
Assessment (EIA) for Shore Crossing***

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1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

Unless the context otherwise indicates, whenever used in the Contract, the following words and expressions shall have the following meanings:

“Affiliate”	means in relation to any Party, any entity that directly or indirectly controls, is controlled by, or is under common control with that party. This includes any controlled subsidiary or parent or holding company of any Party or any other subsidiary of such parent or holding company of a Party. For the purposes of this definition, "control" means the ownership of more than 50% of the voting rights or other equity interests in an entity.
“Agreement”	means the Form of Agreement forming part of the Contract as listed in clause 2.1 of the Agreement.
“Appendix”	means an appendix attached to and listed in the Agreement.
“Business Days”	Means any day which is not a Saturday, Sunday nor a German public holiday.
“Client”	means owner of the AquaDuctus Pipeline GmbH i.e. Gascade Gastransport GmbH.
“Company”	means AquaDuctus Pipeline GmbH.
“Company Group”	means the Company, the EPCm, their respective Affiliates, their other contractors and their subcontractors and the employees and directors of the aforementioned companies and others whose services are used by the Company, including GASCADE Gastransport GmbH.
“Company Representative”	means the person(s) referred to in clause Error! Reference source not found. of the Agreement.
“Completion Certificate”	means the certificate to be issued by the Company in accordance with clause 24.1.
“Completion Date”	means the scheduled completion date where Work is required to be completed as set out in the Schedule of Key Dates in Exhibit A to the Agreement and, if not completed by this date, renders the Contractor liable for Liquidated Damages.
“Contract”	means all of the documents listed in clause 2.1 of the Agreement.

“Contract Schedule”	means a work schedule identifying the times for the completion of any Work, including any Delivery Date, Completion Date and Mobilisation Window, as set forth in Appendix C: Contract Schedule.
“Contractor Group”	means the Contractor, its Affiliates, the Contractor's subcontractors and the employees and directors of the aforementioned companies and others whose services are to be provided to the Company.
“Contractor Representative”	means the person(s) referred to in clause 11.3 of the Agreement.
“Days”	means calendar days under the Gregorian calendar.
“Delivery Date”	means the date specified in a Contract Schedule for the delivery by the Contractor of any part of the Work, including the delivery of equipment, goods, materials, personnel and other resources.
EPCm	Worley Projects GmbH, appointed by the Company to perform Engineering, Procurement and Construction Management entailing project management, engineering management, procurement management, construction management, contract administration, technical assurance, quality assurance, HSE management, interface management and related project delivery services for the AquaDuctus Project
EPCm representative	Any employee, representative or authorised delegate of the EPCm notified by the EPCm to the Contractor with the role as defined in Clause 11.2.
“Final Completion Certificate”	means the certificate issued under clause 25.4.
“Financier”	means any lender, entity or organisation providing financing for the Project.
“Force Majeure”	has the meaning given in clause 29.1.
“GDPR”	Means the General Data Protection Regulation (EU) 2016/679.
“Good Industry Practice”	means the practices, policies, methods, standards (including any relevant international standard taking into account any standards specified in the Contract) and acts that would reasonably be expected from a qualified, competent and skilled engineering, procurement and construction management contractor experienced in performing services of a similar nature to the Services for a project of a similar size, scope, complexity and nature to the Project.

“HSE”	means health, safety and environment.
“Insolvency”	means any bankruptcy, insolvency, liquidation, amalgamation, reconstruction, reorganisation, administration, administrative or other receivership, winding up or dissolution of any person, and any equivalent or analogous proceedings by whatever name known and in whatever jurisdiction, and any step taken (including the presentation of a petition or the passing of a resolution) for or with a view to any of the foregoing.
“Intellectual Property”	means all intellectual property rights subsisting or arising in relevant jurisdictions (including, rights in the nature of any copyright, trade mark, trade secret, design register, drawing, patent, know-how, secret process and other similar proprietary rights, whether or not registered, and the rights to the registration of those rights and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these rights conferred under the laws of any relevant jurisdiction..
“Key Personnel”	means the key personnel of the Contractor referred to in clause 11.5.
“Liquidated Damages”	means liquidated damages payable by the Contractor for delay in achieving a Completion Date, as more particularly described in clause 10.9.
“Permit”	means any approval, authorisation, certification, consent, licence, notice or permission which must be obtained from any authority, body or organisation having any jurisdiction in connection with the Work.
“Price”	has the meaning given to it in clause 6.1.
“Project”	means the AquaDuctus Project involving the construction of an offshore hydrogen pipeline and associated pipeline works.
Project Participants	means the Company, the EPCm, other contractors, consultants, suppliers and any other persons engaged in connection with the AquaDuctus Project.
“Site”	means any site where any part of the Work is to be performed, and as may be more particularly identified by the Company.
“Subcontract”	means an agreement entered into between the Contractor and a Subcontractor.

“Subcontractor”	means any party (other than Contractor), who has entered into an agreement with Contractor for the supply of goods or services in connection with the Work.
“Third Party”	means any party other than the Company Group and the Contractor Group.
“Variation”	means any increase or decrease in the quantity, character, quality, nature or execution of the Work or any part thereof, as well as changes to the Contract Schedule.
“Warranty Period”	has the meaning given in clause 25.2.
“Work(s)”	means any work or services required to be performed by the Contractor under the Contract and any activity ancillary thereto, including the procurement and provision of any equipment, goods, materials, personnel or other resources required to perform the work or services, and as may be more particularly described in Appendix A - Scope of Work.

1.2 Interpretation

In the Contract, unless the context otherwise indicates:

- (a) references to persons include any natural person, firms, corporations and any other organisation or legal entity having legal capacity;
- (b) capitalised terms and fully Capitalised terms shall have the same meaning as set out in the Agreement or these terms and conditions;
- (c) words importing the singular only also include the plural and vice versa;
- (d) references to any Party to the Contract include its successors or permitted assigns;
- (e) headings are for convenience only and will not be taken into consideration in the interpretation of the Contract;
- (f) references to the Contract and any deed, agreement or instrument are deemed to include references to the Contract or such other deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (g) words denoting any gender include all genders;
- (h) references to any legislation or to any section or provision of any legislation include any statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision, and ordinances, by-laws, regulations and other statutory instruments issued under that legislation, section or provision;

- (i) no rule of interpretation applies to the disadvantage of a Party on the basis that the Party put forward the Contract or any part thereof;
- (j) the words “including” and “includes”, and any variants of those words, will be read as if followed by the words “without limitation”; and
- (k) a reference in the Contract to a clause, annex, appendix, schedule, or exhibit is a reference to a clause, annex, appendix, schedule or exhibit of or to the Contract.

2 ADMINISTRATION

The Company may administer this Contract through the EPCm. References in this Contract to the Company Representative shall include the EPCm Representative to the extent of authority delegated under Clause 11 of the Agreement.

3 CONTRACTUAL DOCUMENTS AND ORDER OF PRECEDENCE

3.1 Contractual Documents

The documents forming the Contract consist of the documents listed in clause 2 of the Agreement.

3.2 Order of Precedence

Any conflict, discrepancy or ambiguity between the documents in clause 3.1 shall be resolved in the order of priority of the documents listed in clause 2 of the Agreement.

The Parties shall, acting reasonably, endeavour to resolve any conflict between documents of the same class.

4 FINANCING

4.1 General

The Contractor acknowledges that the Company has entered into or will enter into agreements for the purpose of financing of the Project.

The Contractor shall provide all information and assistance reasonably required by the Company in connection with the requirements of any Financier.

The Contractor shall negotiate in good faith and execute any direct agreement, tripartite agreement, acknowledgement or other agreement reasonably required by any Financier, provided that such agreement does not materially increase the Contractor's obligations or liabilities under the Contract.

5 SCOPE OF WORK

The Contractor shall perform the Work and any Variation to the Work in accordance with the terms of the Contract.

The Work shall include any work which is necessary to satisfy the Company's requirements, or is implied by the Contract, and all works which (although not mentioned in the Contract) are necessary for the completion of the Work.

6 COMPENSATION AND PAYMENT

6.1 Compensation

The Company shall pay the Contractor for any Works performed under the Contract in accordance with the price(s) as per Appendix B – Remuneration and as may be adjusted by a Variation issued by the Company under clause 7 ("Variations").

The currency of payment is Euro (€). The price(s) stated therein shall remain fixed and firm for the Work for the duration of the Contract, unless otherwise adjusted by the Company in accordance with clause 7 or as otherwise provided in the Contract.

If any part of the Price is expressed as a lump sum, the amount shall remain fixed and firm throughout the term of the Contract and shall not be adjusted, except as expressly provided under the Contract.

If any part of the Price is expressed as cost reimbursable, the rates to be used shall be mutually agreed between the Parties and shall not be adjusted except as otherwise agreed by the Company.

6.2 Not used

6.3 Payment

The Company shall pay the Contractor for any Work performed under the Contract in accordance with this clause 6.3.

All invoices and supporting documentation shall first be submitted to the EPCm for review and verification. Following review by the EPCm, the EPCm may recommend approval, adjustment or rejection of all or part of the invoice and shall advise this to Contractor for its consideration. The EPCm shall complete its review and verification of each invoice and supporting documentation within 10 Days of receipt. If the EPCm does not notify the Contractor of a recommendation to adjust or reject the invoice (in whole or in part) within that period, the invoice shall be deemed recommended for approval and the Contractor may submit it to the Company in accordance with this clause 6.3.

Following approval by the EPCm, the Contractor shall submit the invoice to the Company in accordance with this Clause.

No review, recommendation or approval by the EPCm shall relieve the Contractor of any obligation under this Contract nor prejudice the Company's right to dispute any invoice.

- (a) within 10 Days of the end of a calendar month, the Contractor shall submit to the Company an invoice for any Work performed in the preceding month.
- (b) the invoice shall be prepared in accordance with the provisions of Appendix B – Remuneration and all documentation necessary to substantiate the invoiced amount shall be attached to the invoice.
- (c) Invoices shall bear the Contract Number **XX-XXXX** and Purchase Order Number **XX-XXXX**;
- (d) Invoices shall be accompanied by the supporting documents in respect of the Works invoiced;
- (e) Invoices shall issued by the Contractor to the following billing address:

AquaDuctus Pipeline GmbH
Kölnische Straße 108-112
34119 Kassel

and should be sent electronically by e-mail in the form of a PDF file to the following e-mail address:

rechnungen@aquaductus-offshore.de

The invoicing principle is based on a combination of an agreed Lump Sum and day rates. Payments will be made on a proven progress based basis. For the avoidance of doubt, the Contract is remunerated on a combined basis; the Lump Sum scope and the reimbursable (time unit rate) scope, together with the applicable amounts, unit rates and their allocation, are as set out in Appendix B – Remuneration.

Payments for the Works under the Contract shall be made as described in Appendix A.

Time Unit Rates basis: where the pricing for the Works is based on unit rates (e.g., daily rates, number of tests etc.), the Contractor shall be paid based on the actual time spent and number of tests performed for Section I, up to the agreed estimated quantities. Any deviations from the estimated quantities will be subject to approval in accordance with the Contract terms.

The detailed payment mechanism, including invoicing intervals, documentation requirements, and reconciliation procedures, will be finalised during Contract negotiations.

The Company shall, within 10 Days after receipt of the Contractor's invoice which complies with the requirements in sub-paragraph (b), certify the amount which the Company considers is payable to the Contractor. If this amount is less than the amount invoiced by the Contractor, the Company shall give reasons for this. The Company and the Contractor shall use all reasonable endeavours to agree any adjustment from the Contractor's invoiced amount and, failing any agreement, may refer any dispute to the dispute resolution provisions in clause 34.2.

The Company shall, within 30 Days after receipt of the Contractor's invoice, pay the amount certified by the Company or any amount not disputed by the Company as being due to the Contractor under the invoice less and any set-off under clause 6.5.

6.4 Security

Within 15 days from the date of issue of a Contract, the Contractor shall issue (a) an irrevocable bank guarantee in accordance with the form set out in Appendix N1: Form of Performance Bond to secure the Contractor's performance under the Contract. The bank guarantee shall be issued from a bank approved by the Company in the amount of 10% of the Purchase Order value, with validity after 12 (twelve) months from the issuance of the Completion Certificate.

The provision of the bank guarantees stated in this clause 6.4 is a precondition to the Contractor's entitlement to claim any payment under the Purchase Order. The Company shall be entitled to call the bank guarantee only to the extent of amounts that are due and payable and either undisputed or finally determined under clause 34, and any call shall be limited to the Company's actual loss. The amount and form of the security shall be proportionate to the value and risk profile of the Works.

6.5 Set-Off

Any payment made by the Company shall be on account only and shall not be construed as a waiver of the Company's right to object to any payment made.

The Company may deduct from moneys otherwise due to the Contractor:

- (a) any debt or other moneys due or payable from the Contractor to the Company; and
- (b) any claim to money which the Company may have against the Contractor whether for damages (including Liquidated Damages) or otherwise.

6.6 Audit of Reimbursable Payments

The Company shall be entitled to audit at the Contractor's and its Subcontractors' premises all payments for reimbursable work to the Contractor and its Subcontractors. Such audit may be carried out at any time during the period of this Contract and for up to 6 years after the issue of a Completion Certificate.

Any payment by the Company shall not affect the Company's audit rights. If amounts charged by the Contractor or a Subcontractor are proven incorrect, then a new account shall be prepared, whether or not this is in the favour of the Contractor.

7 VARIATIONS

7.1 Right to Vary the Work

The Company shall be entitled to order any Variation to the Work provided that any variation is within the reasonable capability and capacity of the Contractor.

When the Company orders a Variation to the Work, the Contractor shall without undue delay submit an estimate to the Company containing:

- (a) a schedule for the execution of the Variation showing the required resources and any significant milestones;
- (b) the effect on the Price, showing any calculation and rates used when preparing the estimate, and
- (c) the effect on Contract Schedule, with documentation demonstrating such effect.

The Company may require the submission of such estimate prior to instructing a Variation.

The Contractor shall also have the right to ask for a Variation in the event that it considers any request of the Company to be a Variation to the Work.

Any request for a Variation by the Contractor shall first be submitted to the EPCm for review and recommendation. The EPCm may request such information, estimates and supporting documentation as it reasonably requires.

No Variation shall be binding unless approved in writing by the Company or a person expressly authorised by the Company.

7.2 Effects of a Variation to the Work

All obligations under the Contract apply to a Variation, unless otherwise agreed by the Parties.

The Parties shall use reasonable endeavours to agree the effect of a Variation on the Price and the Contract Schedule. If the Parties are unable to agree on such effect, the Contractor shall nonetheless comply with the Company's instructions to perform the Variation but may refer any disputed part to the dispute resolution provisions in clause 34.2.

The Company may require the Contractor to undertake special measures to avoid any effect of a Variation on the Contract Schedule, or to limit delays as much as possible, and the reasonable costs of taking such measures shall be compensated by the Company, subject to clause 7.3.

The EPCm may review and negotiate the effect of a Variation on the Price and Contract Schedule and make recommendations to the Company.

No Variation shall be binding unless instructed or approved by the Company or Company Representative in accordance with this Contract.

7.3 No Relief

A Variation caused or necessitated by circumstances for which the Contractor is responsible shall not entitle the Contractor to any adjustment to the Price or the Contract Schedule or other relief.

8 CLAIMS AND DISPUTES

8.1 Claims

The Contractor shall give notice of any Claim within 10 Business Days after becoming aware of the event giving rise to the Claim.

The notice shall:

- a) expressly state that it is a Claim under the Contract;
- b) identify the contractual basis of the Claim;
- c) provide full particulars of the facts relied upon;
- d) provide details of any relief sought; and
- e) include all supporting information then reasonably available.

Strict compliance with this clause shall be a condition precedent to any entitlement of the Contractor to the relief claimed.

8.2 Disputes

Pending resolution of any Dispute, the Parties shall continue to perform their respective obligations under the Contract.

The Contractor shall continue performance of the Works and the Company shall continue payment of all undisputed amounts.

9 STEP-IN RIGHTS

If the Contractor fails to perform any obligation under the Contract and such failure threatens safety, compliance, Project delivery or the performance of the Project, the Company may upon reasonable notice perform or procure the performance of the affected obligation.

All reasonable costs incurred by the Company shall be recoverable from the Contractor as a debt due and payable.

10 TIME FOR COMPLETION

10.1 Time is of the Essence

The Contractor acknowledges that "time is of the essence" Delivery Dates and Completion Dates identified in the Contract Schedule.

10.2 Contract Schedule

The Contractor shall perform and complete the Work in accordance with the Schedule of Key Dates and the Contract Schedule as stated in Appendix C: Contract Schedule.

If the Contractor should have cause to believe that any part of the Work cannot be carried out in accordance with the Schedule of Key Dates and the Contract Schedule, it shall promptly notify the Company accordingly.

10.3 Delay

If in the Contractor's opinion the Work cannot be performed according to the Contract Schedule, the Contractor shall promptly notify the Company and provide details of:

- (a) the cause of delay;
- (b) its estimated effect on the Contract Schedule, other parts of the Work and its possible impact on the Price; and
- (c) the measures which Contractor considers appropriate to avoid, mitigate or recover the delay.

The Parties shall discuss and use reasonable efforts to agree a remedial plan and/or alternative solutions to mitigate any delay, with the aim of completing the Work within the agreed timeframe.

10.4 Acceleration

If measures proposed or implemented by the Contractor are insufficient to avoid or recover any delay, then the Company may require the Contractor to take other measures which the Company considers necessary, including any reasonable acceleration measures, and the Contractor shall promptly comply with the Company's request. Unless the delay is caused by or attributable to the Contractor, such measures shall be at the Company's cost.

10.5 Extension of Time

The Contractor shall be entitled to an extension of time to a Delivery Date or a Completion Date in the Contract Schedule if the achievement of such Date will be delayed by any of the following causes:

- (a) Any act, omission or breach of the Contract by the Company or the Company Group;
- (b) a Variation (unless a time adjustment has already been agreed by the Parties);
- (c) a Force Majeure event;
- (d) a cause of delay giving an entitlement to an extension of time under a provision of the Contract;

10.6 Claims for Extension of Time

If the Contractor considers itself to be entitled to an extension of time for one or more of the reasons set out in clause 10.5 above, the Contractor shall give written notice of its claim to the EPCm with a copy of the notice to the Company within 14 Days of the events giving rise to its claim. The Contractor's notice shall state:

- (a) the events which the Contractor considers gives rise to its entitlement to an extension of time with full details thereof;
- (b) the period of time extension claimed and the calculation of this period; and
- (c) any measures which the Contractor has taken to avoid, mitigate or recover the delay.

Subject to the foregoing, the EPCm shall review the Contractor's notice and either propose to Company to grant a reasonable extension of time or give reasons as to why the extension of time claimed by Contractor should not be granted.

10.7 Entitlement to Relief

The Contractor shall only be entitled to an extension of time if the cause of delay relied upon from those set out in clause 10.5 was beyond the reasonable control of the Contractor, was not caused by or attributable to any act or omission of the Contractor and the Contractor actually suffered delay due to the cause.

Notwithstanding any other provision of the Contract, the Company may for any reason and in its absolute discretion grant an extension of time to the Contractor (including where the Contractor is not entitled to an extension of time).

10.8 Delay Due to Contractor

If the achievement of a Delivery Date is delayed for reasons other than those set out in clause 10.5, the Contractor shall take all necessary steps to mitigate any delay at its own cost.

10.9 Liquidated Damages for Delay

If the Contractor fails to achieve a Completion Date, the Contractor shall pay the Company Liquidated Damages at the rate specified in Exhibit A to the Agreement for every calendar day (or part thereof) after the expiry of the Completion Date, extended by any grace periods (as detailed in Exhibit A), until actual completion of the Work required in accordance with the terms of the Contract.

The Contractor's liability to pay Liquidated Damages under this clause 10.9 shall not exceed 10% of the total Price under the Contract. Liquidated Damages under this clause 10.9 shall apply only to a delay to a clearly defined and objectively measurable Completion Date or deliverable that is caused by the Contractor's culpable breach ("Vertretenmüssen"), and shall not apply to advisory or consultancy activities not tied to such a deliverable. The Contractor shall be entitled to prove that no loss, or a lower loss than the applicable rate, has been suffered, in which case the Liquidated Damages shall be reduced accordingly. The applicable rate and the aggregate cap shall be proportionate to the value of the delayed deliverable.

10.10 Nature of Liquidated Damages

The Parties agree that the Liquidated Damages under the Contract represent a genuine pre-estimate of the Company's loss for delay and shall be the Company's sole and exclusive financial remedy for delay (without prejudice to the Company's rights of termination under this Contract). If the Contractor's obligation to pay Liquidated Damages under the Contract is, or becomes, void or unenforceable (either in whole or in part) for any reason, then the Company shall, to the extent of the voidness or unenforceability, be entitled to claim unliquidated damages at law in relation to the delay, not exceeding that which it would have had for liquidated damages pursuant to the Contract, had the relevant obligation to pay Liquidated Damages not been void or unenforceable.

11 PERSONNEL

11.1 Company Representative

The Company Representative is responsible for administering this Contract and giving directions for and on behalf of the Company as provided in this Contract.

Directions given to the Contractor by any person other than the Company Representative or an EPCm Representative acting within delegated authority shall not bind the Company unless ratified by the Company Representative.

The Company may from time to time appoint another individual as Company Representative and shall notify the Contractor accordingly.

The Company Representative may notify the Contractor that it authorises the EPCm Representative or any other delegate to exercise specified powers and functions of the Company Representative under this Contract and may, by further notice, cancel or modify such authority.

The Company Representative may delegate authority to the EPCm Representative or any other delegate and shall notify the Contractor of such appointment. Any notice of delegation under this Clause shall identify the extent of the delegated authority.

11.2 EPCm Representative

The EPCm Representative may act as the primary day-to-day point of contact between the Contractor and the Company for the administration and coordination of the Works.

The EPCm Representative may exercise powers and perform functions delegated by the Company Representative under this Contract.

The EPCm Representative may receive and administer notices, claims, Variation requests, requests for information, invoices, reports, schedules and other communications required under this Contract.

The Contractor shall cooperate fully with the EPCm Representative and comply with any reasonable instruction, direction, review comment, request for information, coordination requirement or reporting requirement issued by the EPCm Representative within the scope of authority delegated under this Contract.

The EPCm Representative's role is to:

- a) administer and coordinate the Works;
- b) review and comment upon Contractor deliverables;
- c) monitor Contractor performance;

- d) coordinate interfaces with other Project Participants;
- e) administer reporting requirements;
- f) coordinate HSE and quality activities;
- g) conduct inspections, audits and reviews; and
- h) issue instructions concerning the planning, execution and coordination of the Works.

Any instruction, direction, review comment, request for information, acceptance, rejection, inspection finding or other communication issued by the EPCm Representative within delegated authority shall be deemed to have been issued by the Company Representative.

Any review, inspection, comment, acceptance, rejection or instruction by the EPCm Representative shall not relieve the Contractor from any obligation or responsibility under this Contract.

11.3 Contractor Representative

The Contractor Representative is responsible for liaising with the Company Representative and the EPCm Representative and shall have full power and authority to legally bind the Contractor in respect of all matters arising out of, or in connection with, this Contract.

Any direction issued by the Company Representative or the EPCm Representative in accordance with this Contract shall be deemed to have been given to the Contractor when given to the Contractor Representative and the Contractor shall comply with such direction accordingly.

Any communication, notice, report, deliverable, request, submission or document given, issued or signed by the Contractor Representative shall be deemed to have been given, issued or signed by the Contractor and shall bind the Contractor accordingly.

Matters within the knowledge of the Contractor Representative shall be deemed to be within the knowledge of the Contractor.

The Contractor shall ensure that the Contractor Representative is available and authorised at all times to receive instructions, directions, requests for information and other communications from the Company Representative and the EPCm Representative and to take all actions necessary for the performance of the Works.

The Contractor may replace the Contractor Representative only upon prior written notice to the Company Representative and the EPCm Representative and shall ensure that any replacement possesses appropriate authority and competence to perform the role.

The Company may object to any delegation by the Contractor if, in its reasonable opinion, it considers that the person to whom the tasks are to be delegated is unable to properly perform or fulfil his functions.

11.4 Contractor's Personnel

The Contractor shall ensure that its personnel are suitably qualified and competent and shall be fully responsible for the acts or omissions of its personnel performing any part of the Works.

The Contractor shall at its own cost ensure that personnel performing any Work have passed safety courses and medical examinations in accordance with the applicable laws and regulations.

The Contractor shall, at its own cost, replace any personnel who conduct themselves in an improper manner or are unsuitable to perform their tasks. Any replacement personnel shall have at least equivalent or higher qualifications than the personnel to be replaced.

11.5 Key Personnel

The Contractor must involve the Key Personnel offered in the tendering phase for this Contract for the provision of the Services. The Parties may identify Key Personnel of the Contractor in writing. Any appointment, transfer or replacement of personnel identified as Key Personnel by the Parties shall be approved by the Company.

The Contractor shall ensure that all Key Personnel have a good working knowledge of the English language and understanding of safety instructions and commands.

12 NOT USED

13 CONTRACTOR'S OBLIGATIONS

13.1 General Obligations

The Contractor shall perform the Work in a professional, proper and workmanlike manner, with all due diligence and at the level of skill and care expected of an international contractor performing similar work, and in accordance with the Contract.

As part of such performance, the Contractor shall:

- (a) perform and deliver the Work in a timely manner and ensure that the Work delivered is fit for purpose;
- (b) comply with all applicable laws and the requirements of the Contract;
- (c) give priority to safety in order to protect life, health, property and environment;
- (d) co-operate with the Company's representative, the EPCm Representative and persons appointed or delegated by them;
- (e) cooperate fully with the Company, the EPCm and all Project Participants and coordinate its activities so as not to delay, disrupt nor interfere with the activities of others so as to ensure that all activities on a Site can be carried out efficiently and without delay; and in the event that this results in delays to the execution of the Work by Contractor, clauses 7 and 10.3 shall apply; and

- (f) comply with the Company's reasonable direction.

13.2 Investigations

Where, in the course of compliance with its obligations in Appendix D – Technical Specifications, Appendix A – Scope of Work and in addition to the requirements of Health, Safety and Environment under the provisions of Clause 19, the Contractor shall notify the Company and EPCm without delay of any accidents, non-conformances, near miss incidents or any incidents as defined in Appendix D, which occur in connection with the carrying out of the Work, which have or may have a serious impact on health, safety, environment and social matters. The Contractor shall also notify the EPCm of any other incidents which occur which might affect the carrying out of the Work or the Contract. The Contractor shall promptly, at the Company's or EPCm's request, provide the Company and/or EPCm access to the Site to conduct any investigation. The Contractor shall make available to the Company's and/or EPCm's investigation team all necessary resources, personnel and information relevant to the incident and shall assist the investigation in every way possible.

14 GOOD INDUSTRY PRACTICE

The Contractor shall perform the Work and comply with its obligations under the Contract in accordance with Good Industry Practice.

For the purposes of this Contract, Good Industry Practice means the exercise of the degree of skill, diligence, prudence, efficiency, foresight and judgment that would reasonably and ordinarily be expected from a skilled and experienced contractor performing services, work or supplying goods of a similar nature, scope, complexity and value, under the same or similar circumstances, for projects of a similar type, size and complexity as the Project.

Without limitation, Good Industry Practice includes:

- a) compliance with all applicable Laws, Approvals and applicable codes, standards and regulations;
- b) compliance with applicable international, European and national standards relevant to the Work, including recognised engineering, technical, environmental, quality, health and safety standards;
- c) use of appropriately qualified, competent and experienced personnel together with suitable equipment, systems, procedures and management controls;
- d) the implementation of sound risk management, quality assurance, quality control, technical assurance and management of change processes;
- e) the timely identification, assessment and mitigation of risks and the prompt notification to EPCm of any matter that may adversely affect safety, quality, cost, schedule, operability, maintainability, regulatory compliance or Project performance;

- f) proper coordination and cooperation with EPCm, the Company, other contractors and interface parties;
- g) maintaining complete, accurate and auditable records relating to the Work; and
- h) performing the Work in a manner that promotes safe, reliable, efficient and fit-for-purpose outcomes throughout the design life and operational life of the Project.

Good Industry Practice is a continuing obligation and shall take account of developments in technology, standards, methods, procedures and knowledge that become generally available and accepted within the relevant industry prior to completion of the Work.

Compliance with Good Industry Practice shall not relieve the Subcontractor of any express obligation, warranty or performance requirement under the Contract. Where a requirement of this Contract imposes a higher standard than Good Industry Practice, the higher standard shall apply.

15 PERMITS

15.1 Contractor's Permits

Contractor is to provide all the required permits to undertake the surveys.

Contractor shall be responsible for and comply with all permissions required to operate. The Contractor's obligation under this clause 15.1 is limited to Permits that the Contractor is legally and practically able to apply for and obtain. To the extent any Permit can, as a matter of law, only be applied for or held by the Company, the relevant landowner or another entity, the Company shall provide (and shall procure that the relevant entity provides) all reasonable cooperation, information and authority required for the Contractor to obtain it, or shall obtain such Permit itself.

16 ASSIGNMENT AND SUBCONTRACTING

16.1 Assignment

The Company may at any time at its sole discretion assign, sublet, novate or transfer any or all of its rights and obligations under the Contract to:

- (a) its Affiliate; or
- (b) any Financier.

Subject to the above, the Company may assign, sublet, novate or transfer any or all of its rights and obligations under the Contract with the prior written consent of the Contractor, such consent not to be unreasonably withheld.

The Contractor may assign, sublet, novate or transfer any part of the Contract with the Company's prior written consent, such consent not to be unreasonably withheld.

16.2 Subcontracting

The Contractor shall not subcontract any part of the Work, or replace any Subcontractor, without the prior written consent of the Company which shall not be unreasonably withheld.

The Contractor shall conduct adequate due diligence on its Subcontractors to ensure that they meet acceptable criteria required for working in an international project such as the Project. The Contractor shall include in all Subcontracts the provisions of the Contract which are necessary in order to enable the Contractor to fulfil its obligations under the Contract, and a provision that a Subcontract may be assigned or novated to the Company provided that this provision shall not be applicable to long term agreements concluded before the award of the Contract. When requested by the Company, copies of all unpriced documents relating to a Subcontract shall be made available to the Company prior to the award of a Subcontract.

The Contractor shall be responsible for the performance, acts and/or omissions of any Subcontractor as if they were the performance, acts and/or omissions of the Contractor.

Should the Contractor rely, for prequalification in accordance with Art. 79(2) Directive 2014/25/EU; national transposition § 47 SektVO (Eignungsleihe), on the capacity of a sub-contractor to pre-qualify for the Tender, then Contractor shall engage this sub-contractor for the full performance of the work scope for which he relied on the sub-contractor. In the event of non-availability of such a sub-contractor, the Company can demand an equally appropriate subcontractor as a replacement in a reasonable time limit.

16.3 Flow down

The Contractor shall ensure that all Subcontracts contain provisions equivalent to those relating to:

- a) Health, Safety and Environment;
- b) confidentiality;
- c) intellectual property;
- d) privacy and data protection;
- e) modern slavery;
- f) anti-corruption;
- g) sanctions;
- h) audit rights;
- i) insurance;
- j) indemnities;

- k) liability;
- l) termination; and
- m) assignment.

The Contractor shall remain fully responsible for the acts and omissions of all Subcontractors.

17 SITE

17.1 Unforeseeable Conditions

The Contractor shall be deemed to have obtained all necessary information as to site risks, contingencies and other circumstances which may influence or affect the Work, and accepts total responsibility for having foreseen all difficulties and costs of successfully completing the Works expected by a prudent contractor.

The Contractor is responsible for, and assumes the risk of, all costs arising out of, or in connection with, any Site conditions. Accordingly, the Price shall not be adjusted to take account of any unforeseen difficulties or Site conditions that could not have been expected by a prudent contractor.

18 PASSING OF TITLE AND RISK

18.1 Title and Risk

Title in any part of the Work shall pass to the Company on the earlier of:

- (a) payment; or
- (b) delivery of the Work in accordance with this Contract.

However, the Company may accept or refuse at its sole discretion the title to any part of the Work which it considers is not in conformity with the requirements of this Contract.

Risk in the Work shall pass to the Company on the issue of the Completion Certificate by the Company to the Contractor. Claims for damages of the Company against the Contractor shall remain unaffected hereby.

18.2 Liens

The Contractor shall do all things necessary to ensure that title to all parts of the Work is transferred to the Company free from any lien, charge or any other security interest and that no person other than the Company or a lender shall have any claim to ownership or title thereto.

If, notwithstanding the preceding paragraph, any part of the Work is subject to any lien, charge or other security interest, without limiting any other rights, the Company may discharge the

lien, charge or other security interest and the costs incurred in so doing will be a debt due and payable from the Contractor to the Company.

19 HEALTH, SAFETY AND ENVIRONMENT

19.1 HSE

The Contractor shall comply with all HSE directions issued by the Company Representative or EPCm Representative within their authority under the Contract.

The Contractor shall place the highest importance and priority on HSE during performance of the Work and shall have an implemented and documented HSE system in accordance with the requirements stated in Appendix D – Technical Specifications.

The Contractor shall comply with and be responsible for its Subcontractors complying with the HSE requirements in the Contract. The Contractor shall take all necessary safety precautions related to the performance of the Work in order to protect life, property and the environment.

The Contractor shall take full responsibility for the adequacy, stability and safety of all its operations and methods necessary for the performance of the Work and shall keep strictly to the provisions of Appendix D – Technical Specifications. The contractor shall collaborate with the company in establishing HS&E interface arrangements and the production of a HS&E interface document.

19.2 Breach of HSE

If the Contractor, after having received notification from the Company of any major and/or repeated deviations from the HSE requirements in this Contract or applicable law, fails to take the required immediate actions, such failure shall be considered a material breach of this Contract.

The Company's representative and personnel authorised by him shall have the right to undertake audits and verification of the Contractor's and a Subcontractor's quality assurance system and HSE system.

20 MODERN SLAVERY

The Contractor warrants that neither it nor any of its Affiliates nor any person in its supply chain has engaged in any Modern Slavery Offence.

The Contractor shall:

- a) comply with all applicable modern slavery and human trafficking legislation;
- b) implement and maintain policies and procedures reasonably designed to prevent modern slavery within its operations and supply chain;
- c) immediately notify the Company if it becomes aware of any actual or suspected Modern Slavery Offence in its operations or supply chain;

- d) cooperate fully with any investigation undertaken by the Company in relation to any actual or suspected Modern Slavery Offence; and
- e) ensure that equivalent obligations are imposed upon all Subcontractors.

21 INTELLECTUAL PROPERTY

21.1 Company's IP

All Intellectual Property in data, documents and deliverables prepared by the Contractor during the performance of the Contract shall be owned by the Company. The Contractor shall store all data (raw and processed) for a period of six (6) years after completion of the work and will make this data available to the Company on request at any time during this period.

21.2 Contractor's IP

All Intellectual Property owned by the Contractor prior to the Effective Date shall remain with the Contractor during the performance of the Contract.

The Contractor grants to the Company an irrevocable, royalty-free, perpetual and transferable licence to use any Intellectual Property retained by the Contractor for any purpose connected with the Project, the Work and the Contract. The licence granted by the Contractor may be sublicensed or assigned and will survive the termination of the Contract for any reason and may be used by the Company for similar projects undertaken by the Company.

The Contractor shall ensure that in carrying out the Work, it does not infringe or misuse any Intellectual Property, and shall indemnify the Company and the Company Group against any claim, including claims by any Third Party:

- (a) that the use of any documents and deliverables produced by the Contractor infringes any Intellectual Property right, including any licence fees, expenses or costs incurred by the Company in avoiding or rectifying infringements of Intellectual Property rights; and
- (b) arising out of, or in any way in connection with, any actual or alleged infringement or misuse of any Intellectual Property rights attributable to the Contractor.

The Company and the EPCm may use, reproduce, copy, modify and distribute all data, documents and deliverables for the purposes of the Project, the operation, maintenance, modification or expansion of the Project and for any replacement project associated with the AquaDuctus Project.

22.1 Confidentiality Obligations

The Contractor shall keep strictly confidential all information coming to its attention in connection with the performance of the Contract. The Contractor and its affiliates shall not at any time without the Company's prior written consent, except as may be necessary to enable the Contractor to perform its obligations under the Contract, use, reproduce, copy, disclose to, place at the disposal of or use on behalf of any third party or enable any third party to use, peruse or copy any information, including drawings, data, and computer software which:

- a) is provided to the Contractor by or on behalf of the Company or its affiliates in or in relation to the Contract; or
- b) vests in the Company in accordance with the Contract; or
- c) the Contractor prepares in connection with the Work and/or Services.

The foregoing provisions shall not apply to information which:

- (i) is in the public domain; or
- (ii) was in the possession of the Contractor prior to award of the Contract and which was not subject to any obligation of confidentiality owed to the Company; or
- (iii) was received from a third party whose possession is lawful and who is under no obligation not to disclose; or
- (iv) is required to be disclosed in order to comply with the requirements of any law, rule or regulation of any governmental or regulatory body having jurisdiction over the Work or the Contractor, or of any relevant stock exchange (provided that the Company has, acting reasonably, first approved any disclosure required by or for a relevant stock exchange); or
- (v) is used or disclosed by the Contractor six (6) years or more after the start of the Warranty Period in clause 25.2.

Notwithstanding any other provision of the Contract, the Contractor must refer any communications with any media, authorities, government or quasi-government departments or regulatory bodies in relation to the Project ("**Authorities**") to the Company and must not contact or communicate with any Authorities without first notifying the Company and obtaining the prior written approval of the Company.

The Contractor shall ensure that the provisions of this clause 22.1 are incorporated in any Subcontract and that the officers, employees and agents of the Contractor and of the Subcontractors comply with the same.

The Contractor shall indemnify the Company, its affiliates, officers, agents, contractors and employees against any claim arising from breach of the confidentiality obligations in this clause.

22.2 Publication

The Contractor shall not publish information concerning the Contract and shall not make any public announcement, media release, press release, social media communication, marketing communication or public statement concerning the Contract, the Project, the Company, the EPCm or the Client without the Company's prior written approval.

23 PRIVACY / GDPR

Each Party shall comply with all Privacy Legislation applicable to it.

Each Party acts as an independent controller in relation to Personal Information processed in connection with the Contract.

The Contractor shall:

- a) process Personal Information only in accordance with applicable Privacy Legislation;
- b) implement appropriate technical and organisational security measures to safeguard Personal Information;
- c) promptly notify the Company of any actual or suspected Data Contravention or Loss of Data;
- d) cooperate fully with the Company in relation to any complaint, investigation or regulatory enquiry; and
- e) ensure that its Subcontractors comply with equivalent obligations.

24 COMPLETION

24.1 Completion of the Work

Any Work performed by the Contractor shall only be deemed completed under the Contract when the Company issues a Completion Certificate to the Contractor.

When the Contractor considers that it has completed the Work required in accordance with the requirements of the Contract, it shall notify the Company in writing and request the Company to issue a Completion Certificate.

Within 5 Days of the Contractor's notification and request, the Company may either:

- (a) issue a Completion Certificate to the Contractor; or
- (b) provide reasons as to why a Completion Certificate should not be issued.

In the case of sub-paragraph (b), the Contractor shall promptly take all necessary steps and measures to ensure that completion of the Work in accordance with the requirements of the Contract is achieved, whereupon the provisions of this clause 24.1 shall re-apply.

Prior to issuance of a Completion Certificate, the EPCm Representative may review the Work and provide recommendations to the Company.

25 WARRANTY PERIOD

25.1 Contractor's Warranty

The Contractor warrants and guarantees that the Work will fully comply with the specification and other requirements of the Contract.

If any part of the Work is found to be defective or in violation of the warranties or requirements set forth in the Contract, the Contractor shall promptly remedy the defect at its cost. The Contractor shall consult with the Company as to the remedial measures which the Contractor intends to take.

25.2 Warranty Period

Any Work certified under a Completion Certificate shall be subject to a Warranty Period, which shall commence immediately upon issue of the Completion Certificate and expires on the period of 12 months thereafter.

During the Warranty Period, the Contractor shall promptly remedy and rectify any defect in the Work at its own cost and shall complete such remedy or rectification within the period required by the Company (acting reasonably) or, if no period is stipulated, within a reasonable time. The Warranty Period for any part of the Work so remedied or rectified shall be extended for another period of 12 months from the date of completion of the remedy or rectification.

25.3 Company's Right to Remedy

If the Contractor does not remedy or rectify a defect as required under the Contract, or if the Company is unwilling for any reason and in its sole and absolute discretion to permit the Contractor to perform remedial or rectification work, the Company shall be entitled to perform or cause the said remedial or rectification work to be performed by itself or a Third Party. All costs for such remedial or rectification work incurred by the Company shall be borne by the Contractor. In addition, the Company shall be entitled to any damages incurred in connection thereto. The Company's right under this clause to perform or procure remedial or rectification work itself or through a Third Party shall arise only where the Contractor has failed to remedy or rectify the defect within a reasonable period set by the Company, or where the setting of such a period is dispensable under applicable law (including §§ 323 and 637 BGB), in particular where the Contractor has refused remediation, remediation has failed, or immediate action is required to avert imminent harm. This clause shall be construed so as to preserve the Contractor's statutory right to cure ("Recht zur Nacherfüllung") to the extent mandatory under applicable law.

25.4 Final Completion Certificate

The Company shall, within 30 days after the expiration of the Warranty Period (as may be extended), issue to the Contractor a Final Completion Certificate stating that the Work has been completed by the Contractor.

26 INSURANCE

26.1 Contractor's Insurance

Without limiting the generality of the following, the Contractor shall comply with the requirements of Appendix I - Insurance Schedule and further, shall affect and maintain the following insurances:

- (a) Liability insurance covering Contractor's liability for damage to property and personal injury, including coverage for collision liability;
- (b) Personnel insurance which shall cover losses connected with illness, personal injury or accidental death in the Contractor Group, to the extent required by applicable laws;
- (c) Not Used
- (d) Not used.

Such insurance cover shall be in place from the start of any Work and shall not expire until after all the obligations of the Contractor under this Contract have been completed.

To the extent possible, the insurance policies shall state that the Company, EPCm and the Contractor are co-insured, and the insurers shall waive any right of subrogation against the Company and the EPCm.

In particular, the Contractor shall ensure that the Company and the EPCm is named as additional insured under the insurances listed in (a), (b) and (c) in respect of claims which the Contractor is obliged to indemnify under this Contract. The Company and the EPCm shall be named as additional insured under the Contractor's P&I insurance in accordance with the applicable P&I Club Rules.

The Contractor shall ensure that all the insurance policies contain a clause requiring the insurer to notify the Company in good time before the insurance is cancelled or expires for any reason.

27 INDEMNITY

27.1 Contractor's General Indemnity

Subject to the exclusions in clause 28, to the maximum extent permitted by law, the Contractor will indemnify, keep indemnified and hold harmless, the Company and EPCm from and against all loss, liability or damage that the Company and EPCm suffers, sustains or incurs, to the extent arising out of or in connection with:

- (a) any negligent or unlawful act or omission by the Contractor or its personnel;
- (b) any illness, injury or death of any person caused or contributed to by the Contractor or its personnel, in connection with the Contractor's performance or non-performance or breach of the Contract, or any other act or omission of the Contractor or its personnel;
- (c) any loss or destruction of or damage to any property caused or contributed to by the Contractor or its personnel, arising out of or in connection with the Contractor's or its personnel's negligent performance or non-performance or breach of the Contract, or any other wrongful act or omission of the Contractor or its personnel;
- (d) breach by the Contractor of any of its obligations under clauses 22 or 23;
- (e) any claim made against the Company and EPCm by any of the Contractor's personnel in respect of relevant legislation concerning income tax, payroll tax, workers' compensation, annual leave, long service leave, superannuation or any applicable award, determination or agreement of a competent industrial tribunal; and
- (f) any third-party claim arising out of or in connection with the Contractor's (or its personnel's) fault, act or omission or any breach of the Contract.

27.2 Proportionate Reduction

Any liability of the Contractor under clause 27.1 shall be reduced to the extent of any contribution by the Company, a member of the Company Group, or any of their personnel or other contractors (other than the Contractor or its personnel), or any of their employees, directors, officers, agents or representatives, or any third parties for whom the Contractor is not responsible unless otherwise caused by the Contractor.

27.3 Indemnity Continuing

Each indemnity in the Contract is a continuing obligation separate and independent from the Contractor's other obligations and survives the expiry or earlier termination of the Contract.

27.4 No Requirement for Expense Before Enforcing Indemnity

It is not necessary for the Company, a member of the Company Group or their respective personnel to incur expense or make payment before enforcing a right of indemnity conferred by the Contract.

28 LIMITATION OF LIABILITY

28.1 General Liability

Nothing in the Contract (whether or not expressly referencing this clause) limits or excludes any party's liability that cannot be limited under law, including:

- (a) death or personal injury caused by its negligence;
- (b) fraud or fraudulent misrepresentation.

Under no circumstances shall the EPCm incur any liability to the Contractor whether in contract, tort, negligence, breach of statutory duty or otherwise.

28.2 No Consequential Loss

Neither Party shall be liable to the other for any indirect or consequential damages of any kind, including losses of production, lost profit, lost business, lost savings or other economic or business losses arising out of any failure to perform their respective obligations under the Contract.

The forgoing exclusion shall not apply to the exceptions detailed at clause 28.4.

The EPCm shall not be liable for any indirect, consequential or special loss whatsoever.

28.3 Cap on Liability

The aggregate liability of the Contractor arising under or in connection with the Contract shall be limited to an aggregate amount of 100% of the total Price payable under the Contract.

The foregoing cap shall not apply to the exceptions detailed at clause 28.4.

28.4 Exclusions from Limitation of Liability

Nothing in clauses 28.2 or 28.3 will affect or reduce or limit the Contractor's liability arising out of or in connection with any liability (that shall fall outside of the liability caps in clause 28.2 or 28.3. For the avoidance of doubt, the Company and the EPCm shall not recover the same loss more than once, whether as damages, under any indemnity (including under clause 27) or otherwise, and any amount recovered under one head shall be credited against any other. The exclusions in this clause 28.4 apply only to the extent permitted by applicable law; where and to the extent the Contract constitutes standard business terms within the meaning of §§ 305 et seq. BGB, clauses 27 and 28 shall be applied and construed so as to remain valid under §§ 307 to 310 BGB, including as regards a single aggregate cap on the liability of the Contractor and the EPCm.

- (a) of the Contractor to the extent that the Contractor:
 - (i) is entitled to be indemnified for such liability under a policy of insurance effected by it under the requirements of the Contract; or
 - (ii) would have been entitled to be indemnified for such liability under a policy of insurance effected by it under the requirements of the Contract but for:
 - (A) the operation of this clause 28; or

- (B) the Contractor's failure to comply with the terms and conditions of the relevant policy or its obligations under this Contract in respect of such policy;
- (b) in respect of any other indemnity provided by the Contractor to the Company under the Contract;
- (c) any Liquidated Damages payable under the Contract;
- (d) of the Contractor arising out of or in connection with its, or its personnel's Wilful Default and/or Gross Negligence;
- (e) arising out of or in connection with the Contractor's breach of any of its obligations under clauses 13.1(b), 21, 22 and 23; or
- (f) in respect of personal injury or death (whether such liability arises by way of contribution, indemnity or otherwise).

29 FORCE MAJEURE

29.1 Definitions

In this clause:

"Affected Party" means any party claiming that a Force Majeure has arisen;

"Force Majeure" means an event occurring on or after the Effective Date which is beyond the reasonable control, directly or indirectly, of the Affected Party, but only if, and to the extent:

- (a) such event, despite the exercise of reasonable diligence and efforts, cannot be prevented, avoided or removed by the Affected Party;
- (b) such event materially adversely affects the ability of the Affected Party to fulfil its obligations under the Contract;
- (c) the Affected Party has taken all reasonable precautions, due care and reasonable alternative measures in order to avoid the effect of such event on the Affected Party's ability to fulfil its obligations under the Contract and to mitigate the consequences thereof;
- (d) such event is not the result of any failure of the Affected Party to comply with any of its obligations under the Contract or any negligence of the Affected Party;
- (e) such event is not foreseeable
- (f) where the Affected Party the Contractor, the Contractor has at all relevant times conducted itself in accordance with prudent industry practice and
- (g) the Affected Party has complied with the notification requirements of this Clause 29.

29.2 Examples of Force Majeure

Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (f) in clause 29.1 are satisfied:

- (a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies;
- (b) terrorism, revolution, insurrection, military or usurped power;
- (c) embargoes, sanctions and any formal decision of a competent authority, each of which, as the case may be, were imposed after the Effective Date, denying applications for an import/export licence (not otherwise due to Contractor Group's fault);
- (d) epidemics and pandemics, natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity;
- (e) riot, commotion, disorder, strike or lockout by persons other than the Contractor's personnel and the Contractor Group and Subcontractors and
- (f) any suspension, revocation, material delay or restriction of governmental approvals, survey permits, environmental permits or navigation permissions required for the Works, provided that such event is not (part) caused by any act, omission or default of Contractor.

29.3 Exclusions of Force Majeure

The following shall not be considered a Force Majeure and the Contractor shall not be entitled to an extension of time on the grounds of Force Majeure in respect of:

- (a) late performance by the Contractor attributable to a default of the Contractor and the Contractor Group, including any failure to procure adequate number of personnel or resources or any inefficiencies on the part of the Contractor Group;
- (b) economic hardship of the Contractor or its inability to pay debts;
- (c) the late payment of money;
- (d) infringement of any Intellectual Property right;
- (e) delays resulting from late submission of documents and applications for Permits to the relevant authorities; and
- (f) delays resulting from strikes, lockouts or other industrial action (other than national, regional or sector-wide strikes) which arise out of any dispute between the Contractor or any Subcontractor and their respective directors, officers, employees or agents.

29.4 Notice of Force Majeure

If a Party is or will be prevented from performing any of its obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances

constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within 14 days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure.

The Party shall, having given notice, be excused performance of such obligations for so long as such Force Majeure prevents it from performing them.

29.5 Duty to Minimise Delay

Each Party shall, at all times, use all reasonable endeavours to minimise any delay in the performance of the Contract as a result of Force Majeure.

A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.

29.6 Consequences of Force Majeure

If the Contractor is prevented from performing any of his obligations under the Contract by Force Majeure of which notice has been given under clause 29.4 and suffers delay, the Contractor may seek an extension of time for any such delay in accordance with clause 10.

For the avoidance of doubt, a Force Majeure event shall not constitute a suspension under Clause 30 unless the Company expressly issues a suspension instruction.

30 SUSPENSION AND CANCELLATION

30.1 Company's right to Suspension

The Company may temporarily suspend the performance of the Work, or any part thereof, by written notice to the Contractor.

The notice shall specify which part of the Work shall be suspended, the effective date of the suspension, the expected date for resumption of the Work and, if applicable, the mobilisation plan and any support functions which shall be maintained while the Work is suspended.

30.2 Effect of Suspension

Unless a suspension is caused by or attributable to the Contractor, the Company shall compensate the Contractor for all reasonable expenses arising from any demobilisation and subsequent remobilisation of personnel, and working equipment.

If a suspension of the Work not caused by or attributable to the Contractor affects the Contract Schedule, the Contractor may seek an extension of time to the Contract Schedule in accordance with clause 10.5.

A suspension that is caused by or attributable to the Contractor shall not entitle the Contractor to any relief.

30.3 Company's right to Cancellation

The Company may by, notice to the Contractor, cancel any part of the Work with the consequence that the performance of that part of the Work, ceases. The Company may require any outstanding Work not otherwise cancelled to be progressed or completed in the event of such cancellation.

30.4 Effect of Cancellation

Following such cancellation, the Company shall pay:

- (a) the unpaid balance due to the Contractor for that part of the Work already performed, and
- (b) all reasonable and justified demobilisation costs, cancellation charges and administration costs incurred by the Contractor in connection with the cancellation.

The Contractor shall, in accordance with the Company's instructions, make its best efforts to cancel Subcontracts on terms acceptable to the Company. If the Company cannot accept the cancellation terms, then the Contractor shall assign or novate such Subcontracts to the Company at the Company's request.

31 TERMINATION

31.1 Termination for Convenience

Without prejudice to any of the Company's other rights or remedies, the Company may by written notice at any time for its sole convenience, and for any reason, by written notice to the Contractor, terminate this Contract effective from the time stated in the Company's notice or if no such time is stated, at the time the notice is given to the Contractor. Nothing in clauses 30 and 31 shall exclude or limit any mandatory statutory right of the Contractor on termination under applicable law, including under §§ 648 and 648a BGB. To the extent the Contract qualifies as a contract for works (Werkvertrag) and the Company terminates for convenience, the Contractor's entitlement shall be no less than that provided under § 648 sentence 2 BGB.

Upon such termination, clauses 31.3 and 31.5 shall apply.

31.2 Termination for Contractor Default

The Company may terminate the Contract by written notice to the Contractor upon the occurrence of any of the following:

- (a) the Contractor becomes Insolvent;
- (b) the Contractor abandons the Contract;
- (c) the Contractor breaches clause 32;

- (d) the Contractor fails to perform any material covenants or obligations in accordance with the Contract, including failing to perform in a timely manner and with all with due expedition;
- (e) any representation or warranty made by the Contractor shall prove to be incorrect or misleading; and/or
- (f) any cap on Liquidated Damages or the aggregate liability of the Contractor under this Contract is reached.

The Company may terminate the Contract with immediate effect in the case of any occurrence in subparagraphs (a), (b), (c) and (f).

In the case of the occurrences in subparagraphs (d) and (e), the Company shall give notice of default to the Contractor and, if such default is not cured to the Company's satisfaction within 30 days of the Contractor's receipt of such notice, the Company may terminate the Contract.

Upon such termination, clauses 31.3 and 31.5 shall apply.

31.3 Obligations following Termination

Upon any termination of the Contract, the Contractor shall, unless the Company directs otherwise:

- (a) immediately discontinue the Work;
- (b) place no further orders or Subcontracts except as may be necessary for completion of any portion of the Work as is not discontinued;
- (c) promptly make every reasonable effort to procure cancellations upon terms satisfactory to the Company of all orders, Subcontracts and other agreements to the extent they relate to the performance of any Work that is discontinued;
- (d) thereafter execute only that portion of the Works as may be necessary to preserve and protect Works already in progress;
- (e) where directed by the Company, assign or transfer to the Company any Subcontracts as may be required by the Company and/or extended warranties procured from a Subcontractor;
- (f) immediately deliver to the Company any part of the Work which title has already passed to the Company; and
- (g) provide all assistance to the Company as reasonably required by the Company.

Upon any termination of the Contract, the Company may at its sole and absolute discretion, complete any uncompleted part of the Work either itself or by engaging others.

31.4 EPCm

The Contractor shall have no claim against the EPCm arising from any suspension, cancellation or termination of the Contract.

31.5 Payment following Termination

Upon any termination of the Contract, the Contractor shall be entitled to payment of the following:

- (a) the portion of the Price corresponding to the value of the Work performed up to the date of termination; and
- (b) in the case of termination under clauses and 31.1, reasonable and proper expenses of the Contractor occasioned by such termination and not previously paid for, including reasonable and proper Subcontractor cancellation charges and all reasonable demobilisation costs incurred by the Contractor.

Subject to clause 22, in the case of termination under clause 31.2, the Company shall be entitled to recover all costs, losses and damages arising out of or in any way in connection with such termination and/or all circumstances connected with the termination (including any financing charges and costs, losses and damages arising from the inability of the Work to meet any deliverables required under the Project).

32 BUSINESS ETHICS AND TRADE CONTROLS

32.1 Business Ethics

- (a) Each Party hereby undertakes that, at the date of the entering into force of the Contract, itself, its directors, officers or employees have not offered, promised, given, authorized, solicited or accepted any undue pecuniary or other advantage of any kind (or implied that they will or might do any such thing at any time in the future) in any way in order to influence any unlawful acts or omissions connected with the Contract and that it has taken reasonable measures to prevent Subcontractors, agents or any other third parties, subject to its control or determining influence, from doing so. The Contractor itself, its directors, officers or employees shall as of the date of the entering into force of the Contract adhere to the Appendix F- Code of Conduct.
- (b) The Parties agree that, at all times in connection with and throughout the course of the Contract and thereafter, they will comply with the requirements of this Clause and that they will take reasonable measures to ensure that their Subcontractors, agents or other third parties, subject to their control or determining influence, will comply with the provisions of this Clause.
- (c) The Contractor shall not pay, promise to pay, or offer any bribe, fee, commission, material remuneration or other thing of value to or for the benefit of any government official at the international, national or local level, a political party, party official or candidate to political office (hereinafter referred to as "**Government Official**") or any other person in order to influence an act or a decision of the Government Official in its official capacity, cause the Government Official to act or fail to act in violation of its

lawful duty, or cause the Government Official to influence an act or a decision of the government for the purpose of assisting the Contractor in obtaining or retaining business, or in violation of applicable anti-bribery and corruption laws, or in violation of any such law applicable to the Contractor.

- (d) The Contractor shall not be engaged in other corrupt practices, including: (i) kicking back a portion of a contract payment to Government Officials or to employees of the Company, their close relatives, friends or business partners or (ii) using intermediaries such as agents, subcontractors, consultants or other third parties, to channel payments to Government Officials, or to employees of the Company, their relatives, friends or business partners. Additionally, if the Contractor is demanded of a bribe, whether or not coupled with a threat, it will oppose any such attempt and is encouraged to report such attempts. Equally, the Contractor will not engage itself or facilitate in the concealing or disguising of the illicit origin, source, location, disposition, movement or ownership of property, knowing that such property is the proceeds of crime.
- (e) The Company shall have the right to audit all information, rates and costs and expenses related to the Contract required for the limited purpose of ensuring compliance with the provisions of this Clause at any time during and within five (5) years after termination of the Contract and the Contractor shall permit the Company and its appointed persons to access and inspect the above referenced information. The Company shall use reasonable efforts to ensure that the audit causes no disturbance to business executed at the property where the audit is taken.
- (f) If the Company, as a result of the exercise of the audit right above, or otherwise, brings evidence that the Contractor has been engaging in material or several repeated breaches of the provisions above, it will notify the Contractor accordingly and require it to take the necessary remedial action in a reasonable time and to inform it about such action. If no remedial action is taken by the Contractor, the Company may, at its discretion, either suspend the Contract or terminate it, and all amounts contractually due at the time of such suspension or termination of the Contract will remain payable, as far as permitted by applicable law.

32.2 Trade Controls

For the purposes of this Clause, “**Trade Control Laws**” means all applicable laws concerning the import, export or re-export of goods, software or technology, or the direct product thereof, and restrictions on dealings with restricted or designated parties and the regulations and orders issued and/or administered in relation to export control, anti-boycott and sanctions, (as amended from time to time).

The Contractor acknowledges that it is familiar with and will comply with all applicable Trade Control Laws. Without prejudice to the foregoing, the Contractor shall provide the Company, in writing, with the relevant export control classification number (ECCN) or equivalent, if applicable, for any dual-use or military items or items restricted under trade or economic sanctions or other Trade Control Laws (i.e. goods, software, or technology) as well as Harmonized System Codes, if and where applicable only, for any items provided pursuant to the Contract. Unless otherwise agreed between the Parties, the Contractor shall be responsible for obtaining all necessary import and export licences as required by applicable

Trade Control Laws for any goods, software, or technology provided by or on behalf of the Contractor pursuant to the call-off(s). Where such licenses or authorizations are obtained, the Contractor shall provide the Company with written notice of all applicable conditions, including but not limited to those restricting the further export, use or release of the goods, software or technology. The Contractor shall indemnify, defend, and hold harmless the Company from and against any and all losses, damages, costs (including legal fees), claims, expenses, fines and penalties incurred or suffered as a result of the Contractor's non-compliance with applicable Trade Control Laws.

33 NOTICES

All notices under or in connection with the Contract shall be sent to the addresses specified in the Agreement.

All notices under or in connection with the Contract shall be submitted to the EPCm. Where a notice relates to a claim, Variation, extension of time, suspension, termination or any other matter that may affect the rights, obligations, Contract Price or Contract Schedule under this Contract, the notice shall simultaneously issued to the Company.

The EPCm shall administer such notices on behalf of the Company and may review, comment upon and respond to such notices within the authority delegated under this Contract.

Unless expressly stated otherwise in this Contract, delivery of a notice to the EPCm shall be deemed delivery to the Company.

34 GOVERNING LAW AND DISPUTES

34.1 Governing Law

The contract shall be construed and be subject to the substantive laws of the Federal Republic of Germany with the exclusion of (i) the United Nations Convention on Contracts for the International Sale of Goods ("CISG") dated 11 April 1980 and (ii) the applicable law rules in Germany on the conflict-of-laws.

34.2 Dispute Resolution

If a dispute or difference (together a "**Dispute**") arises between the Company and the Contractor in connection with or arising out of the Contract, then either party to the Dispute may give written notice to the other (the "**Notice of Dispute**") which notice must state that it is a dispute notice under this clause 34.2. All Disputes between Company and the Contractor shall be resolved by means of the procedure set out below:

- (a) the Dispute shall initially be referred to the Company Representative and the Contractor Representative who shall discuss the matter in Dispute and make all reasonable efforts to reach an agreement;
- (b) if no agreement is reached under subparagraph (a) within 28 days after the Notice of Dispute, the Dispute shall be referred to the Managing Directors (or equivalent managerial personnel) of the Company and the Contractor;

- (c) if the Dispute remains unresolved (whether in whole or in part) under subparagraph (b) above for more than 30 days after the Notice of Dispute, either Party may refer the Dispute for final settlement under the Rules of Arbitration of the International Chamber of Commerce. The number of arbitrators will be 3, one to be appointed by each Party with the chairperson to be appointed by the ICC if the arbitrators are not able to agree on a chairperson within 21 days of the commencement of the arbitration. The **seat and place of arbitration shall be Frankfurt am Main, Germany**, and the language of the arbitral proceedings shall be English..

35 CUSTOMS PROCEDURES

When applicable, the Company and the Contractor shall each apply for all relevant customs and excise relief for their respective import, export and re-import of materials, goods, tools, equipment and supplies required for the Contract.

The Contractor undertakes to import, export and re-import any items for the Works which are subject to customs control in such a way as to enable maximum advantage to be taken of all applicable customs and excise procedures and any failure to do so shall be at the Contractor's sole cost and expense.

The Contractor shall pay and make payment at such times when due and payable, all import/export taxes and duties on materials, goods, tools, equipment and supplies required for the Contract and imported or exported by the Contractor. The Contractor shall be responsible for ensuring that it holds the necessary import/export licences and all other approvals and authorisations issued by the relevant authorities prior to the commencement of the Works.

36 TAXES

36.1 The Contractor shall be responsible for:

- (a) the payment of all taxes, duties, levies, charges and contributions (and any interest or penalties thereon) for which the Contractor is liable as imposed by any appropriate government authority in any country relevant to the Works, whether or not they are calculated by reference to the wages, salaries, benefits or expenses and other remuneration paid directly or indirectly to persons engaged or employed by the Contractor;
- (b) the payment of all taxes, duties, levies, charges and contributions (and any interest or penalties thereon) including income, profits, corporation taxes and taxes on capital gains, turnover and added value taxes for which the Contractor is liable, now or hereafter levied or imposed by any appropriate government authority, arising from this Contract;
- (c) compliance with all statutory obligations to make deductions on account of and to remit the required amounts to any appropriate government authority, including income tax, employee taxes, charges, social security costs, levies and contributions whether or not they are measured by the wages, salaries or other remuneration or benefits paid to persons employed by the Contractor, or persons providing services in connection with the Contract to the Contractor, and the imposition of a similar obligation upon all

Subcontractors or any other persons employed by them or providing services to them in connection with the Contract; and

- (d) ensuring that any Subcontractor or any other person employed, or providing services on or in connection with the Contract shall comply with this clause.

- 36.2 The Contractor shall supply to the Company all such information, in connection with activities under the Contract, as is necessary to enable the Company to comply with the lawful demands for such information by any appropriate government authority. Where the Company is entitled to any VAT or other tax recovery, refund or relief from any relevant government authority, the Contractor shall take all necessary steps and submit all necessary documentation to the relevant authority to ensure that the Company does not lose its said entitlement, including by virtue of any failure or delay by the Contractor to take such steps or submit such documentation. The Contractor shall indemnify the Company against any liability or penalty imposed on the Company as a result of failure by the Contractor to comply with the foregoing.
- 36.3 The Contractor shall save, indemnify, defend and hold harmless the Company against all claims, levies, charges, contributions and taxes of the type referred to in this clause and any interest or penalty thereon which may be assessed, by any appropriate government authority, on the Contractor Group in connection with the Contract, including any breach of the Contractor's obligations under this clause, and from all costs reasonably incurred in connection therewith.
- 36.4 If the Company receives a notice requiring it to pay any levies, charges, contributions or taxes of the types referred to in this clause and/or any interest or penalty thereon whether with respect to the Contractor, any Subcontractor, their respective Affiliates or any other person employed by the Contractor or any Subcontractor or providing any services to the Contractor or any Subcontractor on or in connection with the Contract, the Company shall forthwith notify the Contractor who shall work with the Company to make all reasonable endeavours to make any valid appeal against such payment. The costs of any such appeal shall be for the account of the Contractor.
- 36.5 Notwithstanding the aforementioned, where, under the provisions of any laws, regulations or directives for the time being in force, Company is required to deduct any amount from the payment, whether as tax or howsoever called, Company shall without further notification to Contractor deduct the specified amount from any amount payable to Contractor. Where Company makes any such deduction or withholding, Company shall, within a reasonable time upon receipt of the official receipt(s), or other satisfactory verification in respect of such deduction or withholding from the relevant authority, submit same to Contractor.

37 GENERAL

37.1 Retention of Liability

The Contractor shall not be relieved from any liability or obligation under the Contract by any review, approval, authorisation, acknowledgement or the like, by the Company.

37.2 Independence of the Contractor

The Contractor shall act as an independent contractor with respect to the Work and shall exercise control, supervision, management and direction as to the method and manner of obtaining the results required by the Company.

37.3 Entire Agreement

The Contract constitutes the entire agreement between the Parties hereto with respect to the Work and supersedes all prior negotiations, representations or agreements related to the Contract, either written or oral.

37.4 Amendment

No amendment to the Contract shall be effective unless evidenced in writing and signed by both Parties.

37.5 Invalidity and Severability

If any provision of the Contract is found to be invalid or unenforceable, the invalidity or unenforceability shall not affect the other provisions of the Contract and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The Company and the Contractor agree to attempt to substitute, for any invalid or unenforceable provision, a valid or enforceable provision which achieves to the greatest possible extent, the economic, legal and commercial objectives of the invalid or unenforceable provision.

37.6 Indemnities

All obligations to indemnify under the Contract shall survive termination of the Contract on any basis.

37.7 Rights of Third Parties

The Contracts (Rights of Third Parties) Act 1999 shall not apply to the Contract and no person not a party to the Contract shall have or acquire any right to enforce any term of it pursuant to that Act.

38 Duty of Care

Neither the Company nor the EPCm assumes any duty of care to the Contractor by reviewing, commenting upon, inspecting, accepting or approving any document, deliverable, methodology, programme or part of the Works.

Such review, comment, inspection, acceptance or approval shall not relieve the Contractor from any obligation or responsibility under the Contract.

39 CHANGE OF CONTROL

The Contractor shall not undergo a Change of Control without the prior written consent of the Company. The Contractor shall immediately notify the Company upon becoming aware of any proposed Change of Control. A Change of Control without the prior written consent of the Company shall constitute a material breach of the Contract and shall entitle the Company to terminate the Contract.