

Intersea Ltd - Conditions of Purchase

- 1 General**
- 1.1 Unless expressly modified or varied in writing by the Buyer, the terms and conditions set forth below, and in the confirmation of purchase ("Confirmation") shall form the contract for purchase between the Buyer and the Seller. Acceptance of an order by the Seller shall be deemed to be acceptance of the terms of this contract.
- 1.2 This contract constitutes the entire agreement between the Buyer and Seller in respect of the goods listed in the Confirmation ("Goods") and shall supersede all previous proposals, both oral and written, negotiations, representations, commitments, writings, agreements and all other communications, between the parties. This contract may not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorised representative of each of the parties. The terms of this contract shall prevail notwithstanding any variance with the terms and conditions of any documents submitted by the Seller.
- 1.3 Where there is any inconsistency between these conditions of purchase and the Confirmation, the Confirmation will prevail. Any term used in these conditions of sale that is defined in the Confirmation will have the meaning given to that term in the Confirmation.
- 1.3 The clause headings in this contract appear as a matter of convenience only and shall not affect the construction of this contract.
- 1.4 Each Confirmation shall constitute a separate contract between Buyer and Seller.
- 2 Law and Language**
- 2.1 This contract shall be deemed to be a contract made in New Zealand and its construction, validity and performance shall be governed by New Zealand law and the parties submit to the non-exclusive jurisdiction of the New Zealand Courts.
- 3 Pre-Shipment Survey**
- 3.1 The Buyer may request that all Goods be subject to independent inspection conducted at the Buyer's expense prior to shipment by an agent duly appointed by the Buyer.
- 4 Shipment**
- 4.1 The Seller will deliver the Goods to the place, point, port, vessel or carrier and at the time specified in the Confirmation, or as otherwise agreed in writing, in accordance with the relevant provision of the Incoterms 2000 (being the International Rules for Interpretation of Trade Terms produced by the International Chamber of Commerce which came into force on 1 January 2000 as amended from time to time) stated in the Confirmation.
- 4.2 The time of delivery of the Goods is of essence to the contract and shipment must be made within the time stipulated in the Confirmation unless an amendment is authorised in writing by the Buyer. If delivery is not made within the time specified, the Buyer reserves the right to cancel the contract (without prejudice to any other rights of the Buyer under this contract or at law) and to recover from the Seller any loss, costs, damages and/or expenses (including costs on a solicitor/client basis) whether incurred directly or indirectly by the Buyer as a result of such default by the Seller.
- 5 Price and Payment**
- 5.1 All orders will be filled at the prices specified in the Confirmation unless otherwise agreed in writing by the Buyer.
- 5.2 Payment shall be made by the Buyer to the Seller at the time and in accordance with the payment terms stated in the Confirmation, provided that the Buyer shall be entitled to withhold payment where there is any dispute between the parties in relation to the Goods.
- 6 Title and Risk**
- 6.1 Possession in, title to and risk in the Goods shall pass to the Buyer at the contractual point of delivery as provided in clause 4.1 but all risk in relation to the Goods shall remain with the Seller until that time.
- 7 Force Majeure**
- 7.1 If either party is prevented from or delayed in carrying out any of the provisions of this contract by reason of any force majeure circumstance, including acts of God, war, terrorist act, civil unrest, accidents, labour disturbances, breakdown of plant or equipment, lack of or failure of transportation facilities, sources of labour, raw materials or power, import or export restriction or by any reason of any law, order, proclamation, regulation, ordinance, demand or requirement of any governmental agency or department, or by reason of any other cause whatsoever beyond the reasonable control of the party, the party so prevented or delayed from acting shall be excused from such performance to the extent and during the period of such prevention or delay.
- 8 Warranties**
- 8.1 The Seller warrants that all Goods supplied shall be supplied in accordance with their contractual description as set out in the Confirmation or any other description provided by the Seller to the Buyer. The Goods shall be of good merchantable quality and in good and saleable condition, packaged and fit for the purpose for which they are purchased, in accordance with usual trade practice and all government and/or other relevant official regulations and in particular, shall satisfy the import requirements of the country of destination.
- 8.2 Any Goods which deteriorate, have unacceptably short use-by dates or are for some other reason unlikely to be saleable will not be accepted by, or paid for by the Buyer and are to be uplifted by the Seller at the Seller's sole cost.
- 8.3 In the event defective Goods are supplied by the Seller, the Seller is responsible for all costs of collection and disposal of the Goods from the point at which such damage is discovered and will immediately replace and redeliver such Goods at no cost to the Buyer.
- 8.4 Notwithstanding the Seller's duty to collect Goods as specified in clauses 8.2 and 8.3, the Buyer may dispose of such Goods as it thinks fit if it is not practicable to keep them or if the Seller fails to uplift them within a reasonable time. All costs of disposal will be met by the Seller.
- 8.5 The warranties contained in this contract shall be in addition to warranties implied by law and shall subsist notwithstanding acceptance by the Buyer of Goods with respect to which such warranties are applicable.
- 8.6 The Seller shall indemnify the Buyer for any loss, damage, injury or expense (including costs on a solicitor/client basis) suffered by the Buyer in the event of breach of this clause by the Seller howsoever arising.
- 9 Liability**
- 9.1 The Seller indemnifies the Buyer for all liabilities, costs and other expenses (including costs on a solicitor/client basis) arising from any claim by a customer of the Buyer or by any third party in connection with the Goods.
- 9.2 The Seller will fully cooperate with the Buyer if requested in relation to any claim or threatened claim.
- 9.3 Any liability the Buyer may have to the Seller or anyone claiming through it will be limited to the amounts then owed to the Seller by the Buyer for the Goods to which the liability relates.
- 10 Inspection**
- 10.1 All goods are subject to the Buyer's right to inspect and approve the same within a reasonable time of actual delivery to the Buyer or its customer.
- 10.2 Failure of the Buyer, its agent or customer to effect such inspection shall not be treated as a waiver of any of the terms, covenants and conditions herein contained and failure by the Buyer to insist upon strict performance and observance by the Seller of any of the terms, covenants and conditions on the part of the Seller herein contained or implied or to take advantage of or to exercise any of the Buyer's rights, privileges or powers hereunder, shall not be construed as a waiver of such terms, covenants, conditions or restrictions or relinquishment of any such rights, privileges or powers and the same shall continue in full force and effect.
- 11 Cancellation**
- 11.1 The Buyer reserves the right to immediately cancel this contract upon the Seller:
- a. breaching any term of this contract;
- b. becoming insolvent, committing an act of bankruptcy, being adjudicated bankrupt or any like matter occurring; or
- c. ceasing to carry on business or threatening to stop carrying on business.
- 11.2 Any losses or expenses incurred directly or indirectly by the Buyer (including costs on a solicitor/client basis) upon cancellation of the contract shall be to the Seller's account.
- 11.3 Notwithstanding payment having been made, the Buyer shall have the right to reject any Goods supplied which are in breach of the terms hereof (including the Seller's warranties set out in clause 8) in which event the Seller shall forthwith refund to the Buyer the purchase price paid together with any other costs and expenses incurred by the Buyer (including costs on a solicitor/client basis).
- 12 Documents**
- 12.1 All documentary requirements stipulated by the Buyer shall be complied with absolutely by the Seller. Such documentation shall comply in all respects with all government and/or other relevant official requirements of the country of origin and destination.
- 13 Confidentiality**
- 13.1 Neither party shall disclose to any third party the details of any purchases nor at any time divulge information in relation to the other's affairs in relation to this contract.
- 14 Arbitration**
- 14.1 If any dispute or difference (otherwise than in respect of a claim to which clause 15 applies) shall arise between the parties hereto in any way arising out of the terms hereof or in connection with any purchase of Goods, such dispute or claim shall be referred to the arbitration of a single arbitrator, if the parties can agree upon one, or otherwise to an arbitrator appointed by the president of the Auckland District Law Society and any such reference shall be a submission to arbitration within the meaning of the Arbitration Act 1996 and its amendments and the provisions of the second schedule of the Act shall apply.
- 14.2 Nothing in this clause will prevent either party from taking immediate steps to seek urgent interlocutory relief before the appropriate Court.
- 15 Survey Procedure**
- 15.1 All claims for survey or disputes between the parties to the contract in respect of quality and/or quantity of the Goods shall be referred to the arbitration of two registered surveyors. One to be appointed by each party.
- 15.2 The party claiming for surveyor as regards a dispute in respect of quality must appoint and instruct its surveyor and give notice of such appointment to the other party within thirty (30) calendar days of the date of completion of final discharge of the goods at final destination stated in the Confirmation.
- 15.3 If either party to a claim for survey or a dispute in respect of quality and/or quantity refuses or neglects to appoint and instruct a surveyor within five (5) days after receiving notice in writing from the other party calling upon it to do so, such other party may apply to the International Chamber of Commerce or any other competent body selected for the purpose by that party who shall appoint a registered surveyor to act on behalf of the defaulting party.
- 15.4 In the event of the surveyors appointed under any of the preceding clauses failing to agree on an award within seven (7) days after the date when the last of them was appointed, they shall within a further four (4) days appoint an umpire to be agreed upon between them, such umpire to be a registered surveyor and in the event of such surveyors failing to agree upon such appointment within the time herein specified, such umpire shall be appointed by the International Chamber of Commerce or any other competent body selected for the purpose on the application of the Buyer.
- 15.5 The decision of the surveyor or umpire, as the case may be, shall be final and binding on the parties, subject to manifest error on the part of the surveyor or umpire.