

## Standard Terms and Conditions for the Provision of Fire Rescue and Safety Inspections and Related Services

### 1 DEFINITIONS AND INTERPRETATION

1.1 In these Conditions the following terms shall have the following meanings:

**"Applicable Laws"** means all national, supranational, foreign or local laws (including case law), legislation, statutes, statutory instruments, rules, regulations, edicts, by-laws or directions or guidance from government or governmental agencies including any rules, regulations, guidelines or other requirements of relevant regulatory authorities which have the force of law in effect from time to time.

**"Business Day"** means any day which is not a Saturday, Sunday or a bank or public holiday in the United Kingdom.

**"Certificate of Inspection"** means a certificate issued by Survitec certifying that the Equipment has been inspected by Survitec and complies with the Standards.

**"Change of Control"** means that a person who had Controlled any person ceases to do so, or another person acquires Control of such a person.

**"Charges"** means Survitec's rates for the provision of the Services as set out in the SSFA or, in the absence of a SSFA, as otherwise notified by Survitec to the Customer Party.

**"Commencement Date"** has the meaning given to that term in Condition 2.5 (Basis of Contract).

**"Conditions"** means these standard terms and conditions for the provision of

fire rescue and safety inspections and related services and any special terms and conditions agreed between Survitec and the Customer Party.

**"Confidential Information"** means the provisions of the SSFA and each Contract and all information which is secret or otherwise not publicly available (in both cases in its entirety or in part) including commercial, financial, marketing or technical information, know-how, processes of production and technology, trade secrets, software or business methods in all cases in any form or medium whether disclosed orally or in writing before or after the date of the SSFA (where a SSFA exists) or the date of the Contract (where no SSFA exists), together with any reproductions of such information in any form or medium or any part(s) of such information (and "confidential"

means that the information, either in its entirety or in the precise configuration or assembly of its components, is not publicly available).

**"Contract"** means any order and acknowledgment of order (whether formed under the SSFA or otherwise) between Survitec and the Customer Party for the provision of Services, incorporating these Conditions.

**"Control"** means that a person possesses, directly or indirectly, the power to direct or cause the direction of the affairs and policies of the other person (whether through the ownership of share capital, possession of voting power, ability to appoint directors, contract or otherwise) and **"Controls"** and **"Controlled"** shall be interpreted accordingly.

**"Customer"** shall have the meaning given to it in the SSFA.

**"Customer Party"** means the person(s), firm or company identified as the customer on the acknowledgement of order who purchases the Services from Survitec and who may be either the Customer or a member of the Customer's Group.

**"Customer Party's Property"** means the offshore property and/or Vessel (as defined below) owned by the Customer on which the Equipment is located or installed, and which is identified in the SSFA (or if no SSFA exists, identified in the relevant Contract). **"Property"** shall be construed accordingly.

**"Effective Date"** has the meaning given to that term in the SSFA.

**"Equipment"** means the FRS Equipment.

**"Equipment List"** means a document specifying what (if any) FRS Equipment is installed or present on the Customer's Property.

**"Export Controls and Sanctions Laws"** means any applicable export control, trade or economic sanctions, embargo or similar laws, regulations, rules, licences, orders or requirements including without limitation those of the U.S. and the EU.

**"Indemnity Losses"** means any claims, demands, suits, proceedings, costs (including reasonable costs, fees and expenses arising from dispute resolution or legal proceedings), expenses, damages, penalties, fines and losses whatsoever.

**"Fire Rescue and Safety Inspection"** means an inspection of the FRS Equipment as further described in Schedule 1 of the SSFA and as specified in the relevant Contract (or, where no SSFA exists the relevant Contract) which Survitec shall provide to the relevant Customer Party.

**"Force Majeure"** means any event outside the reasonable control of either Party affecting its ability to perform any of its obligations (other than payment) under the SSFA or the relevant Contract including any, act of God, fire, flood, lightning, compliance with any law or governmental order, rule, regulation or direction (including any import, export or transit laws and customs processes and procedures) war, revolution, act of terrorism, riot or civil commotion, strikes (except in the work force of the affected Party), lock-outs or other industrial action, default or delays of suppliers or sub-contractors, failure of supplies of power, fuel, transport, equipment, raw materials or other goods or services, refusal of the relevant port authority or its employees, agents or contractors to permit access to the Service Location, failure of public utilities, epidemic, destruction of production facilities, insurrection, inability to obtain labour, or energy sufficient to meet needs. Performance affected or delayed as a result of Export Control and Sanctions Laws shall not constitute a Force Majeure event but shall be dealt with in accordance with Condition 15 (Export Terms).

**"FRS Equipment"** means the fire rescue and safety equipment, such equipment to be agreed in advance between Survitec and the Customer Party and set out in writing in either the Equipment List which will form part of the SSFA or if there is no SSFA, in the Customer Party's order.

**"Governing Bodies"** means each and any of the International Maritime Organisation and the Flag State of the Customer's Property.

**"Group"** means in relation to any company, that company and every subsidiary or holding company of that company or a subsidiary or holding company of any such subsidiary or holding company (in each case from time to time) and the terms "subsidiary" and "holding company" shall have the meanings given to them by Section 1159 of the Companies Act 2006.

**"Inspection"** means a Fire Rescue and Safety Inspection.

**"Inspection Chart"** means a report issued by Survitec after an Inspection of the relevant Equipment specifying the particular Inspection that has been carried out, the actions taken and the actions that may be

required in the future in accordance with the Standards.

**"Inspection and Certificate of Inspection"** shall have the meaning given in Condition 4.1 (Provision of the Services).

**"Intellectual Property"** means any patent, copyright, right in databases, moral right, right in design, right in software, trademark, service mark or trade name, image right, right in an invention, right relating to passing off, domain name, know-how, utility model, and all similar or equivalent rights in each case whether registered or not including all applications (or rights to apply) for, or renewal or extension of, such rights which exist now or which will exist in the future in the United Kingdom and all other countries in the world.

**"Personnel"** means any person employed or engaged by Survitec in providing the Services.

**"Repairs and Replacement"** shall have the meaning given in Condition 4.2 (Provision of the Services).

**"Safety Equipment Certificate"** means the official safety equipment certificate issued by the relevant third party classification society with respect to the Equipment's adherence to required Standards.

**"Services"** means the Fire Rescue and Safety Inspection, the Inspection and Certificate of Inspection, the Repairs and Replacement, and any other services which may be agreed by Survitec and set out in the relevant Contract.

**"Service Location"** means those locations where Survitec will perform the Services as agreed in writing between the Customer (or the Customer Party, as applicable) and Survitec and set out in the SSFA or in the relevant Contract. If no locations are set out in the SSFA or the relevant Contract, the Service Location shall be those locations notified to the Customer or the relevant Customer Party (as appropriate) by Survitec in advance of the relevant Services taking place.

**"Spare parts"** means those spare parts required for Repairs and Replacement work as described in the relevant Inspection Chart.

**"SSFA"** or **"Safety Service Framework Agreement"** means, where applicable, the agreement with that title entered into between the Customer and Survitec.

**"Standards"** means the requirements of SOLAS (the International Convention for Safety of Life at Sea 1974) and the Governing Bodies relating to the Services,

as amended, extended or re-enacted from time to time.

"**Survitec**" means the entity identified as the supplier of the Services on the acknowledgement of order and who is a company within the Group of Survitec Group Limited (Registered No. 00905173) whose registered office is at 12 Finsbury Square, 4th Floor London, United Kingdom, EC2A 1AS.

"**Vessels**" means the Vessels identified in the SSFA (or if no SSFA exists, identified in the relevant Contract) and which are either administered or owned by the Customer Party. The term "Vessel" shall be construed accordingly.

"**Vessel Owner**" means the owner of the Vessel or any other party on whose behalf the Customer or any Customer Party manages or operates the Vessel. The term "**Vessel Owners**" shall be construed accordingly.

"**Working Day(s)**" means any day (other than a weekend or a bank or public holiday) in the country or region where the Services are being performed when the banks are open for business.

"**Year**" means a period of 12 months commencing on the Effective Date and each successive anniversary of the Effective Date and ending on the day before each successive anniversary of the Effective Date.

## 1.2 Drafting Conventions

- (a) References to a gender include every gender, reference to persons includes an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity and reference to the singular include the plural and vice versa as the context admits or requires.
- (b) Headings to Conditions are for ease of reference only and shall not affect the interpretation or construction of these Conditions.
- (c) References to a Condition is, unless otherwise provided, reference to a clause of these Conditions. Reference to a Clause or a Schedule is, unless otherwise provided, reference to a clause of or schedule to the SSFA.
- (d) References to any statute or statutory provision shall be deemed to include (i) any subordinate legislation made under it; (ii) any provision which it has modified or

re-enacted (whether with or without modification); and (iii) any provision which subsequently supersedes it or re-enacts it (whether with or without modification) whether made before or after the date of the SSFA (or where no SSFA exists, the date of the relevant Contract).

- (e) The words "other", "including" and "in particular" shall not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible.

## 2 BASIS OF CONTRACT

- 2.1 Subject to any variation under Condition 2.2, the Contract will be subject to these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer Party purports to apply under any purchase order, confirmation of order, specification or other document whatsoever and whenever).
- 2.2 Any variation to these Conditions and any representations about the Services shall have no effect unless such variation is expressly agreed in writing by Survitec, refers specifically to the Contract and is executed by a duly authorised representative of Survitec.
- 2.3 Any quotation or estimate made by Survitec (including any quotation or estimate provided in a company catalogue, brochure or website) is given subject to these Conditions. Without prejudice to Survitec's right not to accept an order, quotations and/or estimates that are expressly given by Survitec to the Customer Party shall be valid for fourteen (14) days from date of issue.
- 2.4 Each order for Services submitted by the Customer Party to Survitec shall be deemed to be an offer by the Customer Party to purchase Services subject to these Conditions.
- 2.5 No order placed by the Customer Party shall be deemed to be accepted by Survitec until a written acknowledgement of order is issued by Survitec or (if earlier) Survitec commences performance of the Services (in whole or in part, or whether by Survitec or a third party). Any order shall be accepted entirely at the discretion of Survitec, at which point and on which date the Contract shall come into existence (the "**Commencement Date**").
- 2.6 It is the Customer Party's obligation to ensure that the terms of its order and any applicable design, drawings, specification and any other data (whether or not supplied

- by Survitec or the Customer Party) in relation to the Services are complete and accurate.
- 2.7 Survitec reserves the right without liability to the Customer Party to make any changes in the specification of the Services which are required to conform with any applicable statutory or EC requirements or which do not materially affect the quality or performance of the Services.
- 2.8 The Customer Party can only cancel an order (or any part of an order) which Survitec has already accepted, with Survitec's prior written agreement (which may be by e-mail). Survitec is not bound to agree to any such cancellation and may complete such order even if the Customer Party purports to cancel it.
- 2.9 If Survitec's performance of the Contract is suspended or delayed through the Customer Party's default (including, without limitation, lack of, incomplete or incorrect instructions or refusal to collect or accept delivery of the relevant Equipment), Survitec shall be entitled to and the Customer Party shall immediately make payment in accordance with the Contract for any part of the Services which has already been performed prior to the suspension or delay and for any other additional costs that Survitec incurs including storage, insurance and interest as a result of such suspension or delay.

### 3 DESCRIPTION OF THE SERVICES

- 3.1 The description of and any specification for the Services shall be set out in the SSFA or, where no SSFA exists, in Survitec's acknowledgement of order or, in its absence, any written quotation or estimate expressly sent by Survitec to the Customer Party.
- 3.2 All drawings, descriptive matter, specifications and advertising issued by Survitec and any descriptions, details or illustrations contained in Survitec's catalogues, brochures or websites are issued or published for the sole purpose of giving an approximate idea of the Services described in them and they will not form part of the Contract unless otherwise agreed in writing by Survitec.
- 3.3 The Customer Party acknowledges that from time to time the Customer Party may supply Survitec with designs, drawings, specifications and other data to enable Survitec to perform the Services, and that Survitec places particular reliance upon such designs, drawings, specifications and data.
- 3.4 Therefore, in addition to any other remedy available to Survitec, the Customer Party shall indemnify, defend and hold harmless Survitec, the members of Survitec's Group and their respective directors, officers,

employees, sub-contractors and agents in full and on demand (with no duty to mitigate their loss) from and against all direct or indirect liabilities, claims, demands, actions, proceedings, damages, losses, costs and expenses (including legal and other professional advisers' fees), interest and penalties made against or incurred or suffered by any of them howsoever arising whether wholly or in part resulting directly or indirectly from the matters listed below whether or not such losses or the consequences of the matters listed were foreseeable at the date of the Contract:

- (a) the performance of the Services by Survitec in accordance with the Customer Party's designs, drawings, specifications or other data or information furnished or instructions given by the Customer Party; and/or
- (b) any claims that any Intellectual Property or Confidential Information or other exclusive right of any third party has been infringed through the performance of the Services (save to the extent the same have been supplied in accordance with specifications or designs of Survitec).

### 4 PROVISION OF THE SERVICES

#### Inspection and Certificate of Inspection

- 4.1 If, pursuant to Condition 2 (Basis of Contract) above, Survitec agrees to provide the Services, Survitec shall:
- (a) perform a Fire Rescue and Safety Inspection;
  - (b) issue a new or update the existing Inspection Chart; and
  - (c) issue a Certificate of Inspection provided that any repairs or replacements of the FRS Equipment which were identified during the particular Inspection and set out in the relevant Inspection Chart (if any) have been completed in accordance with the requirements and recommendations set out in the Inspection Chart,

hereinafter referred to as an "**Inspection and Certificate of Inspection**".

#### Repairs and Replacement

- 4.2 If, pursuant to Condition 2 (Basis of Contract) above, Survitec agrees to undertake repairs to, or replace all or part of, the Equipment (or

otherwise agrees to perform any additional testing which is not included within the the Fire Rescue and Safety Inspection but which is required for certification of the relevant Equipment), Survitec shall undertake the repairs to or replace the Equipment or the additional testing (as applicable) in accordance with the requirements and recommendations set out in the relevant Inspection Chart hereinafter referred to as the "Repairs and Replacement" work.

4.3 Where Spares are required to carry out the Repairs and Replacement work, the Customer Party shall either:

- (a) provide the required Spares to Survitec; or
- (b) place a separate order to purchase the Spares from Survitec, which shall be subject to Survitec's terms and conditions of sale for the supply of products and form a separate contract.

**Service Locations**

4.4 Survitec shall carry out the Services at the relevant Service Location. Survitec has no obligation to complete the Services in one Service Location. If the relevant Services have not been completed in one Service Location, Survitec shall perform the Services in the next available Service Location (as nominated by Survitec).

**Additional Services**

4.5 Survitec shall perform any other services as may be agreed between the Customer Party and Survitec (which may be by e-mail) and set out in the relevant Contract.

4.6 Any additional requirements from the Customer Party in relation to the Services must be specified by the Customer in writing (which may be my e-mail) and set out in its order and are subject to Survitec's prior written agreement at all times (which may be by e-mail).

**General**

4.7 Where Survitec is to perform the Services at the Customer Party's Property, the Customer Party shall:

- (a) procure safe and unhindered access to the Customer's Property for all the Personnel to carry out the Services at all relevant times;
- (b) ensure that all consents, permissions, or licences required to allow the Services to be provided are in place;

(c) ensure the provision of adequate power, lighting, heating and other such facilities or supplies required for the provision of the Services;

(d) provide adjacent to where the Services are to be provided storage for the materials required for the Services;

(e) ensure that the site where Services are to be provided are adequate for that purpose, clear and free from all health and safety hazards and possesses such facilities for the Personnel to comply with any Applicable Laws and as Survitec shall reasonably require; and

(f) be responsible for the Personnel's death or personal injury or damage to or loss of Survitec's (and subcontractors and Personnel's) property whilst on the Customer Party's Property except to the extent any such death or personal injury results from the negligence of Survitec or its subcontractors.

4.8 Survitec shall provide all Services using reasonable care and skill.

4.9 The Services will be deemed to be completed:

(a) when Survitec issues a written notice to the Customer Party confirming such completion; or

(b) if Survitec is available to perform the Services but is prevented from doing so by reason of:

(i) the lack of appropriate assistance from the Customer Party (such as lack of availability of test components or parts or from the Customer Party); and/or

(ii) the condition of the Customer Party's Property at which the Services are to be performed and/or the facilities at or the services available therein,

at the time agreed for the provision of the Services.

4.10 Any dates for the performance of the Services are intended to be an estimate only and time for performance shall not be of the essence. If no dates are so specified, performance of the Services shall be within a reasonable time.

- 4.11 In performing the Services, Survitec shall operate as, and have the status of, an independent contractor and shall not operate or have the status of agent, employee or representative of the Customer Party.
- 4.12 Survitec may sub-contract performance of any of the Services (or part thereof) to any person, firm, corporation or organisation provided that Survitec shall remain responsible to the Customer Party for the performance of such Services in accordance with the terms of the Contract.
- 4.13 Survitec reserves the right to amend the scope of the Services as set out in the Contract and described in this Condition 4 if necessary to comply with Applicable Law, or if the amendment will not materially affect the nature or quality of the Services to be performed, and Survitec shall notify the Customer Party (which may be by e-mail) in any such event.

## **5 PAYMENT TERMS**

- 5.1 Unless otherwise agreed and set out in the SSFA or the relevant Contract, Survitec may issue an invoice for the Charges on or at any time after performance of the Services.
- 5.2 Unless otherwise agreed in writing (which may be by e-mail) by Survitec, the Customer Party shall pay all invoices in full and cleared funds without any deduction, withholding or set-off within thirty (30) days of the date of the invoice.
- 5.3 The Charges are applicable only for the agreed Service Location and any Charges for Services to be performed outside of these Service Locations are available on request.
- 5.4 Survitec shall be entitled to charge the Customer Party for any expenses reasonably incurred by its Personnel including travelling expenses, hotel costs, subsistence and any associated expenses, and if agreed in advance between the parties (which may be by e-mail), for the cost of services provided by third parties and required by Survitec for the performance of the Services.
- 5.5 All sums payable under the SSFA and each Contract are exclusive of value added tax or any other applicable tax or duty which must be paid in addition at the rate and in the manner prevailing at the relevant tax point.
- 5.6 All payments shall be in the currency set out in the SSFA or relevant Contract and made by electronic transfer to such bank account as Survitec may from time to time notify the Customer Party with any applicable charges on such payments being at the Customer Party's expense.

- 5.7 Survitec shall be entitled to automatically increase the Charges in line with Survitec's annual price adjustment mechanism. The Charges will be adjusted annually on the anniversary of the Commencement Date to reflect any increase in the consumer price index as published from time to time by the Organisation for Economic Co-operation and Development (OECD) in its 'Total OECD Inflation' figures. The source of data is taken from OECD (Organisation for Economic Co-operation and Development) where the World Total Consumer prices (All items) is used. See link: OECD data and inflation per country:  
[http://stats.oecd.org/Index.aspx?DataSetCode=MEI\\_PRICES](http://stats.oecd.org/Index.aspx?DataSetCode=MEI_PRICES).

- 5.8 All payments payable by the Customer Party to Survitec under the SSFA and each Contract shall become due immediately on termination of the SSFA or the relevant Contract.

- 5.9 If a Contract is entered into by the Customer Party as an agent for a principal (disclosed or undisclosed) then the Customer Party shall be jointly and severally liable with such principal for the payments of all amounts (including the Charges) due to Survitec in connection with the performance of the Services.

## **6 DELAYED PAYMENT**

- 6.1 If any sum payable under the SSFA or a Contract is not paid when due then, without prejudice to Survitec's other rights under these Conditions, the Customer Party shall interest of five percent (5%) per annum above the base rate of the Bank of England from time to time on any overdue payment from the due date until payment in full is received by Survitec (before as well as after judgment) and Survitec shall be entitled to suspend performance of its obligations under the relevant Contract until the outstanding amount has been received by Survitec from the Customer Party.
- 6.2 If any sum is overdue, Survitec is entitled to claim and recover full compensation from the Customer Party for collection of cost and expenses in and out of court and all legal costs and expenses on a full indemnity basis.

## **7 REMEDIES FOR BREACH**

- 7.1 Survitec shall provide the Services in accordance with the provisions of the SSFA (if any) and the relevant Contract. Subject to Condition 9.7(b) (Liability), if the Customer Party can prove to Survitec's reasonable satisfaction that, due to Survitec's own act or omission, Survitec has failed to perform the Services in accordance with the SSFA (if

- any) and/or the relevant Contract, then Survitec shall at its option remedy such breach:
- (a) by re-performing the relevant part of the Services free of charge up to the amount of the Charges received by Survitec for the provision of such Services (exclusive of any value added tax); or
  - (b) by repaying or crediting the Customer Party that part of the Charges paid by the Customer Party to Survitec relating to the provision of the relevant part of the Services (exclusive of any value added tax).
- 7.2 Subject to Condition 10 (Liability), the remedies set out in Condition 7.1 shall only apply if the Customer Party notifies Survitec in writing of any default within thirty (30) calendar days after any such default is discovered by the Customer Party or should have been discovered by the Customer Party. Following such thirty (30) calendar days period, Survitec shall have no liability to re-perform the relevant Services or to provide a refund for the relevant Services but may do so at Survitec's sole discretion. Where re-performance or a refund is provided by Survitec then, to the extent permitted by law, such re-performance or refund will constitute the Customer Party's sole and exclusive remedy in relation to such breach.
- 8 RECORDS**
- Survitec shall keep records of the Inspection Chart and Certificate of Inspection covered by the SSFA and each Contract for a period of time as required by local law in each Service Location.
- 9 THE CUSTOMER'S OBLIGATIONS**
- 9.1 The Customer shall ensure that the relevant Property on which the Equipment is installed and/or located is available at the agreed Service Location and agreed date for the Services to be carried out.
- 9.2 Unless otherwise agreed between the parties and where required by Survitec (as notified by Survitec in writing (which may be by e-mail) before the performance of the Services), the Customer Party shall (at its sole cost, expense and risk):
- (a) if applicable, transport the Equipment to and from the Customer's Property to a suitable land-based location and vice versa;
  - (b) supply all cranes, lifting equipment and personnel required for such transportation,
- prior to the carrying out of the Services by Survitec. The Customer Party shall ensure that all Equipment is securely supported prior to Survitec carrying out the Services.
- 9.3 The Customer Party shall, at all times, comply with any warnings, instructions or safety rules provided to it by Survitec from time to time.
- 9.4 The Customer Party shall, at all times, comply with and apply best industry practice at all times in relation to the testing, storage, handling and use of all Equipment, including the undertaking of any annual or other inspections that are required to be undertaken by or on behalf of the Customer Party as per Survitec's instructions and/or in accordance with Applicable Law and the Customer shall notify Survitec immediately in writing (which may be by email) if any Equipment fails to pass any such Customer inspection.
- 9.5 The Customer Party shall inform Survitec and keep Survitec informed of any Applicable Laws in connection with the performance or receipt of the Services.
- 9.6 The Customer Party shall take all necessary steps to ensure that it is safe on board the Customer's Property for Survitec to perform the Services.
- 9.7 Unless otherwise agreed in writing (which may be by e-mail) between the parties, the Customer Party shall (at its sole cost and expense):
- (a) arrange all local transfers required to ensure the Personnel are at the relevant Service Location on the agreed date and at the agreed time for the performance of the Services; and
  - (b) arrange, where required, the attendance of the relevant classification society to witness the performance of the Services.
- 9.8 The Customer Party acknowledges and agrees that the Services provided and supplied under the Contract are, or may be, hazardous to human health and shall:
- (a) shall ensure the safe and correct use of the Equipment and assume all risk and liability for the safe and correct use of the Equipment;
  - (b) shall familiarise themselves and keep themselves informed with respect to possible hazards to persons or property involved in the

- handling and use of the Equipment; and
- (c) shall advise their employees, independent contractors and others who handle the Equipment for the Customer Party and shall take such action as is reasonably necessary to advise others who are foreseeable users of the Equipment, of the suspected or proven hazards of the Equipment and the proper handling of the Equipment.
- 9.9 The Customer Party agrees that any Inspection and Certificate of Inspection are provided for the benefit of the Customer Party only and shall procure that such Inspection and Certificate of Inspection is not relied upon by any third party or any member of the Customer's Group.
- 9.10 The Customer will refer its employees, contractors, customers, vessel owners and any technical managers (if applicable) to all instructions and guidelines provided by the Company or the manufacturer and shall ensure that its own contractors, customers, vessel owners and any technical managers (if applicable) will specifically agree with the Customer in writing to comply with the obligations in this Condition 9.
- 9.11 In addition to any other remedy available to the Company, the Customer shall indemnify, defend and hold harmless the Company, the members of its Group and their respective directors, officers, employees, sub-contractors and agents in full and on demand (with no duty to mitigate their loss) from and against all Indemnity Losses made against or incurred or suffered by any of them howsoever arising whether wholly or in part resulting directly or indirectly from any breach of, or failure by, the Customer, the vessel owner or any technical manager (or any of their respective employees, agents and sub-contractors) to comply with the Customer's obligations under Condition 4 (Provision of the Services) or this Condition 9, whether or not such losses or their consequences were foreseeable at the date of the Contract or on the date of the performance of the Services.
- 10 LIABILITY**
- 10.1 This Condition 10 sets out the entire liability of Survitec arising under or in connection with the SSFA (if any) and the Contracts.
- 10.2 Nothing in the SSFA, any Contracts or these Conditions shall exclude or limit either Party's liability to the other for: (a) death or personal injury caused by its negligence; (b) fraud or fraudulent misrepresentation; or (c) any liability which cannot legally be limited or excluded.
- 10.3 Subject to Condition 10.2, Survitec shall not be liable, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise in connection with the SSFA or any Contract:
- (a) in the event that the Services were not carried out prior to the expiry date of the Safety Equipment Certificate due to:
- (i) the Customer's Property not being made available to Survitec at the agreed date and time and at agreed Service Location; or
- (ii) the Customer's Property not being made available to Survitec in sufficient time to allow Survitec to complete the Services at such agreed date and time and at agreed Service Location;
- (b) for any loss or damage to the Customer's Property, the FRS Equipment or other property belonging to or in the possession of the Customer or the Customer Party arising due to:
- (i) incorrect information contained within the Equipment List, previous records of Inspections and/or Certificates of Inspections, Safety Equipment Certificates or other safety certificates, Documentation or other information provided to Survitec;
- (ii) any defects within the Equipment which could not have been reasonably discovered by Survitec when providing the Services; or
- (iii) any failure by the Customer or the Customer Party to implement the findings of any Inspection and Certificate of Inspection or any other recommendation of Survitec;
- (c) for any loss or damage to the Customer's or the Customer Party's Property, the FRS Equipment or damage suffered by individuals during the transportation of the relevant Equipment) in accordance



- with Condition 9 (The Customer's Obligations);
- (d) for any defective Spares installed by or on behalf of Survitec as part of the Repairs and Replacement work which have not been purchased from Survitec;
- (e) for any loss or damage suffered or incurred by the Customer or the Customer Party or any third person as a result of:
- (i) any failure to provide the Services in accordance with the SSFA or the relevant Contract unless the Customer or the Customer Party notifies Survitec in writing of such a claim (with detailed particulars of the circumstance giving rise thereto) within one (1) month of such failure coming to the Customer's or the Customer Party's notice; or
  - (ii) any failure to provide the Services in accordance with the SSFA and/or the relevant Contract as a result of any act or omission of the Customer or the Customer Party or its employees; or
  - (iii) any failure to provide the Services in accordance with the SSFA and/or the relevant Contract as a result of Survitec's compliance with any instruction or direction given by the Customer or the Customer Party if Survitec has informed the Customer or the Customer Party before it complies therewith that, in its opinion, that instruction or direction will inhibit performance of the Services; or
  - (iv) the absence of any consent required to be obtained by the Customer or the Customer Party; or
  - (v) the incompetence of any consultant, professional adviser, contractor or person other than Survitec and its Personnel employed by the
- Customer or the Customer Party to provide the Services at the Customer's or the Customer Party's specific request;
- (f) for any loss of profits, business, contracts, anticipated savings, goodwill or revenue, any wasted expenditure, any loss of market, or any loss or corruption of data (regardless of whether any of these types of loss or damage are direct, indirect or consequential); or
- (g) for any indirect or consequential loss or damage howsoever arising, even if Survitec was aware of the possibility that such loss or damage might be incurred by the Customer Party.
- 10.4 Subject to Conditions 10.2 and 10.3 above, the total aggregate liability of Survitec in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise in connection with the SSFA (if any) and all Contracts shall in no event exceed the lesser of USD \$250000 (two hundred and fifty thousand USD) or 125% of the Charges paid or payable (had the SSFA or the relevant Contract not been breached) under the SSFA and the Contracts.
- 10.5 To the extent permitted by Applicable Law, the Customer and each Customer Party will procure that any and all claims to be made against Survitec Safety Norway AS or any member of its Group arising under or in relation to the SSFA or any Contract will be made by the Customer or the Customer Party against Survitec only and not by any other member of the Customer's or Customer Party's Group or by the owner of the relevant Property or any other third party. For the avoidance of doubt any such claims will be subject to the exclusions and limitations on liability set out in these Conditions.
- 10.6 The Customer and the Customer Party acknowledges that Survitec has calculated the Charges on the basis that Survitec will exclude or limit its liability under the SSFA and the Contracts as set out in these Conditions and the Customer and the Customer Party agrees and warrants that:
- (a) the Customer and the Customer Party shall insure against or bear itself any loss for which Survitec has excluded or limited its liability in these Conditions; and
  - (b) Survitec shall have no further liability to the Customer or the Customer Party.

- 10.7 Unless expressly stated in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the SSFA and each Contract. (as applicable) of its obligations under Conditions 10.5 (Liability) and/or 11.1 above, whether or not such losses or their consequences were foreseeable at the date of the SSFA or the relevant Contract.
- 11 INDEMNIFICATION** **12 INSURANCE POLICIES**
- 11.1 The Customer and the Customer Party:
- (a) acknowledge and agree that the Services provided and supplied under the SSFA and each Contract are, or may be, hazardous to human health;
- (b) shall ensure the safe and correct use of the FRS Equipment and assume all risk and liability for the safe and correct use of the FRS Equipment;
- (c) agree that the Inspection and Certificate of Inspection are provided for the benefit of the Customer and the Customer Party only and shall procure that such Inspection and Certificate of Inspection is not relied upon by any third party or any member of the Customer's or Customer Party's Group;
- (d) shall familiarise themselves and keep themselves informed with respect to possible hazards to persons or property involved in the handling and use of the FRS Equipment; and
- (e) shall advise their employees, independent contractors and others who handle the Equipment for the Customer or the Customer Party, and shall take such action as is reasonably necessary to advise others who are foreseeable users of the Equipment, of the suspected or proven hazards of the Equipment and the proper handling of the Equipment.
- 11.2 In addition to any other remedy available to Survitec, the Customer and the Customer Party shall indemnify, defend and hold harmless Survitec, the members of its Group and their respective directors, officers and employees in full and on demand (with no duty to mitigate their loss) from and against all direct or indirect liabilities, claims, demands, actions, proceedings, damages, losses, costs and expenses (including legal and other professional advisers' fees), interest and penalties made against or incurred or suffered by any of them howsoever arising whether wholly or in part resulting directly or indirectly from any breach by the Customer or Customer Party
- 12.1 Survitec shall maintain in force at its own cost such insurance policies as are appropriate and adequate having regard to its obligations and liabilities under the SSFA and each Contract and shall on the reasonable written request (which may be by e-mail) of the Customer Party from time to time allow the Customer Party to inspect and/or provide the Customer Party with copies of the full policy document for such policies and, on the renewal of each policy, Survitec shall send a copy of the premium receipt to the Customer Party when requested to do so on reasonable notice in writing (which may be by e-mail) by the Customer Party.
- 12.2 The Customer and the Customer Party shall have and maintain with insurers of good repute at its own cost throughout the term of the SSFA and each Contract and for a period of six years following termination public liability insurance for a minimum of £5,000,000 (five million pounds) for each occurrence and shall on the reasonable written request of Survitec from time to time allow Survitec to inspect and/or provide Survitec with copies of the full policy document for such policies and, on the renewal of each policy, the Customer Party shall send a copy of the premium receipt to Survitec when requested to do so on reasonable notice in writing (which may be by e-mail) by Survitec.
- 13 SUBCONTRACTING, ASSIGNMENT AND THIRD PARTY RIGHTS**
- 13.1 Neither the Customer nor any Customer Party shall be entitled to assign, charge, subcontract, transfer or otherwise dispose of all or any of its rights and responsibilities under the SSFA or any Contract or any part of either of them without the prior written consent of Survitec.
- 13.2 Survitec may assign, charge, subcontract or transfer any or all of its rights and obligations under the SSFA and any Contract or any part of either of them to any person.
- 13.3 No person who is not a party to the SSFA or a Contract (including any employee, officer, agent, representative or sub-contractor of either party to the SSFA or the relevant Contract) shall have the right (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise) to enforce any provisions of the SSFA or a Contract which expressly or by implication confers a benefit on that

person without the express prior agreement in writing of Survitec and the Customer or the Customer Party (as applicable) which agreement must refer to this Condition 13.3.

#### **14 EXPORT TERMS**

14.1 Survitec shall comply with all Export Control and Sanctions Laws that are applicable to Survitec in the performance of the SSFA and each Contract and shall not do anything to cause the Customer or the Customer Party to be in breach of Export Control and Sanctions Laws.

14.2 The Customer and each Customer Party shall comply with all Export Control and Sanctions Laws that are applicable to them in the performance of the SSFA and each Contract and shall not do anything to cause Survitec to be in breach of Export Control and Sanctions Laws. The Customer and each Customer Party shall also be solely responsible for complying with any legislation or regulations governing the Customer or the Customer Party's obligations in these Conditions, the SSFA and each Contract so as to enable Survitec to perform the Services as well as any legislation or regulations which relate to the performance of the Services.

14.3 The Customer and each Customer Party shall provide to Survitec upon request information regarding the Vessel Owners, operators or managers and/or the Vessel and such other information as Survitec may require so as to ensure its compliance with Export Control and Sanctions Laws.

14.4 The Customer Party shall immediately notify Survitec in writing (which may be by e-mail and then subsequently confirmed in writing in accordance with Condition 18 (Notice)), in the event that the Customer or the Customer Party or the Vessel Owners, operators or managers or any person having ownership or Control of any of them, is designated a sanctioned person pursuant to any Export Control and Sanctions Laws.

14.5 The Customer and each Customer Party will procure that all Vessel Owners as well as Vessel operators and managers also comply with the obligations set out in this Condition 14.

14.6 The Customer and each Customer Party shall indemnify and hold harmless Survitec from and against any and all Indemnity Losses arising from any breach of Conditions 14.2 - 14.5 inclusive.

14.7 If Survitec, in its sole discretion, determines that performance of any obligation under these Conditions, the SSFA and each Contract (in full or in part) would be violation of Export Control and Sanctions Laws

(including as a result of a delay in or refusal of any export licence or as a result of a delay in or refusal of any export licence or as a result of Customer, the Customer Party, Vessel Owners, managers or operators or a person having ownership or Control of any of them being designed as a sanctioned person, or which might otherwise give rise to a violation of Export Control and Sanctions Laws), then Survitec may at its option and without being liable for any damages or costs of any kind, either:

(a) suspend performance of its obligations under these Conditions for as long as the restrictions or designations remain in place; or

(b) immediately or at any time following a suspension pursuant to Condition 14.7(a) decide to terminate the SSFA or the relevant Contract with immediate effect.

#### **15 FORCE MAJEURE**

15.1 A Party shall not be in breach of the SSFA or any Contract nor liable for any failure or delay in performance of any obligations (except as to payment) under the SSFA or the relevant Contract (and the date for performance of the obligations affected will be extended accordingly) as a result of a Force Majeure, provided that such party complies with the obligations set out in this Condition 15. Save as provided in Condition 15, a Force Majeure will not entitle either party to terminate the SSFA or the relevant Contract.

15.2 The Party affected by Force Majeure shall immediately notify the other party in writing of the matters constituting the Force Majeure and shall keep that Party fully informed of their continuance and of any relevant change of circumstances whilst such Force Majeure continues.

15.3 The Party affected by Force Majeure shall take all reasonable steps available to it to minimise its effects on the performance of its obligations under the SSFA and the relevant Contract.

15.4 If the Force Majeure continues for longer than ninety (90) days, then either Party to the relevant Contract or either party to the SSFA may, whilst the Force Majeure continues, immediately terminate the relevant Contract and/or the SSFA by notice in writing to the other Party.

**16 TERMINATION**

16.1 If the parties have entered into a SSFA, the provisions of the SSFA shall govern any termination of the SSFA.

16.2 Either Party may immediately terminate the Contract by giving notice in writing to the other Party if:

(a) the other Party commits a material breach of any of its obligations under the Contract which is incapable of remedy;

(b) the other Party commits a material breach of its obligations under the Contract which is capable of remedy and fails to remedy it or persists in such breach after twenty-eight (28) days of having been required in writing to remedy or desist;

(c) the other Party:

(i) suspends, or threatens to suspend, payment of its debts (whether principal or interest) or is deemed to be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;

(ii) calls a meeting, gives a notice, passes a resolution or files a petition, or an order is made, in connection with the winding up of that party (save for the sole purpose of a solvent voluntary reconstruction or amalgamation);

(iii) has an application to appoint an administrator made or a notice of intention to appoint an administrator filed or an administrator is appointed in respect of it or all or any part of its assets;

(iv) has a receiver or administrative receiver appointed over all or any part of its assets or a person becomes entitled to appoint a receiver or administrative receiver over such assets;

(v) takes any steps in connection with proposing a company voluntary arrangement or a

company voluntary arrangement is passed in relation to it, or it commences negotiations with all or any of its creditors with a view to rescheduling any of its debts;

(vi) has any steps taken by a secured lender to obtain possession of the property on which it has security or otherwise to enforce its security;

(vii) has any distress, execution or sequestration or other such process levied or enforced on any of its assets which is not discharged within seven (7) days of it being levied;

(viii) has any proceeding taken, with respect to it in any jurisdiction to which it is subject, or any event happens in such jurisdiction that has an effect equivalent or similar to any of the events in this Condition 16.2(c); and/or

(d) the other Party ceases to carry on all or a substantial part of its business.

16.3 Survitec may immediately terminate all or part of the Contract by giving notice in writing to the Customer Party if the Customer Party has undergone a Change of Control.

16.4 If Survitec becomes entitled to terminate the SSFA under Condition 16.1 above or an individual Contract under Conditions 16.2 or 16.3 above, then it may instead at its option immediately suspend or cancel, in whole or in part, further performance of the SSFA or the relevant Contract (as applicable) without terminating the whole of the SSFA or relevant Contract.

16.5 Termination of an individual Contract shall not affect the SSFA or any other current Contract.

**17 CONSEQUENCES OF TERMINATION**

17.1 The termination of the SSFA or any Contract will be without prejudice to the rights and remedies of either Party which may have accrued up to the date of termination.

17.2 Notwithstanding any suspension, cancellation or termination in accordance with the provisions of the SSFA, Condition 17.1, 17.2 or 17.3, Survitec shall be entitled

to submit invoices and the Customer Party shall pay Survitec for all Charges and other amounts payable pursuant to the SSFA or the relevant Contract, up to and including the date of suspension, cancellation or termination.

17.3 On expiry or termination of the SSFA and each Contract (for any reason whatsoever):

- (a) the Customer Party shall (at its sole cost, expense and risk) be responsible for arranging the return of, and shall return, the FRS Equipment to the relevant Vessel;
- (b) subject to Condition 17.3(c) each of the parties shall immediately return to the other Party (or, if the other Party so requests by notice in writing, destroy) all of the other party's property in its possession at the date of termination, including all of its Confidential Information, together with all copies of such Confidential Information, and shall make no further use of such Confidential Information;
- (c) if a Party is required by any law, regulation or government or regulatory body to retain any documents or materials which it would otherwise be required to return or destroy by Condition 17.2(c), it shall notify the other Party in writing of such retention, giving details of the documents or materials that it must retain; and
- (d) any provision that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

## 18 NOTICES

18.1 Unless specified otherwise in these Conditions, all notices between the parties sent under a Contract must be in writing and delivered by hand or sent by pre-paid first class post or prepaid international air postal service:

- (a) in the case of notices to Survitec: to the Head of Contracting at the registered office address stated in the SSFA (or if no SSFA exists, in the relevant Contract) or such other address as shall be notified to the Customer Party by Survitec in writing in accordance with this Condition 18; or
- (b) in the case of notices to the Customer Party: to the registered office address stated in the

Contract or such other address as shall be notified to Survitec by the Customer Party in writing in accordance with this Condition 18.

18.2 Where these Conditions permit notices to Survitec (or Survitec's agreement) to be by e-mail, such notices shall be sent to Survitec at [contractnotification@survitecgroup.com](mailto:contractnotification@survitecgroup.com) or such other e-mail address as Survitec shall notify to the Customer Party from time to time by e-mail. Where the Conditions permits Survitec giving notice to the Customer Party by e-mail this may be sent from the e-mail account of any authorised person and shall be sent to the Customer Party at the e-mail address stated in the Contract or such other e-mail address as the Customer Party may notify Survitec from time to time.

18.3 Notices shall be deemed to have been received:

- (a) if sent by pre-paid first class post domestic delivery service, two (2) Business Days after posting;
- (b) if sent by pre-paid international air postal service, five (5) Business Days after posting;
- (c) if delivered by hand, on the day of delivery provided delivery is between 9.00am and 5.00pm on a Business Day and in all other circumstances the first Business Day after delivery; and
- (d) where permitted by e-mail, at the time the e mail is sent, provided this is between 9.00am and 5.00pm on a Working Day and in all other circumstances at 9.00am on the first Working Day after the e mail is sent.

18.4 To prove service of any notice delivered by:

- (a) Hand or sent by prepaid first class post or prepaid international air postal service it shall be sufficient to show that the same was properly addressed and delivered in the manner set out in this Condition 18;
- (b) by e-mail it shall be sufficient to show that the same was despatched in a legible and complete form to the correct e-mail address without any error message.

## 19 COMPLIANCE

19.1 Anti-Bribery

Each Party shall:

- (a) comply with all applicable laws, relating to anti-bribery and anti-corruption including but not limited to the US Foreign Corrupt Practices Act 1977 and the UK Bribery Act 2010;
  - (b) not engage in any activity, practice or conduct which would constitute an offence under such Acts set out in Condition 19.1(a) or any other applicable anti-corruption legislation; and
  - (c) have, maintain in place and enforce, throughout the term of the Agreement, its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with any anti-bribery legislation.
- 19.2 Modern Slavery
- Each Party shall comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015 and will not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK.
- 19.3 Tax
- The Parties represent and warrant that they shall comply with all applicable taxation laws, and shall not commit an offence of cheating the public revenue or an offence consisting of being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of a tax by itself or any other person.
- 19.4 Either Party may terminate the Agreement immediately upon written notice to the other Party where it determines in good faith that the other Party has breached this Condition 19, and each Party shall indemnify the other Party from all damages, penalties, fines and/or costs of any kind arising from, or relating to, any breach of this Condition 19.
- 20 CONFIDENTIALITY**
- 20.1 Subject to Condition 20.2, Survitec and the Customer (and each Customer Party) agree to keep all Confidential Information confidential, not to use it for any purpose (other than in the context of the Services) and not to disclose it without the prior written consent of the other Party to any third party, unless:
- (a) the information was public knowledge at the time of the disclosure;
  - (b) the information becomes public knowledge other than by breach of the confidentiality requirements set out in these Conditions;
  - (c) the information subsequently comes lawfully into its possession from a third party; or
  - (d) such disclosure is required pursuant to any mandatory laws or regulations to which the disclosing Party is subject.
- 20.2 Each Party shall be entitled to disclose Confidential Information to its directors, shareholders, officers, employees, advisers and consultants having a need to know the same. Survitec may disclose the Confidential Information to potential assignees or transferees and may disclose Confidential Information for the purposes of performing the Services (including disclosing information to any sub-contractors or representatives of Survitec).
- 20.3 Neither Survitec nor the Customer (including any Customer Party) shall make any announcement, statement or press release concerning the SSFA, these Conditions or any Contract without the prior written consent of the other Party.
- 21 GENERAL**
- 21.1 Any Intellectual Property created by Survitec in the course of the performance of the SSFA or any Contract or otherwise in the provision of the Services shall remain Survitec's property. Nothing in the SSFA or any Contract shall be deemed to have given the Customer or any Customer Party a licence or any other right to use any of the Intellectual Property of Survitec.
- 21.2 The SSFA and each Contract is entered into in the English language and all amendments to the SSFA and each Contract, all correspondence concerning or relating to the SSFA and each Contract and all notices given and all documentation to be delivered by either Party to the other under the SSFA or these Conditions shall be in writing in the English language or shall be accompanied by an English translation prepared by such person or body as Survitec shall have approved in advance.
- 21.3 Nothing in the SSFA or any Contract shall create, or be deemed to create a partnership or joint venture or relationship of employer and employee or principal and agent between the parties.

- 21.4 The rights and remedies of either Party in respect of the SSFA or any Contract shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time granted by such Party to the other nor by any failure of, or delay in ascertaining or exercising any such rights or remedies. The waiver by either Party of any breach of the SSFA or any Contract shall not prevent the subsequent enforcement of that provision and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.
- 21.5 If at any time any part of the SSFA or any part of a Contract is held to be or becomes void or otherwise unenforceable for any reason under any Applicable Law, the same shall be deemed omitted from the SSFA or the Contract and the validity and/or enforceability of the remaining provisions of the SSFA or the Contract shall not in any way be affected or impaired as a result of that omission.
- 21.6 The SSFA, each Contract and these Conditions sets out the entire agreement and understanding between Survitec and the Customer (or the Customer Party, as applicable) in relation to their subject matter and supersede and replace any prior arrangements, understanding, written or oral agreements between Survitec and the Customer (or the Customer Party, as applicable) in relation to such subject matter. The parties acknowledge that the SSFA and each Contract have not been entered into wholly or partly in reliance upon, nor has a Party been given, any warranty, statement, promise or representation by the other Party or on its behalf other than as expressly stated in the SSFA or the relevant Contract and neither the Customer (or the Customer Party, as applicable) nor Survitec shall have any liability to the other Party for any pre-contractual statement or representation that is deemed to be a misrepresentation of the terms of the SSFA or the relevant Contract. Nothing in this Condition 21.6 will exclude any liability in respect of misrepresentations made fraudulently.
- 21.7 Save as expressly provided in the SSFA or these Conditions, no amendment or variation to the SSFA or any Contract shall be effective unless it is in writing, specifically refers to the SSFA or the relevant Contract and is signed by a duly authorised representative of each of the parties.
- 21.8 The Customer Party shall comply at all times with the Data Protection Act 2018 and the General Data Protection Regulation (EU) 2016/679 (or analogous legislation in other jurisdictions) and shall ensure that it has all appropriate rights and consents to pass personal data to Survitec for Survitec to

process in accordance with the terms of the SSFA, each Contract and these Conditions.

- 21.9 The express provisions of the SSFA, the Contract and these Conditions are in place of all warranties, representations, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise (including but not limited to implied undertakings of satisfactory quality, conformity with description and reasonable fitness for purpose), all of which are hereby excluded by Survitec to the maximum extent permitted by mandatory law.

## **22 LAW AND JURISDICTION**

- 22.1 The SSFA, the Contract, these Conditions and any issues, disputes or claims arising out of or in connection with any of them (whether contractual or non-contractual in nature such as claims in tort, from breach of statute or regulation or otherwise) shall be governed by and be construed in accordance with English law.
- 22.2 All disputes or claims arising out of or in connection with the SSFA, each Contract and these Conditions shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with such rules. Such arbitration shall take place in the English language in London, UK. The seat of arbitration shall be in England.

END

