

BALMORAL COMTEC LTD

BALMORAL COMTEC LIMITED TERMS AND CONDITIONS FOR TESTING (General)

1. DEFINITIONS

AFFILIATES of a PARTY means those corporations, companies, and other legal entities which are, directly or indirectly, controlled by, controlling, or under common control with such PARTY. The term "control" means the power of a PERSON to secure that the affairs of an entity are conducted in accordance with the wishes of that PERSON either (a) by means of the holding of shares, or the possession of voting power, in or in relation to that or any other entity; or (b) by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating that entity; and "controlled by" and "under common control with" are to be interpreted accordingly.

BALMORAL means Balmoral Comtec Limited, registered in Scotland under the number SC301819 and with its registered address at Balmoral Park, Loirston, Aberdeen, United Kingdom, AB12 3GY.

CLIENT means the PERSON that wishes BALMORAL to carry out TESTING.

CONDITIONS means the terms and conditions set out in this document.

CONTRACT means the CONTRACT between BALMORAL and CLIENT for the TESTING, comprising a PURCHASE ORDER from CLIENT and accepted by BALMORAL IN WRITING, that describes scope and timing of the TESTING to be performed, refers to or contains the applicable SPECIFICATIONS and any SPECIAL CONDITIONS, and which, however made or communicated, is deemed made subject to these CONDITIONS.

PARTY means either BALMORAL or CLIENT, and **PARTIES** means both of them.

PERSON means a natural or legal person, including a corporate or unincorporated body (whether or not having a separate legal personality).

PRICE means the price for the TESTING, plus any applicable VAT as stated in the CONTRACT.

PURCHASE ORDER means a document that CLIENT issues to BALMORAL to accept a quotation from BALMORAL for the performance of TESTING, however that document is entitled.

SPECIAL CONDITIONS means any special conditions set out, or referred to, in BALMORAL's acceptance of the PURCHASE ORDER which are to apply to the CONTRACT (in addition to the CONDITIONS).

SPECIFICATIONS means those specifications, whether created by BALMORAL or CLIENT, in accordance with which TESTING is to be performed and which are incorporated into the CONTRACT.

TEST CENTRE means the testing facility located at BALMORAL's premises at Balmoral Park, Loirston, Aberdeen, United Kingdom, AB12 3GY, described on the following BALMORAL web page: [Balmoral Subsea Test Centre \(balmoraloffshore.com\)](http://balmoraloffshore.com).

TESTING means BALMORAL's testing of the TEST SUBJECTS at the TEST CENTRE in accordance with the CONTRACT.

TEST SUBJECTS means the applicable equipment, materials, or other items of CLIENT to be tested by BALMORAL.

WRITTEN or IN WRITING means in the form of a written, printed, or electronically-made document that creates a permanent record, including emails, but only when (i) the email is transmitted containing a request for receipt to be acknowledged; and (ii) such acknowledgment of receipt is duly provided.

2. CONDITIONS APPLICABLE

- 2.1. These CONDITIONS apply to all CONTRACTS for the performance by BALMORAL of TESTING for CLIENT, to the exclusion of all other terms and conditions whatsoever, particularly any terms or conditions which CLIENT may seek or purport to apply in any PURCHASE ORDER or other document. Any such CLIENT-proposed terms and conditions will be of no force and effect.
- 2.2. Each PURCHASE ORDER constitutes an offer by CLIENT to purchase TESTING pursuant to these CONDITIONS. No contract shall exist between the PARTIES until BALMORAL has issued a WRITTEN acceptance of the PURCHASE ORDER.
- 2.3. CLIENT's delivery of TEST SUBJECTS to the TEST CENTRE or BALMORAL's collection of TEST SUBJECTS to bring them to the TEST CENTRE is deemed conclusive evidence of CLIENT's acceptance of these CONDITIONS.
- 2.4. A quotation by BALMORAL for TESTING does not constitute an offer. A quotation by BALMORAL for TESTING will only be valid for 14 (fourteen) days from its date of issue.

- 2.5. Any purported variation to these CONDITIONS will not be applicable unless agreed IN WRITING by a duly authorised representative of BALMORAL.
- 2.6. For the avoidance of doubt, no employee or agent of BALMORAL has authority to agree to any oral variation to the CONDITIONS.

3. TRANSPORTATION OF TEST SUBJECTS

- 3.1. Unless the CONTRACT expressly provides otherwise, CLIENT shall, at its own cost, (i) deliver all TEST SUBJECTS to the TEST CENTRE for TESTING; and (ii) promptly collect the TEST SUBJECTS on completion of TESTING. BALMORAL shall, at its own cost, provide handling equipment for offloading TEST SUBJECTS from and loading them onto the CLIENT-provided transportation.
- 3.2. If the CONTRACT expressly so provides, BALMORAL will arrange transportation of the TEST SUBJECTS to and from the TEST CENTRE. In such event: (i) unless such transportation is expressly stated to be included in the PRICE, CLIENT shall reimburse the actual cost of the BALMORAL-arranged transportation; and (ii) BALMORAL will be deemed to be acting as CLIENT's agent for the sole purpose of arranging such transportation on CLIENT's behalf with an independent transportation provider.

4. PRICE AND PAYMENT

- 4.1. As provided in Clause 2.4, all prices and timings quoted by BALMORAL remain fixed for 14 (fourteen) days or such other period agreed by BALMORAL in writing. Thereafter they will be subject to revision at BALMORAL's option.
- 4.2. In the event of any delay on the part of CLIENT which prevents BALMORAL from performing the TESTING as arranged, (i) BALMORAL is entitled to reschedule performance of the TESTING based on first availability of the TEST CENTRE without rescheduling of commitments to BALMORAL's other clients; and (ii) CLIENT shall be liable for any extra costs incurred by BALMORAL as a result of the delay.
- 4.3. BALMORAL may invoice CLIENT for the PRICE and any transportation charges, on or at any time after the TESTING is (i) completed or (ii) curtailed without imminent prospect of resumption. If TESTING will continue for more than 14 (fourteen) days, unless the CONTRACT expressly stipulates otherwise, BALMORAL may invoice CLIENT separately for TESTING performed within each successive period of 14 (fourteen) days.
- 4.4. PURCHASER shall pay each BALMORAL invoice in full within 30 (thirty) days from the date of receipt thereof. CLIENT's timely payment of BALMORAL's invoices is of the essence.
- 4.5. In the event of CLIENT's failure to make payment as specified, BALMORAL shall take such action as it considers necessary to recover the PRICE and any transportation charges, together with interest at a rate equal to Bank of England base rate plus 600 basis points per annum, which shall be payable on the total sum due as from the due date for payment.
- 4.6. Nothing in these CONDITIONS prejudices in any way the remedies, whether statutory, contractual, or at common law, exercisable by BALMORAL with respect to non-payment of any amounts due to it by CLIENT.

5. RISK AND INDEMNITIES

- 5.1. BALMORAL shall indemnify and hold harmless CLIENT from and against any loss of or damage to the TEST CENTRE, except and then to the extent the loss or damage is caused by TEST SUBJECTS (i) failing during TESTING performed in accordance with the SPECIFICATIONS; or (ii) that are controlled by CLIENT during TESTING. Where CLIENT is liable for damage to the TEST CENTRE pursuant to the foregoing exceptions, CLIENT shall be liable for all the substantiated actual costs of remedying such damage, whether by repair or replacement. BALMORAL shall indemnify and hold harmless CLIENT from and against any claims in respect of personal injury (including ill health and death) suffered by any employees (including agency and contract personnel) of BALMORAL in relation to TESTING.
- 5.2. CLIENT has risk in the TEST SUBJECTS and shall indemnify and hold harmless BALMORAL from and against any loss of or damage to the TEST SUBJECTS, unless the loss or damage is caused by the wilful misconduct of BALMORAL. CLIENT shall also indemnify and hold harmless BALMORAL from and against any claims in respect of personal injury (including ill health and death) suffered by any employees (including agency and contract personnel) of CLIENT or of CLIENT's AFFILIATES or of CLIENT's contractors in relation to TESTING.
- 5.3. The PARTIES shall have and maintain insurance to support the foregoing indemnities. The terms of BALMORAL's insurance shall include a waiver of subrogation in favour of CLIENT to the extent of liability assumed by BALMORAL under these CONDITIONS; and the terms of CLIENT's insurance shall include a waiver of subrogation in favour of BALMORAL to the extent of liability assumed by CLIENT under these CONDITIONS.

5.4.

6. WARRANTIES AND LIABILITY

- 6.1. BALMORAL shall perform TESTING with reasonable skill and care and to a reasonable standard in accordance with recognised industry standards and codes of practice.
- 6.2. CLIENT warrants that TEST SUBJECTS are suitable for TESTING. CLIENT shall be liable to BALMORAL for the PRICE if TEST SUBJECTS are found not to be in compliance with this warranty before or during TESTING.
- 6.3. All terms, whether made expressly or implied or whether made by BALMORAL or its employees (including agency and contract personnel) or agents relating to the quality or fitness for purpose (or both) of the TEST FACILITY are expressly excluded to the fullest extent permitted by law.
- 6.4. Without prejudice to the generality of Clause 6.3, in the event of BALMORAL (i) breaching the CONTRACT; or (ii) committing tort, including by way of negligence of its employees (including agency and contract personnel), subcontractors, or agents; BALMORAL will have no greater liability to CLIENT than is provided by Clause 12.

7. SEVERABILITY Should any one or more of the provisions of the CONTRACT be found to be invalid or otherwise unenforceable, the validity and enforceability of all other provisions will be unimpaired and continue in full force and effect.

8. THIRD PARTY RIGHTS The provisions of the Contracts (Rights of Third Parties) Act 1999 do not apply to the CONTRACT and a person who is not a PARTY has no right under that Act to enforce any term of the CONTRACT.

9. FORCE MAJEURE BALMORAL will not be liable to CLIENT for any loss or damage caused by delay in the performance or non-performance of any of BALMORAL's obligations under the CONTRACT when the delay or non-performance is occasioned by any cause whatsoever that is beyond BALMORAL's control, including but not limited to an Act of God, war (whether declared or not), civil disturbance, governmental restrictions or prohibitions or enactments of any kind, national or local or industry-wide strike or lock-out or trade dispute, breakdown of machinery, fire or flood, or loss of premises. Should any such event occur, BALMORAL may cancel or suspend the CONTRACT without incurring any liability to CLIENT for any loss or damage thereby occasioned.

10. WAIVER Any failure by either PARTY to exercise any rights under these CONDITIONS does not constitute a waiver or preclude the subsequent exercise of such rights. Any purported waiver by a PARTY of rights under these CONDITIONS will not be valid unless set out in writing and signed on behalf of a PARTY by its duly authorised representative.

11. JURISDICTION The CONTRACT is governed by and to be construed in accordance with English law, and the courts of England and Wales have non-exclusive jurisdiction for resolution of any disputes that the PARTIES are unable to resolve between themselves.

12. LIMITATION OF LIABILITY Notwithstanding anything to the contrary in the CONTRACT, BALMORAL's maximum liability to CLIENT arising out of or in connection with the CONTRACT, including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution, or otherwise, is limited to an amount equal to the PRICE (excluding VAT). Neither PARTY shall be liable to the other for the following types of losses: loss of profits; loss of sales or business; loss of agreements or contracts; loss of anticipated savings; loss of use or corruption of software, data, or information; loss of or damage to goodwill; or indirect or consequential loss. Nothing herein limits any liability which cannot legally be limited.