

Normandie Hydroliennes Purchase Order and Terms and Conditions

1. Definitions

1.1 Where the context permits, in this Purchase Order:

(a) **“Goods and Services”** means depending on whether the item or service was ordered, any or some of the following:

(i) the products, materials, parts, components and technical data supplied pursuant to this Order and

(ii) any services supplied by the Supplier pursuant to this Order.

(b) **“Order”** means that this purchase order including these terms and conditions.

(c) **“Normandie”** means Normandie Hydroliennes

(d) **“Supplier”** means the party providing the Goods and Services including a tenderer to and contractor or sub-contractor to Normandie as applicable.

(e) **“Specifications”** means all the requirements as referred to in the “description” column in this Purchase Order and as provided by Normandie to the Supplier at any time in connection with the Goods and Services.

2. The Terms and Conditions

2.1 This Order including these terms and conditions, the Specifications and associated drawings attached to it (if any) and any additional terms and conditions incorporated into and attached to it constitute the sole and entire agreement between Normandie and the Supplier. The Supplier’s quotation is incorporated into and made part of this Order only to the extent of specifying the nature and description of the Goods and Services and then only to the extent that the items are consistent with the Order. No other terms or conditions will be binding on Normandie unless accepted in writing by Normandie.

2.2 Unless Normandie receives, in writing, notification to the contrary, receipt of this Order constitutes the Supplier’s acceptance of the Order. The Supplier’s notification to the contrary must be received by Normandie within 3 working days of this Order being received by the Supplier.

3. Delays

3.1 If the Supplier is aware or has reason to believe that the delivery of the Goods and Services will be in any way delayed, the Supplier must immediately notify Normandie in writing and in the notice must set out the reasons for the delay and the anticipated delivery date. The provision of notice under this clause including the identification of a new delivery date, does not in any way constitute an acceptance or agreement by Normandie to an extended delivery date. Normandie shall acknowledge acceptance or otherwise of this notice in writing within 3 working days of receipt of the notice of delay from the Supplier.

3.2 The Supplier will not be liable for delays in delivery or failure to manufacture or deliver due to causes not reasonably foreseeable which are beyond its control, such as Acts of God, Acts of Civil or Military Authorities, Government Priorities, Fires, Strikes of a major industrial nature and not limited to the Supplier's or its Sub-Contractors works, Floods, Epidemics, War or Riot. In the event of such delay, the delivery date may be extended (by mutual agreement between Normandie and the Supplier) for the period equal to the time actually lost by reason of the delay.

3.3 If the Supplier's performance of any of its obligations in respect of the provision of Goods and Services is prevented or delayed by an omission by Normandie or failure by Normandie to perform a specific obligation under the Order, such as the provision of information and materials, (hereinafter "**Default**"):

3.3 (1) the Supplier shall notify Normandie immediately in writing of the consequences of the delays on the fulfilment of the Order and in particular the implications on the delivery dates. The Supplier shall clearly state in the notification a reasonable timeframe within which Normandie is to rectify their delays before the Supplier, without limiting its other rights and remedies, has a right:

3.3(1)(a) to suspend performance of the provision of Goods and Services until Normandie remedies the Default;

3.3(1)(b) to rely on the Default to relieve it from the performance of any of its obligations as defined in the Order to the extent that the Default prevents or delays the Supplier's performance of any of its obligations under the Order; and

3.3 (2) the Supplier shall not be liable for any costs or losses sustained or incurred by Normandie arising directly or indirectly from the Default;

3.3 (3) Normandie shall reimburse the Supplier for any reasonable losses sustained or incurred by the Supplier arising directly or indirectly from the Default following mutual agreement to a written notification that clearly details the fair and reasonable financial consequences of the Default on the Supplier.

3.4 All delays must be notified in writing.

4. Delivery, risk and title

No clauses

5. Inspection by Normandie

No clauses

6. Changes to the Goods and Services/Order

Normandie is not obliged to accept any Goods and Services delivered to it which do not fully comply with the Specifications. Normandie will not accept any alterations or amendments to the Goods and Services unless a written amendment order is signed by Normandie this can include e-mail correspondence or meeting minutes agreed by both parties. Normandie does not undertake to accept delivery of or make any payments at a date earlier than that required except by prior arrangement, or for any quantity in excess of that shown in this Order.

7. Intellectual Property, Copyright and Confidentiality

- 7.1 The copyright in and ownership of any documents made available by Normandie to the Supplier including the Specifications for the purpose of this Order is and always remains with Normandie. No part may be reproduced by the Supplier by any process without prior written permission of Normandie. Drawings and documents supplied to Normandie by the Supplier as part of the supply of the Services become the property of Normandie upon payment of all fees and expenses due under the contract provided that the Supplier shall not be liable for any use of the drawings or documents other than that for which they were prepared.
- 7.2 No disclosures, description or other communication of any sort will be made by the Supplier to any third party of the fact of Normandie's purchase of the Goods and Services or the details and characteristics of the purchase without Normandie's prior consent in writing. Anything furnished by Normandie to the Supplier pursuant to this Order including but limited to samples, drawings, calculations, documents, patterns and materials will remain the property of Normandie and must be insured by the Supplier against all reasonable risks and losses and must be returned to Normandie on completion of the work or upon demand by Normandie.
- 7.3 The Supplier must not copy, reproduce, publish or disclose any information supplied to the Supplier by Normandie for any purpose other than to perform the Supplier's obligations under this Order or unless Normandie provides its prior written consent.
- 7.4 All background IP shall remain the property of its owner.
- 7.5 The Supplier grants a royalty free licence to Normandie to use the background IP incorporated into Specifications.
- 7.6 All foreground IP generated during the execution of the project shall be the property of Normandie.

8. Documentation to be supplied by the Supplier

The Supplier shall supply all necessary technical documentation, descriptive literature, manuals, calculations, test certificates, installation, operating and maintenance instructions

defined as deliverables in the Order in electronic format. All drawings and documentation must be in the English language.

9. Indemnities by the Supplier and Normandie

- 9.1 The Supplier must indemnify Normandie against any action, claim or demand, costs or expenses arising from or incurred by reason of any infringement or alleged infringement of letters of patent, registered design, trade mark or name, copyright or other protected right in respect of the Goods and Services.
- 9.2 If these terms and conditions require the Supplier to erect or install the Goods and Services the Supplier must indemnify Normandie and hold Normandie harmless against all claims and expenses arising out of or in connection with such installation or erection caused by the negligence or acts of the Supplier or its agents, suppliers and contractors.
- 9.3 The Supplier must indemnify and keep fully and effectually indemnified Normandie, its officers, employees, consultants and contractors agents from and against any or any alleged liabilities, losses, damages, expenses, costs, actions, proceedings, claims and demands, including any consequential, indirect or economic loss such as loss of profits, revenue, business or contracts, whether foreseeable or not, suffered by any or all of them arising out of or as consequence of any of the following:
- a) any matter or thing relating to a breach by the Supplier of this Agreement including any breach of the warranties set out in this clause; and
 - b) any breach of a warranty which has operation by reason of law or by statute where expressed or implied including the *Trade Practices Act 1974*.

10. Warranties & Liabilities

10.1 The Supplier warrants for a period of two years from completion of the Order that the Services:

- (a) are to the best of its knowledge free from defects in design, and have been designed, compiled and delivered using all necessary and prudent due skill, care and judgment;
- (b) have been produced, sold, delivered and furnished in strict compliance with all applicable laws and regulations to which the Services are subject. The Supplier must execute and deliver with the Services such documents as may be required to effect or evidence compliance with the warranties set out in this clause (b) and the above clause (a).

All laws and regulations required to be incorporated in agreements of this nature are deemed to be incorporated including any warranties which operate by reason of any statute or law.

10.2 The total liability of the Supplier under or in connection with the Services, whether in contract or in tort or in negligence or for breach of statutory duty or otherwise, as far as is permitted by law, shall not exceed one million Pounds Stirling.

10.3 The Supplier's liability under this Order shall be limited to that proportion of any loss suffered by Normandie which it would be just and equitable to require the Supplier to pay having regard to the extent of the Supplier's responsibility for the same and on the basis that all other parties responsible for all or part of that loss shall be deemed to have provided contractual undertakings on terms no less onerous than the terms undertaken by the Supplier on the Supplier's appointment.

11. Normandie's authority to make changes and cancel the Order

11.1 Normandie may by written notice to the Supplier

- (a) make any changes, including additions to or deletions from the quantities originally ordered, or the Specifications or drawings and/ or amend the delivery date set out in this Order; and/or
- (b) terminate this agreement as to all or any portion of the Goods and Services not supplied

to which the Supplier shall respond with any revised pricing and delivery schedules to these changes within a period of 5 working days.

11.2 In cases of cancellation the following charges shall apply:

11.2 (a) the total costs of the work produced up to the date of cancellation

11.2 (b) the total estimated gross profit that would have been received had the Goods or Services not been terminated.

11.3 No such termination relieves Normandie or the Supplier of any of their obligations as to any of the Goods and Services delivered under any Order which has not been cancelled.

12. Assignment

12.1 Any assignment of the Order by the Supplier or any rights set out in this Order in any manner, by operation of law or otherwise is void, without prior written consent of Normandie.

13. Waiver By Normandie

13.1 Failure of Normandie to insist on strict performance of any of these terms and conditions will not be deemed a waiver of any rights or remedies that Normandie has and will not be deemed a waiver of any subsequent default of these terms and conditions. The shipping or receiving of any Goods and Services under this Order will not be deemed a waiver of any rights or any prior failure of the Supplier to comply with any provision of this Order.

14. Taxes & Price

14.1 The price specified in the Order, unless otherwise expressly stated, includes all taxes, duties and packing freight and handling charges of any such kind which either party is required to pay with respect to the sale of the Goods and Services.

15. Law

15.1 These terms and conditions and Order shall be governed by the laws of France.

16. Payment to the Supplier

16.1 The Suppliers charges shall be payable by Normandie without prejudice to rights against Normandie or any other person and as defined in the Purchase Order.

16.2 Normandie shall pay amounts due within thirty (30) days of receipt of a valid invoice from the Supplier.

16.3 In case of late payment the Supplier is entitled to charge interest at 4% per annum over the base rate of Barclays Bank Plc, apportioned on a daily basis.

16.4 Normandie shall pay all amounts due under the Order in full without any deduction or withholding except as required by law and Normandie shall not be entitled to assert any credit, set-off or counter-claim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by Normandie against any amount payable by the Supplier to Normandie.

16.5 If Normandie defaults on payments in the event of bankruptcy or insolvency of Normandie, or in the event that any proceeding is brought by or against Normandie under the bankruptcy or insolvency laws then the Supplier, without limiting its other rights or remedies, has a right to cease its obligations under the Order until the payment schedule as defined in the Purchase Order is fulfilled or is renegotiated by mutual agreement with Normandie or an administrator. During this time period all delivery dates are void. Should no agreement be reached within a reasonable time scale the Supplier has the right to cancel the Order and any sums owed shall be paid in full.

17. Exclusivity

17.1 During the execution of the Order the Supplier shall not provide any technical service to any other company in the marine tidal device renewable energy sector without the written consent of Normandie. This restriction does not include work relating to boats that service this sector.

18. Terrorism

18.1 The Supplier is not responsible for designing or advising on or otherwise taking measures to prevent or mitigate the effect of Terrorism or any action that may be taken in controlling preventing suppressing or in any way relating to Terrorism and the Supplier shall have no liability whether in contract or in tort, in negligence, for breach of statutory duty or otherwise for any claim arising out of any consequence whatsoever resulting directly or indirectly from or in connection with Terrorism or any such action (regardless of any other contributory cause or event) save to the extent that the claim is

covered by professional indemnity insurance taken out by the Supplier and in force at the time that the claim or (if earlier) circumstances that may give rise to the claim is or are reported to the insurers in question. In this clause Terrorism shall mean any act or acts including but not limited to:

- a) the use or threat of force and/or violence, &/or
- b) harm or damage to life or to property (or the threat of such harm or damage) including but not limited to harm or damage by nuclear &/or chemical &/or biological &/or radiological means caused or occasioned by any person(s) or group(s) of persons or so claimed in whole or in part for political religious ideological or similar purposes.

19. Pollution

19.1 The Supplier is not responsible for advising or preventing or mitigating any loss or damage wholly or partly arising out of any pollution, contamination, fungus or any similar substance, and shall have no liability whether in contract or in tort, in negligence, for breach of statutory duty or otherwise for any claim for such loss or damage save to the extent that the claim is covered by professional indemnity insurance taken out by the Supplier and in force at the time that the claim or (if earlier) circumstances that may give rise to the claim is or are reported to the insurers in question.

20. Expenses

- 20.1 All foreseeable expenses shall be covered in the contract.
- 20.2 Any additional expenses due to changes in the scope of work of this contract shall be agreed in writing before being accepted by Normandie.

