

# TERMS & CONDITIONS



## PRICING QUALIFICATIONS

The rates are subject to the following:

- This proposal does not provide contingency for delays to operations nor attributable to, or outside the control, including but not limited to simultaneous operations, site access and egress, crane movements, other contractors etc. The operational day rate shall be applied for each day that equipment and personnel are subject to standby outside Subsea's controls.
- Any additional third-party costs incurred due to change in scope of work or project specific requirements will incur an additional handling and administration fee of cost plus 10%.
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- This proposal is strictly subject to vessel, equipment, and personnel availability.
- All other terms in accordance with Subsea's Standard Terms and Conditions.

## OWNER SUPPLIED ITEMS

This proposal is based on the following being supplied by the owner, but not limited to:

- Unrestricted access and egress to the worksite.
- Provision of permits and approvals associated with the works.
- Isolation of equipment where required to ensure safe diving operations.
- Provision of project/Client specific inductions and training if required.

## SPECIFIC TERMS OF QUOTATION

- Subsea's employees are all compliant with AS2299 and Queensland legislative requirements.
- At every operation, the personnel requirements shall be determined on the results of the risk assessment conducted as part of planning and organizing an operation.
- Our rates are based per day during normal working hours, 10hrs.
- Services provided shall be carried out to the best of Subsea's ability with strict adherence to safety and environmental requirements.
- All diving services undertaken are in accordance with AS/NZ 2299 – Occupational diving operations and Subsea's Dive Operations Manual.
- Prior to undertaken services, Subsea requires written direction from the Principal's Operations Manager or other authorized representative and/or written Purchase Order;
- Any operations will only be carried out when weather conditions permit a safe delivery of services.

## PAYMENT TERMS

- Upon acceptance of proposal, invoice will be issued.
- Payment Advice to be emailed prior to commencement of any dive operations unless alternative payment arrangement has been made with agent.
- Payment is required by electronic fund transfer to nominated bank account as follows:

Bank name: Commonwealth Bank of Australia  
BIC/SWIFT Code: CTBAAU2S  
BSB: 064 707  
Account Number: 1068 8635  
Account Name: Subsea Pty Ltd

# STANDARD TERMS & CONDITIONS



## 1. DEFINITIONS

In the Contract, except where the context otherwise requires:

**Client** refers to the party or parties engaging SUBSEA for the Works.

**Contract** means the agreement between the Client and SUBSEA comprising the contract (whether the contract is placed through a written contract form, purchase order or other acceptance of the quotation), these terms and conditions, any other documents included in the contract by reference and all other terms as agreed under the contract.

**Force Majeure** means an unforeseeable event or an event occurring beyond the control of a party, and without the fault or negligence of the party invoking force majeure and which such party is unable to prevent or provide against by the exercise of reasonable diligence, which directly causes a party to be unable to comply with all or a material part of its obligations under the Contract.

**Pricing Schedule** means the rates of payment for the Works, as stated in any document.

**SUBSEA** means Subsea Pty Ltd.

**Site** means any place which is required by SUBSEA for the Works and at which any part of the Works will be carried out.

**Works** means the supply of all goods and the carrying out of all work and services required under the Contract, including the goods, the supply of temporary materials and consumables and the provision of labour and hired equipment.

## 2. QUOTATION

- 2.1 Any quotation given by SUBSEA is subject to the provision of a more detailed scope of works and availability of personnel and equipment at the time of acceptance.
- 2.2 A quotation given by SUBSEA is open for acceptance for a period of thirty (30) days from the date of the quotation. Acceptance must be made in writing or by accepting the quotation produced in Xero by the Client within this time period. If the quotation is not accepted in writing within that period, the offer will lapse.
- 2.3 The quoted completion date for the services is based on the best estimates of SUBSEA at the time of quotation. SUBSEA will use its best endeavors but does not guarantee to complete the Works by this date.

## 3. APPLICATION OF RATES

- 3.1 A minimum charge of ten (10) hours per day will apply to SUBSEA personnel (depending on stated rates under the Pricing Schedule). Overtime rates per hour will apply where the personnel work in excess of ten (10) hours on any day.
- 3.2 The client must pay SUBSEA for its personnel's attendance at any site induction, project briefing or debriefing, and safety meeting or training at the personnel rates.
- 3.3 All equipment will be charged at a daily rate. One day is taken to be from 12 am one morning to 12 am the next morning or any part thereof. This does not apply to equipment supplied by SUBSEA's subcontractors.
- 3.4 All costs incurred as a result of delay due to weather, environment, industrial disputes, client operation or their contractors' operations or any other reason outside the control of SUBSEA, shall be paid by the Client.
- 3.5 Unless otherwise stated in the Pricing Schedule, the Works shall be subject to seas less than 1.5 meters and wind less than twenty (20) knots and otherwise at SUBSEA's supervisor's discretion if considered unsafe. However, it must be recognized that tides, winds and seas can combine to make works unsafe in conditions below these parameters.
- 3.6 Third Party item day rates apply door to door from point of mobilization and remain on hire until returned to point of mobilization. Rates are fixed unless otherwise stated in the Pricing Schedule.
- 3.7 Any time services are ordered and then cancelled, cancellations rates will apply (Please refer to Section 4)
- 3.8 SUBSEA has made no allowance for any additional costs that may be incurred due to changes in the scope of works. Additional costs incurred will be subject to cost plus 15%.



#### **4. CANCELLATION RATES:**

48hrs prior to the works	25%
24hrs prior to the works	50%
Same day cancellation	full rate applicable

#### **5. TERMS OF PAYMENT**

- 5.1 The terms of payment are strictly prior to any work being provided by SUBSEA or within 14 days of Invoice issued.
- 5.2 All prices are quoted in Australian currency and all payments must be made in Australian currency.
- 5.3 All prices are quoted exclusive of any applicable government taxes (including GST) and charges. The Client must pay all applicable government taxes (including GST) and charges incurred as a result of the Contract between the parties.
- 5.4 The Client shall pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the provision of the Works under this Contract.
- 5.5 If payment is not received by SUBSEA within 14 days following the due date SUBSEA will be entitled to charge interest at the rate of 10% per annum on the amount outstanding from and including the due date until payment is received.
- 5.6 After 21 days of invoice being unpaid, SUBSEA may at its discretion defer outstanding amounts to its legal team.

#### **6. PERSONNEL**

- 6.1 SUBSEA personnel do not have specialized engineering or other technical knowledge in fields other than diving. Decisions as to how equipment is to be assembled, inspected or dismantled and interpretations of instrument readings need to be made by a person competent in that field.
- 6.2 It is the Client's responsibility to supply any expert(s) (including engineers) to advise on any engineering aspects of the scope of works. A detailed methodology or scope of works and where applicable plans, work procedures and a competent and authorised Client representative must be available on Site for such work.
- 6.3 The dive supervisor has the final say to decline to put divers in the water or to remove divers from the water should they consider the work environment to be unsafe for the divers for any reason. Should the dive supervisor decline to put divers in the water or to remove divers from the water due to their assessment of the work environment being unsafe then personnel and equipment shall remain on operation rates until a safe environment is established, or the personnel and equipment are demobilised.
- 6.4 Should the dive supervisor be required to dive, a competent diver under the relevant legislative requirements will be appointed as a second dive supervisor and will be charged for at supervisor rates.
- 6.5 Need a clause for the skipper / master of the vessel as some of our projects include Crew Transfers, provisioning, safety vessel and escorting.

#### **7. SUBCONTRACTING**

SUBSEA may subcontract any part or all of the Works to be provided to the Client.

#### **8. ACCESS TO THE SITE(S)**

- 8.1 The Client must provide SUBSEA personnel and subcontractors continuous access to the Site(s) (and each of them) required for the provision of the Works.
- 8.2 SUBSEA may charge the Client standby rates for equipment and personnel at any time the Client does not provide continuous access to the Site(s).
- 8.3 All SUBSEA personnel and their subcontractors must have a site induction (as required) before commencing any work or visiting any Site. In particular, the Client must ensure that SUBSEA is adequately informed of any local environment or other hazards, onsite protection and occupational health and safety requirements in respect of the Site(s).



## **9. INTELLECTUAL PROPERTY AND CONFIDENTIALITY**

- 9.1 Existing intellectual property of SUBSEA, including but not limited to patents, trademarks and copyright that is used by SUBSEA in connection with the provision of the Works remains the property of SUBSEA. Nothing in the agreement between SUBSEA and the Client operates to grant the Client any rights to use SUBSEA's intellectual property, nor operates to transfer or license the intellectual property held by SUBSEA to the Client.
- 9.2 The Client and SUBSEA and their respective officers, employees, subcontracts and agents shall maintain full secrecy and confidentiality on all matters including but not limited to SUBSEA's intellectual property not in the public domain concerning or arising from the agreement between the parties or the tendering thereof at all times.

## **10. EXCLUSION OF GUARANTEES AND WARRANTIES**

To the extent allowed by law, SUBSEA excludes all guarantees, conditions and warranties in relation to the Works or the provision of any other goods or services.

## **11. INDEMNITIES AND LIABILITIES**

- 11.1 To the extent allowed by law, SUBSEA excludes all liability howsoever caused (including by the negligence of SUBSEA or its employees, agents or subcontractors) arising from or in connection with the Contract or Works or the provision of any other goods or services.
- 11.2 The Client will be responsible for, and must indemnify, defend and hold SUBSEA harmless from and against, all claims, losses, damages, costs (including legal costs), expenses and liabilities howsoever caused (including by the negligence of SUBSEA or its agents or subcontractors) arising from or in connection with the Contract or Works in respect of:
- 11.2.1 acts or omissions or negligence of the Client or its employees, agents or subcontractors;
  - 11.2.2 any default or breach by the Client of these terms & conditions;
  - 11.2.3 loss or damage to property of the Client whether owned, hired or otherwise provided by the Client; and
  - 11.2.4 personal injury including death or disease to any person engaged by the Client or its employees, agents or subcontractors.
- 11.3 Neither Party shall be liable to the other in respect of any loss of profits or indirect or consequential losses, including loss of production, loss of income, loss of revenue, loss of market or other similar economic loss whatsoever incurred arising from or in connection with the Contract or Works.
- 11.4 In the event the Australian Consumer Law (or any amending or similar consumer legislation) applies to the Contract or Works or any other goods or services provided by SUBSEA, or SUBSEA cannot exclude liability whether by these terms and conditions or otherwise, the liability of SUBSEA is limited to the lesser of the cost of supplying the Works or the goods or services again or to the payment of the cost of having the Works or goods or services supplied again or to the cost of having the Works or goods or services repaired or replaced.

## **12. INSURANCE**

- 12.1 SUBSEA will procure certain insurance policies that are:
- 12.1.1 required by law in the relevant state or jurisdiction in which it operates.
  - 12.1.2 designated to protect assets that may be owned or leased by SUBSEA.
- 12.2 Where the Client maintains insurance covering the Works or the Client's property for the benefit of SUBSEA, the Client agrees to have its insurer provide a waiver of the insurer's right of subrogation against SUBSEA.

## **13. FORCE MAJEURE**

- 13.1 A party seeking to invoke Force Majeure must:
- 13.1.1 immediately notify the other party of the Force Majeure event causing the non-performance.
  - 13.1.2 make every effort to remedy the cause of non-performance; and
  - 13.1.3 perform the entirety of its obligations as soon as the Force Majeure event has abated.
- 13.2 The other party is released from its contractual obligations until such time as the Force Majeure event has abated.
- 13.3 Except as specified in this Contract, neither SUBSEA nor the Client will be held to have defaulted on its contractual obligations to the extent that its performance has been hindered or prevented by force majeure.



## 14. TERMINATION

- 14.1 Any party may terminate the Contract immediately if:
- 14.1.1 The other party is in breach of a material term of the contract and the breach is not rectified within fourteen (14) days of the party giving written notice of the breach to the other party.
  - 14.1.2 The other party goes into liquidation, is placed under external administration or has receivers or administrators appointed to it, or
  - 14.1.3 There exists a period of Force Majeure affecting performance of the Contract for a period of fourteen (14) days or more.
- 14.2 Either party may terminate the agreement at any time upon giving the other party not less than thirty (30) days written notice.
- 14.3 In the event of cancellation of the Works after the Contract, the Client must pay to SUBSEA at the least all committed and incurred costs and expenses up to and inclusive of the date of cancellation by the Client plus ten percent (10%) of the Contract amount.

## 15. VARIATIONS

Any party will have the right at any time and from time to time during the Contract to request a contract variation. Both parties must agree the contract variation in writing before implementation.

## 16. DISPUTES

- 16.1 In the event of any dispute arising between the parties arising from the Contract or Works, the parties agree to pursue the following sequence of steps:
- 16.1.1 The parties will use their best endeavors to resolve the dispute amicably by discussion as between themselves within a reasonable time;
  - 16.1.2 Either party may issue a formal notice on the other Party describing the nature of the dispute and seeking a resolution by discussion within seven (7) days;
  - 16.1.3 If the dispute is not resolved during that period, either party may refer the dispute to mediation. The mediation is to be conducted within twenty-one (21) days (or within a time agreed by the parties) of the dispute being referred to mediation, with the mediator to be agreed to by the Parties or failing agreement to be nominated by the Queensland Law Society.

## 17. GOVERNING LAW

- 17.1 The Contract and these terms and conditions are governed by and construed in accordance with the law from time to time in the State of Queensland and the parties agree to submit to the exclusive jurisdiction of the courts of Queensland.

## 18. GENERAL

- 18.1 A written purchase order or confirmation of the Contract or Works is required from the Client prior to commencement of operations within no less than seven (7) working days of the project commencement date.
- 18.2 On acceptance of the Contract or the undertaking of the Works, these terms and conditions will be taken as accepted and approved by the Client and will prevail over all other terms and conditions.



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