

To: Amber Grid AB

Number: OPS/K/UTh/026  
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Subject: **Cover Letter**

After careful evaluation of the documents of negotiated procedure published by Amber Grid AB in the Central Portal of Public Procurement (procurement No. 413483), ROSEN Europe B.V. would like to discuss a number of issues with Amber Grid AB during the negotiation stage before a possible contract award to ROSEN can be accepted. Our proposal is based on the alternatives and comments provided below.

Please consider the following items and amend the Draft Contract respectively (alternative wording could be proposed by Amber Grid AB):

We would kindly ask you to amend the clause 2.8 of the Draft Contract as follows:

"2.8. The Customer shall be entitled to withhold the payment for the provided Services if the Contractor fails to eliminate the defects of the result created by the Services occurred due to the reasons attributable to Contractor."

CONTRACTOR cannot agree to transfer all ownership to result, due to the fact that such results can include new inventions, amendment of the existing IP rights, raw data etc. Therefore, we would kindly ask you to amend the clause 3.8 of the Draft Contract as follows:

"3.8. The ownership right to the Reports created by the Services shall pass to the Customer from the moment of final payment"

We would kindly ask you to set forth the clause 4.1.10 of the Draft Contract as follows:

"4.1.10. Where any of CONTRACTOR's equipment becomes lodged in the pipeline and for whatever reason, Customer will be responsible for the recovery of such equipment and all associated cost. Subject to the limitations of liability specified in this Contract, CONTRACTOR shall be liable for the direct costs associated with said recovery if the lodgment was caused by CONTRACTOR's sole negligence."

We would kindly ask you to delete the clause 4.2.25 from the Draft Contract.

We would kindly ask you to amend the clause 5.3 of the Draft Contract as follows:

"5.3. In the event of a failure to provide the insurance contract referred to in paragraph 5.1.1 hereof, the Customer shall be entitled: a) to enter into the insurance contract in the name of the Contractor by giving a 5 (five) working days' notice to the Contractor and deduct the incurred costs from the amounts payable to the Contractor, subject to limitation of Liability provided in the Contract."

We would kindly ask you to amend the clause 5.6 of the Draft Contract as follows:

"5.6. A failure to pay the insurance premiums by the Contractor and termination of the insurance contract referred to in paragraph 5.1.1 hereof or non-compliance of the insurance contract referred

to in paragraph 5.1.1 hereof with the terms and conditions of the Contract for the afore-mentioned reason or any other reasons shall constitute grounds for the Customer to unilaterally terminate the Contract by giving a 10 working days' notice to the Contractor if the Contractor fails to provide a new insurance contract with the same or not worse conditions than established herein within the afore-mentioned period of notice, retain any payments to the Contractor for the provided Services."

We would kindly ask you to amend the clause 7.2 of the Draft Contract as follows:

"7.2. The Contractor shall be liable for non-conformity of the Reports created by the provided Services which existed at the moment of transfer of the Services with the quality requirements within 6 months from the completion of the inspection tool run (warranty period)."

We would kindly ask you to amend the clause 7.5 of the Draft Contract as follows:

"7.5. The Contractor shall undertake to eliminate the defects and/or shortcomings of the result created by the Services identified during the warranty period at its own expense, unless such defects/shortcoming occurred due to the reasons not attributable to Contractor, within reasonable time, except for the cases where the Contractor proves that a longer period of time is necessary for elimination of the identified shortcomings and/or defects."

We would kindly ask you to set forth the clause 7.7 of the Draft Contract as follows:

"7.7. All Intellectual Property residing in any information, materials, products and equipment of any nature whatsoever supplied by one Party to the other under this Contract shall belong exclusively to and shall remain the property of the Party supplying the said Intellectual Property. Customer agrees that all Intellectual Property in all data, specifications, solutions, drawings, know-how, technical information, inventions and technologies developed, obtained, created, written, prepared or discovered by the Parties or by either Party as a result of the performance of the Contract shall reside solely in Contractor and Contractor shall have the exclusive right to protect, exploit and enforce its rights to those Intellectual Property Rights. The Parties agree that the transfer of information under this Contract shall not constitute a prior publication in terms of a potential patent application that Contractor may want to file, thereby not being prejudicial as to novelty."

We would kindly ask you to amend the clause 9.4 of the Draft Contract as follows:

"9.4. If the Contractor performs the obligations provided for herein in a non-timely manner, the Customer shall be entitled to start charging default interest. If the Contractor delays to provide the Services within the final time limit set forth in paragraph 3.1 hereof, the Contractor shall be obliged to pay to the Customer the default interest at the rate of 0.05 per cent upon the value of the not provided part of the Services for each week of delay, subject to limitation up to the maximum of 5% of the value of the not provided part of the Services."

We would kindly ask you to delete the clauses 9.5, 9.6 and 9.7 from the Draft Contract.

There are two clauses under no. 9.9. Please review the numbering.

We would kindly ask you to amend the following clause 9.9 (which should be 9.10) of the Draft Contract:

"The Parties shall agree that if the Contract is unilaterally terminated by the Customer due a material breach of this Contract committed by the Contractor or due to other circumstances falling within the responsibility of the Contractor, the Contractor shall pay to the Customer a fine equal to 10 (ten) per cent of the amount of the Price and indemnify against all losses not covered nu the fine provided for in this paragraph."

as follows:

"The Parties shall agree that if the Contract is unilaterally terminated by the Customer due a material breach of this Contract committed by the Contractor."

We would kindly ask you to amend the clause 9.19 of the Draft Contract as follows:

"9.19. Termination of the Contract shall release both Parties from performance of the Contract, but shall not prejudice the right to request for compensation of the Services performed by Contractor up until the date of termination."

We would kindly ask you to delete the clause 9.25 from the Draft Contract and replace it with the following article, which would be allocated as a separate article under the Contract:

**"Customer's Liability Property**

The Customer shall indemnify, defend and hold CONTRACTOR harmless from and against any and all claims, losses, costs, damages and expenses of every kind and nature including legal expenses with respect to loss of or damage to its respective real and personal property and / or that of its contractors, subcontractors or of its guests or agents or pipeline owner arising under or in connection with the undertaking of the Services and from any cause whatsoever except to the extent of any gross negligence or willful misconduct of CONTRACTOR.

**Third Party Damages**

The Customer shall indemnify, defend and hold CONTRACTOR harmless from and against any and all claims, losses, costs, damages and expenses of every kind and nature with respect to personal injury or death, or disease or loss of or damage to the property of any third party to the extent and in the proportion that such any injury, loss or damage is caused by the negligence of the Customer.

**CONTRACTOR's Liability Property**

CONTRACTOR shall indemnify, defend and hold Customer harmless from and against any and all claims, losses, costs, damages and expenses of every kind and nature including legal expenses with respect to loss of or damage to its respective real and personal property and / or that of its contractors, subcontractors or of its guests or agents arising under or in connection with the undertaking of the Services and from any cause whatsoever except to the extent of any gross negligence or willful misconduct of the Customer

**Third Party Damages**

CONTRACTOR shall indemnify, defend and hold Customer harmless from and against any and all claims, losses, costs, damages and expenses of every kind and nature with respect to personal injury or death, or disease or loss of or damage to the property of any third party to the extent and in the proportion that such any injury, loss or damage is caused by the negligence of Contractor. Neither Party will be liable for any indirect, special, incidental, accidental, or consequential damages suffered by the other Party. Indirect, special, incidental, or consequential damages as used herein will include, but not be limited to, loss of capital, loss of product, loss of profit, business interruption, loss of use of any system or other property, or any other indirect, special, incidental, accidental, or consequential damages, whether arising in contract, tort (including negligence and strict liability), warranty, statute, or otherwise.

Notwithstanding any other provision to the contrary, but to the extent permitted by applicable law, the total aggregate liability of Contractor for all claims of any kind, whether in contract, warranty, indemnity, tort (including negligence), strict liability, or otherwise, arising out of or in connection with the CONTRACT shall not exceed the Contract value and Customer shall defend, indemnify and hold SUPPLIER harmless against any claims, losses, costs, damages and expenses which exceed this amount."

Terms and Conditions for Diagnostic Solutions of the ROSEN Group are attached as well.

**ROSEN Europe B.V.**

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Area Manager Central Europe & CIS  
ROSEN Europe B.V.

# **TERMS AND CONDITIONS FOR DIAGNOSTIC SOLUTIONS OF THE ROSEN GROUP**

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In view of the technical nature of the inspection project, both parties agree and are aware that there are particularly difficult conditions. ROSEN as an experienced service provider cannot guarantee a successful completion as well as a successful feasibility. ROSEN will provide the complete know-how and existing technology to enable the project. Beyond that, ROSEN will not take over any warranties or defects liability.

Unless otherwise agreed upon, contracts with ROSEN shall be concluded subject to the following provisions. When placing an order, Company thereby accepts the following Terms and Conditions. Conflicted or deviated terms and conditions of the Company shall not be binding to ROSEN. In the event that the clauses and/or content of the Contract between Company and ROSEN conflict with these Terms and Conditions, the contractual provisions shall have preference over these General Terms and Conditions.

## **1 DEFINITIONS**

In the Contract Documents, the following words and expressions shall have the meanings hereby assigned to them, except where the context requires otherwise. All personal pronouns used herein and in the Contract Documents, whether used in the masculine, feminine, or neuter gender, will include all other genders; the singular will include the plural, and vice versa.

### **1.1 Amendments**

Means any permitted amendments signed by both Parties to any of the Contract Documents.

### **1.2 Authorized Representative**

Means the person, appointed by each party who shall be authorized to give orders and communicate all technical and operational decisions in relation to the Services.

### **1.3 Cleaning Tool**

Means the device that is driven through a Pipeline with the objective to clean the Pipeline.

### **1.4 Cleaning Run**

Means a passage of a cleaning and/or gauging tool through the Pipeline.

### **1.5 Company**

Means the company and/or organization, which has entered into a contract with ROSEN for the provision of inline pipeline inspection and associated works pursuant to these terms.

### **1.6 Contract**

Means the entire integrated Service Agreement between Company and ROSEN, as evidenced by the Contract Documents.

### **1.7 Contract Documents**

Means the Service Agreement, the Pipeline Questionnaire, the Scope of Services, the Terms and Conditions, the Tender and Tender Documents, the Purchase Order, the Appendices referred to in each of the documents, the Minutes of Meetings, if any, the Confidentiality Letter and any amendments executed after the effective date of the Agreement. In the event of any inconsistency between any of the Contract Documents, they shall take precedence in the following order:

- Service Agreement with its Appendices (Pipeline Questionnaire, Confidentiality Letter, etc.)
- Purchase Order
- Minutes of Meeting
- Tender Documents
- Terms and Conditions of ROSEN
- Request for a Tender

None of the documents abovementioned shall be used by the Company for any purpose other than this Agreement.

**1.8 Contract Price**

Means the amount due to ROSEN from Company stated in the commercial part of the

- (a) Tender Document and/or
- (b) Contract Documents.

**1.9 Day**

Means each working day as defined in the country where the Services shall be provided.

**1.10 Final Inspection Report**

Means the inspection report containing all relevant information about the pipeline inspection operation and the inspection results.

**1.11 Gauging Tool**

Means a utility tool that is permanently deformable by obstructions in the pipeline and thus, upon retrieval from the line, provides evidence of the worst-case obstruction in a given pipeline segment.

**1.12 Equipment**

Means all of ROSEN's property and equipment, including, without limitation, the Cleaning Tools, the Inspection Tools, the Inspection Equipment, Computers and Software, Sensors, Benchmarkers, Location Meters and Receivers, sub contracted equipment, whether leased, rented or otherwise under the control of ROSEN and all other auxiliary tools.

**1.13 Inspection Tool**

Means the device or vehicle, also known as an intelligent or smart Tool that uses a non-destructive testing technique to inspect the Pipeline from the inside.

**1.14 Intellectual Property Rights**

Means inventions, patents, or applications for a patent, design (registered or unregistered) utility models, rights to inventions, copyright and neighboring and related rights, moral rights, trademarks (registered or unregistered) and service marks, copyrights, name, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection or other right in respect of any information, process, work, material or method, which subsist or will subsist now or in the future in any part of the world.

**1.15 Party/Parties**

Means ROSEN and Company individually and collectively.

**1.16 Pipeline**

Means the pipeline and piping in respect to which ROSEN is to provide Services pursuant to the Contract.

**1.17 Pipeline Inspection**

Means the Survey Run and any related Services.

**1.18 Pipeline Questionnaire**

Means ROSEN's Questionnaire furnished to the Company and to be completed by the Company prior to commencement of the Survey of the Pipeline.

**1.19 Preliminary Inspection Report**

Means the provisional inspection report containing the significant and urgent information about the line condition. This report shows temporary results, whereby completeness and accuracy cannot be guaranteed.

**1.20 Preliminary Site Survey Report**

Means the site survey report which shall be provided after the run on site. Thereby potential data quality and inspection conditions shall be communicated directly.

**1.21 Reports**

Means the Final Inspection and/or Preliminary Inspection Report and/or any other reports in relation to the Services provided herein.

**1.22 ROSEN**

Means all members of the ROSEN Group and all ROSEN related Companies, its affiliates, successors and permitted assignees.

**1.23 Service**

Means the Survey Runs and other services specified in the Contract Documents.

**1.24 Site**

Means the premises and the location where the Survey is to be performed.

**1.25 Survey**

Means the work that ROSEN is to perform under the Contract.

**1.26 Survey Run**

Means the run of any of the Inspection Tool through the Pipeline.

**1.27 Tender or Tender Documents**

Means the technical and commercial proposal submitted by ROSEN to the Company for pipeline inspection services.

**1.28 Terms and Conditions**

Means these Terms and Conditions for Diagnostic Solutions of the ROSEN Group.

**1.29 Tool**

Means all appliances, devices, equipment, instruments, scrapers or things of whatsoever nature that are driven through a Pipeline for performing various internal activities (depending on the Tool type) including, but not limited to, separating fluids, cleaning or inspecting the Pipeline.

**1.30 Week**

Means a full calendar week.

**2 SURVEY CONDITIONS**

**2.1 Pipeline Cleaning**

Unless otherwise agreed, prior to commencement of the Survey it is mandatory for the Company to gauge and clean the Pipeline. For the performance of the gauging and cleaning process, it is recommended to use ROSEN's specialized tools. If the Company decides to use its own gauging tools, the Company has to obtain ROSEN's prior written approval that the Company's gauging equipment is suitable for the purpose of pipeline proving. Finally, the Company shall determine the cleaning method. In no case is ROSEN responsible for any direct or indirect damages caused by the cleaning of the Pipeline. ROSEN shall not

accept any liability for a failed run of a Cleaning and/or Gauging Tool or in the event that the Pipeline was not sufficiently clean for a Survey Run.

**2.2 Disposal of Debris**

The Company will be responsible for the disposal of all such debris and bear all related costs thereto.

**2.3 Launching and Trapping Facilities; Valves**

For any Cleaning Run or Survey Run, the Company shall provide proper launching and trapping facilities for the Cleaning, Gauging and Inspection Tools. The Company will ensure that, during the entire duration of all Cleaning Runs and Survey Runs, all valves in the respective Pipeline passage are open 100%.

**2.4 Handling of the Equipment**

ROSEN shall deliver the Equipment to the Company for all Cleaning Runs and Survey Runs and shall give general advice to the Company as to the proper handling of the Equipment. The Company will handle the Equipment in accordance with these general instructions furnished by ROSEN.

**2.5 Launch, Propelling and Recovery of Tool**

Company shall launch, propel and recover the Tools through and from the Pipeline in accordance with the velocity, pressure, temperature and other specifications provided by ROSEN. All decisions concerning the launching and receiving are to be made by the Company or Company's Authorized Representatives. The Company shall remain in complete control of the Pipeline at all times. ROSEN will never be or deemed to be in control of the Pipeline, or any other property belonging to the Company.

**2.6 Cleaning of Equipment between and after Survey Runs**

The Company will be responsible at its own costs for the proper cleaning of the Tools after a Cleaning Run or a Survey Run or between Cleaning Runs or Survey Runs in accordance with the general instructions given by ROSEN, including, without limitation, the removal of any hazardous waste or substances from the Tools.

Where the Tools cannot be cleaned to a degree acceptable to ROSEN, the Company is required to compensate ROSEN for all documented cleaning, repair and replacement costs incurred to remediate the Tool.

**2.7 Condition of Site**

Company shall be responsible for keeping the Site free and clean from all obstructions and debris. The Company shall comply with all applicable laws and regulations applicable to the Site. Upon completion of the Survey, the Company will be responsible for the removal of all debris and rubbish and the restoration of the Site to the Company's accepted condition.

**3 ROSEN'S SERVICES**

**3.1 ROSEN's Services**

ROSEN's Services shall consist of the Survey Runs and other services specified in the Contract Documents.

**3.2 Type of Inspection Tool to be used**

All Inspection Tools utilized in connection with the Survey shall comply with the types described in the Tender or in the Tender Documents or as specified in the Contract Documents.

**3.3 Preliminary Site Survey Report and Preliminary Inspection Reports**

After completion of each survey type, i.e. after completion of all scheduled Survey Runs, ROSEN shall submit a Preliminary Site Survey Report. Any preliminary information submitted on site may be provisional only and may be superseded by the Final Inspection Report. In cases where site confirmation digs are required immediately after provision of a Preliminary Inspection Report as specified by the Contract Documents, ROSEN shall provide dig verification sheets concerning the location and size of the defects to permit the Company to perform such digs. ROSEN shall not be responsible for the provision or acquisition of any permits, and/or other documentation required in order to carry out such site confirmation digs. Any

time taken by the Company to obtain such permits while ROSEN's personnel is on site is billable as standby/waiting time.

#### 3.4 **Final Inspection Report**

Upon completion of the Survey, ROSEN will deliver a Final Inspection Report to the Company's Authorized Representatives as specified by the Contract Documents. Any reports, records, evaluations and/or recommendations made by ROSEN concerning the condition of the Pipeline is the good-faith opinion of ROSEN only and shall not be construed as a warranty or guarantee, express or implied, of merchantability, quality, classification, or fitness for use. Company hereby waives any claim against ROSEN related to the completeness or accuracy of such reports, records, evaluations and recommendations of ROSEN and Company accepts full responsibility for utilization of same.

ROSEN'S EXPRESS WARRANTY STATED ABOVE SHALL BE EXCLUSIVE AND, OTHER THAN AS SET OUT IN SECTION 17 BELOW, THERE WILL BE NO OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED.

#### 3.5 **Inconclusive Results**

If the results of a Cleaning Run or a Survey Run are inconclusive or incomplete or incorrect or inadequate due to a malfunction of the Equipment or due to inadequate interpretation on ROSEN's part, or if ROSEN considers it is necessary to carry out an additional Cleaning Run or Survey Run to confirm the results from the previous Cleaning Runs or Survey Runs, which were incomplete or inconclusive due to a malfunction of the Equipment, ROSEN will not charge Company for such additional Cleaning Runs or Survey Runs. ROSEN will not be liable for any costs, charges or expenses, whether direct or indirect incurred by the Company or any other party as a result of or in connection with such additional Cleaning Run and/or Survey Run. If ROSEN achieves inconclusive or incomplete results due to Pipeline operational malfunction, e.g. the Survey was performed out of the agreed operational conditions and the Company decides to perform a re-run, the Company will bear the costs as specified in the Contract Price.

#### 3.6 **ROSEN's Property**

With the exception of the Reports, and unless specifically approved by ROSEN in writing in advance, none of the printouts, documents or other information provided by ROSEN to the Company will be communicated or furnished to a third party by the Company except as required by applicable law or regulation to be provided to relevant local authorities. In the case ROSEN supplies the Company with any software for data handling, this software will remain the sole property of ROSEN. The Company is only licensed to use this software for its own purposes in connection with the Contract. In this case the corresponding ROSEN software license agreement shall be applicable.

### 4 **EQUIPMENT**

#### 4.1 **Delivery of Equipment to Company**

ROSEN shall have the option to deliver ROSEN's Equipment to the Company's Site prior to commencement of the Survey as well as prior to the arrival of any of ROSEN's technicians or other personnel at the Site.

#### 4.2 **Customs Clearance of ROSEN's Equipment**

If the Contract Documents obligate the Company to clear ROSEN's Equipment through customs (either for importing the Equipment into the country where the Site is located or for re-exports), the Company shall accomplish this obligation promptly. In the case that the customs clearance of ROSEN's Equipment (either for import or re-export) takes longer than seven (7) days, commencing with the eighth (8th) day that ROSEN's Equipment is not cleared through customs, the Company shall be charged with the standby fees for the Equipment specified in the Contract Price for the remaining period up to and including the day on which customs clearance is achieved.

#### 4.3 **Storage of Equipment**

Except as otherwise agreed between the Parties, upon arrival of any of ROSEN's Equipment at the Site, the Company shall store the Equipment, at no cost to ROSEN, in a warehouse or store room ("Storage") and keep the Storage safe and secure, and protect the Equipment against sunlight, extreme temperatures and adverse weather conditions, and must be sufficiently secured to prevent tampering with ROSEN's Equipment and to prevent access by unauthorized persons. Upon the arrival of ROSEN's technician or any

other authorized personnel of ROSEN, the Company shall furnish to ROSEN unrestricted access to the Storage and the Equipment as required by ROSEN. The Storage will be available to ROSEN for the complete duration of the Survey. The Company will also be responsible for keeping ROSEN's Equipment safe and secure during the times of the Survey, including, without limitation, every time the Survey is suspended.

#### **4.4 Power Supply and Climate-Controlled Room**

Except as otherwise agreed, the Company shall provide sufficient power supply to run ROSEN's Equipment on the Site. In addition to a climate-controlled room, the Company has to provide either air conditioned or heated rooms, depending upon the season and location of the Site, for ROSEN's Equipment.

#### **4.5 Access to Equipment**

Only persons authorized by the Company or by ROSEN shall have access to workshops, the Storage rooms, and other places where ROSEN's Equipment is stored and operated in.

#### **4.6 Ownership of Equipment**

The entire ROSEN Equipment shall be and remain the sole property of ROSEN at all times and the Company agrees to keep ROSEN's Equipment free and clear from any and all liens, claims, attachments or encumbrances of any nature.

#### **4.7 Notice Requirement in case of accident**

In the event that ROSEN's Equipment is involved in any accident or occurrence resulting in injury to persons or damage to property or to the Equipment, Company shall immediately notify ROSEN in writing.

#### **4.8 Loss of Equipment in the Pipeline**

The Company hereby acknowledges and accepts certain risks involved in the performance of Cleaning Runs and Survey Runs including, without limitation, the lodging of a Cleaning Tool and/or an Inspection Tool in the Pipeline. If any of ROSEN's Equipment becomes lodged in the Pipeline, for any reason, the Company will bear all costs, charges and expenses associated with the recovery of such Equipment, and shall assist or take over with the retrieval in a prompt manner as the case may be.

#### **4.9 Maintenance and Repair of the Equipment**

ROSEN shall provide Equipment, which is fully maintained and/or repaired in accordance with applicable industry standards. The Company shall pay ROSEN for the replacement cost of all or part of ROSEN's Equipment that is not returned by the Company to ROSEN, including without limitation, Cleaning Tools, Inspection Tools, sensors, Benchmarkers, tool location transmitters and location receivers, including any Equipment which may become lodged in the Pipeline and become incapable of recovery.

### **5 SITE AND CONDITION OF PIPELINE**

#### **5.1 Condition of Pipeline**

ROSEN agrees to undertake the Survey pursuant to the terms of the Contract Documents and in reliance upon the information set out in the Pipeline Questionnaire. In the event that the condition of the Pipeline deviates at any time from the information set out in the Pipeline Questionnaire, ROSEN shall be entitled in its absolute discretion to terminate, or alternatively, not to commence, the Survey.

#### **5.2 Placement of Auxiliary Material**

Company shall install/place Equipment required for the Survey, including without limitation, Sensors, Benchmarkers, tool location transmitters and receivers on or along the pipeline according to ROSEN's instructions or as agreed prior in writing.

#### **5.3 Excavation Work**

Any excavation work required near and/or around the Pipeline, including, without limitation, any works associated with the placement of ROSEN's Equipment prior to, or during the Survey Run, excavation for recovery of ROSEN's Equipment from the Pipeline, and verification digs, will be performed by the Company at its own cost, charge and expense. The Company will be responsible for and bear the costs of restoring any excavated places on the Pipeline to the condition required by the Company.

**5.4 Obstructions in the Pipeline**

Where the gauge and/or bend plate (i.e. Gauging Tool) or geometry inspection indicates that the Tool is unable to pass through the Pipeline, ROSEN will evaluate the possibility of modifying the Tool and, consequently, which additional costs for such modification will incur. These costs aforesaid shall be borne by the Company. Alternatively, the Company has the possibility at its own account, to make suitable modifications to the Pipeline to facilitate the passage of the Tool. After such modifications, a gauge plate run will be required. All associated costs will be charged by ROSEN to the Company as per the Contract Documents.

**5.5 Contents of the Pipeline**

The Company warrants that, during the Survey, the flow, pressure and pump rate/velocity of the contents of the Pipeline will be as stated in the Pipeline Questionnaire or within a variance approved by ROSEN prior to the Survey Run. The Company further warrants that there will be no flow interruption or flow reversal while an Inspection Tool is in the launcher, the Pipeline or the receiver, unless agreed otherwise in writing with ROSEN (e.g. for a bi-directional survey).

**5.6 Number of Inspection Tools in the Pipeline**

Company shall never place more than one of ROSEN's Inspection Tools in the Pipeline without the prior written approval of ROSEN or the concurrent written approval of ROSEN's Authorized Representative at the Site.

**5.7 Advance Notice of Hazardous Waste**

Company shall notify ROSEN in advance in the event of actual or suspected hazardous and/or toxic substances or waste in or around the pipeline, including, without limitation, hydrogen sulphide (H<sub>2</sub>S), naturally occurring radioactive material (NORM) and mercury, the Company will comply with all instructions and requests furnished by ROSEN before ROSEN will commence a Survey Run. The Company will be liable for any and all damages to the Equipment caused by the presence of hazardous and/or toxic substances or waste in excess of the amount stated by Company in the Pipeline Questionnaire, or, if the no presence of such substances in the Pipeline was declared in such questionnaire, for any and all damages, including Equipment repair/replacement costs and applicable stand by charges, caused by such presence.

**5.8 Security at the Site**

The Company shall be responsible for the safety of all persons, including ROSEN personnel, on the Site and will keep the Site in an orderly state to avoid danger to such persons at all times. The Company will provide and maintain at the Company's own cost all lights, guards, fencing, warning signs, security personnel when and where necessary or required by any duly constituted authority for the protection of the Site, the Pipeline, and ROSEN's Equipment or for the safety and convenience of the public or others. The Company shall take all reasonable steps to protect the environment on and off the Site and to avoid damage or nuisance to persons or to property of the public or others resulting from pollution, noise or other causes arising as a consequence of the Contract.

**5.9 Unsafe Conditions**

In the event that, in ROSEN's sole opinion, a lack of safe conditions on Site or Pipeline exists, or if ROSEN encounters hazardous waste or different physical conditions or obstructions (the "Conditions") of which ROSEN was not previously notified, ROSEN shall be entitled to suspend the Survey until such unsafe condition is removed or corrected. In addition, ROSEN may terminate the Contract at ROSEN's sole discretion if such conditions are not removed or corrected in a timely manner.

**6 COMMENCEMENT AND DELAY**

**6.1 Date of Commencement of Survey**

The estimated commencement date set forth in the Tender or Tender Documents is an approximation only. The date of actual commencement of the Survey shall depend on the availability of ROSEN's Equipment and on the Pipeline conditions and operations. The Company shall notify ROSEN, as soon as possible, of the desired date of commencement of the Survey.

Notification periods may be stated in the Tender or Tender Documents or in the Company's purchase order. The Company and ROSEN shall agree on a mutually satisfactory commencement date, which in any case shall be an estimation only. ROSEN will make reasonable efforts to meet the Company's requested commencement date. ROSEN shall not be liable for any damages or losses arising directly or indirectly out of any delay of performance by ROSEN.

**6.2 Delay by Company after Notice of Commencement**

In the event that the Company is unable to meet the agreed commencement date for any reason, ROSEN will make reasonable efforts to make the Equipment available to the Company at a later date. However the next suitable date for ROSEN will depend on the availability of the Equipment. ROSEN is entitled to charge the standby costs to Company's account.

**6.3 Delay of Commencement of or during Survey**

If ROSEN is ready to perform any Survey Run or any other portion of the Survey and ROSEN is prevented or restricted from doing so for any reason, including but not limited to, delays caused by circumstances described in Section "Unsafe Conditions" above, the Company shall pay ROSEN the standby fees for the Equipment and personnel specified in the Contract Price. Charges for the standby fees under this Section will commence twenty-four (24) hours after notification to the Company that ROSEN is set to perform the Survey Run. Where ROSEN is not prepared to perform or if ROSEN is delayed from performing any part or the whole Survey, for reasons or causes that are not attributable partly or altogether to ROSEN the Company will be obliged to pay the standby fees.

**7 PAYMENT**

**7.1 Currency and Place of Payment**

All amounts payable to ROSEN shall be paid in the currency stated in the Contract Documents, and will be due at ROSEN's nominated bank in the invoice.

**7.2 Payments Due**

All invoices from ROSEN shall be due and payable by the Company within thirty (30) days from the date of the invoice.

**7.3 Payment**

Payments shall be made according to project progress as stated in the Contract Documents or the Company Purchase Order.

**7.4 Past Due Payments**

In respect to all past due payments under the Contract ROSEN will charge Company an interest rate of 2% of the total amount past due.

**8 COMPANY'S OBLIGATIONS**

**8.1 Pipeline Questionnaire**

The Company shall furnish all data requested by ROSEN in its Pipeline Questionnaire. ROSEN will rely on the aforementioned data. Unless otherwise agreed in writing with ROSEN's representative during project preparation and/or the Survey, the Company warrants that the operational data of the Pipeline, including, without limitation, temperature, pressure, flow rate and medium, shall not vary from the information set out in the Pipeline Questionnaire.

**8.2 Maps, Welding Records and Other Information**

If the Company is obligated by the Contract Documents to furnish certain information and documents regarding the Pipeline to ROSEN, including, without limitation, maps, welding records and charts, the Company shall provide such information and documents to ROSEN, and ROSEN will rely on them. The maps, records and charts shall be returned to the Company after completion of the Survey.

**8.3 Liability for incorrect data**

The Company shall be liable for any incorrect data provided to ROSEN, and shall be responsible for any and all damages and/or losses caused by ROSEN's reliance on aforesaid incorrect data.

**8.4 Compliance with Governmental Requirements**

The Company shall comply with all federal, state and municipal laws, ordinances, rules, regulations and orders of any public authority bearing on the safety of persons and property and their protection from damage, injury and/or loss and bearing on the performance of ROSEN, its personnel and any of the Equipment.

**8.5 Permits, Fees and Taxes**

The Company shall secure and pay for all permits and governmental fees, taxes, duties, licenses and inspections necessary for the proper execution and completion of the Service. The Company shall pay all sales, consumer, use and other similar taxes, whether or not currently effective or merely scheduled to go into effect. The Company shall indemnify ROSEN for any penalty and/or liability of any kind arising from the infringement of any such provisions and/or non-compliance with such requirements.

**8.6 Representations by Company**

Save to the extent they have been subsequently corrected, any and all representations and warranties by the Company are true and correct as of the dates on which they are made and on which any of the work for the Service is rendered by ROSEN.

**8.7 Joint and Several Liability**

In the event that the Company is a joint venture of two or more persons or companies, all such persons or companies will be jointly and severally bound and liable to ROSEN for the fulfillment of the Terms and Conditions of the Contract. Unless the Company designates one of such persons or companies to act as sole authorized person or company with respect to the Contract, each of such persons or companies will have authority to bind the joint venture. The composition or the constitution of the joint venture will not be changed or altered without prior written notice to ROSEN.

**9 CONFIDENTIALITY**

**9.1 Nondisclosure**

The Company shall treat any and every detail of the Contract as private and confidential, and shall not publish and/or disclose the same to any particulars thereof in any trade or technical paper or elsewhere without the prior written consent of ROSEN.

**9.2 Proprietary Information**

The Company acknowledges the highly secret and valuable nature of all proprietary inventions, methods, processes, designs, know-how and trade secrets (the "Confidential Data") embodied in ROSEN's Equipment, including, without limitation, the Tools and their components. The Company agrees not to disclose or use any Confidential Data or Information provided by ROSEN. For these purposes, "Information" means any and all technical, commercial and financial information that is disclosed to the Company by ROSEN under the Contract in oral, written, graphic, digital and/or sample form, including the execution of the Contract itself. The Company guarantees that no photos will be taken of ROSEN's Equipment without the prior written approval of ROSEN. The Company further agrees to take all necessary precautions to prevent disclosure of the Confidential Data and Information to persons other than those employees of the Company to whom such disclosure is necessary for the performance of the Survey. The Company shall obtain written agreements from such employees, obligating them not to make any unauthorized use or disclosure thereof.

**9.3 No right to Film**

The Company acknowledges that it has no right to photograph, film, record, publish, advertise, and/or any other related action, the services, ROSEN related work, employees, and/or any equipment, unless expressly authorized in writing by ROSEN.

**9.4 Surviving Obligations**

The obligations of the Company under this Section "Confidentiality" shall survive the expiration and termination of the Contract.

**9.5 Damages**

In the event of a breach or misuse of Confidential Data or Information under the Contract by Company, ROSEN shall be entitled to demand a fine equal to the actual loss. Company shall be entitled to provide proof that either no damage or a substantially lesser damage has occurred. Further claims for damages and rights remain unaffected.

**9.6 Promotion of Services**

ROSEN is allowed to take pictures and videos before, during and after the completion of the Services, Cleaning Run and/or Survey Run. The Company grants ROSEN the right to use these pictures, videos and/or any other type of materials in any of ROSEN's internal and external public relations matters, such as print (brochures, magazines, flyers), electronic publications (website or other electronic communications) and video and television broadcasts. If the Company completely or partially does not concur with such publication, the Company shall inform ROSEN in writing about this circumstance before the execution of the Contract.

**10 INTELLECTUAL PROPERTY RIGHTS**

All Intellectual Property residing in any information, materials, products and equipment of any nature whatsoever supplied by one Party to the other under this Contract shall belong exclusively to and shall remain the property of the Party supplying the said Intellectual Property. Company agrees that all Intellectual Property in all data, specifications, solutions, drawings, know-how, technical information, inventions and technologies developed, obtained, created, written, prepared or discovered by the Parties or by either Party as a result of the performance of the Contract shall reside solely in ROSEN and ROSEN shall have the exclusive right to protect, exploit and enforce its rights to those Intellectual Property Rights. The Parties agree that the transfer of information under this Contract shall not constitute a prior publication in terms of a potential patent application that ROSEN may want to file, thereby not being prejudicial as to novelty.

**11 COMPANY'S PERSONNEL**

**11.1 Authorized Representative**

The Company's Authorized Representative with experience, competence and professional skills in cleaning, piping and pipeline operating (or his nominated deputy) will be present at the Site while ROSEN performs its services. The Authorized Representative (or his nominated deputy) shall be familiar with the condition and operation of the Pipeline and will have authority to make decisions at the Site concerning the Company's personnel and the operation of the Pipeline. If the identity of the Authorized Representative (or his nominated deputy) changes, the Company shall give previous notice thereof to ROSEN.

**11.2 Decisions by the Authorized Representative**

All decisions made by the Authorized Representative are on behalf of the Company and shall be binding to the Company.

**11.3 Skilled personnel**

The Company shall furnish personnel that are skilled and experienced in their respective roles and are competent to fulfill the obligations of the Company under the Contract.

**11.4 Personnel under Company's control at all times**

The personnel of Company and any personnel of any third party at the Site (excluding any personnel of any subcontractor to ROSEN) shall be at all times under the control and management of the Company, and shall at no time be or deemed to be under the management or control of ROSEN.

**12 SUBCONTRACTING AND ASSIGNMENT**

Neither Party shall assign, transfer or novate its rights or obligations under the Contract or any part thereof or any benefit or interests therein without prior approval by ROSEN.

## **13 SUSPENSION AND TERMINATION**

### **13.1 Suspension by ROSEN**

In the event that the Company fails to make any payment when due pursuant to the Contract, ROSEN may give notice of suspension of performance, of any part or all, of the Survey under the Contract by written notice to the Company. Unless payment in full is received by ROSEN within seven (7) days of the notice date, the suspension shall take effect without further notice. In the event of a suspension of any part of the Survey or project preparation, ROSEN will have no liability to the Company at all for delay or damages caused to the Company because of such suspension of the same.

### **13.2 Suspension and Termination due to Company's failure**

If at any time the Services and/or project preparation are suspended, or additional time is required for adjustments, caused by Company, Company shall pay to ROSEN the standby fees set forth in the Contract Price. If the Services and/or project preparation are terminated because of the Company's failure to remove and/or remedy the conditions leading to suspension of the Service, Company shall pay ROSEN all expenses incurred, including, but not limited to, the preparation of any of ROSEN's Equipment, mobilization and demobilization, with a minimum of 50% of the Contract Price if terminated before mobilization and with a minimum of 80% of the Contract Price if terminated after mobilization.

### **13.3 Termination by ROSEN**

ROSEN has the right to terminate the Contract, at ROSEN's sole option and without prejudice to any other remedy to which ROSEN may be entitled at law or in equity or elsewhere under the Contract Documents, by written notice thereof to Company and the termination shall be effective upon such notice, except where notice is given pursuant to the Section below upon the occurrence of any of the following events:

(a) an order for relief is entered on behalf of Company, or Company makes a general assignment for the benefit of its creditors or Company declares insolvency; or

(b) failure by the Company in the performance or compliance with any of the agreements, terms, covenants or conditions contained in the Contract Documents.

In the cases mentioned above, Company shall bear all costs incurred until the specified date of termination. Furthermore Company shall not be entitled to charge ROSEN additional cancellation fees.

### **13.4 Rights after Suspension and Termination by ROSEN**

If the Contract is terminated by ROSEN for any reason, the Company will not be entitled to receive any Preliminary or interim or Final Inspection Report from ROSEN. A suspension or termination of the Contract does not release the Company from any obligation to pay any sum that is due or that may become due to ROSEN.

## **14 FORCE MAJEURE**

- 14.1 The Parties will be absolved and excused from its obligations under the Contract to the full extent, if one Party's performance is delayed or prevented by any condition or occurrence that is beyond its control including, without limitation, acts of God, fires, explosions, nuclear reactions, epidemics, earthquakes, acts of public or foreign enemies, civil disturbances, war and hostilities (whether war is declared or not), invasions, blockades, insurrections, rebellion, revolution, riots, acts of terrorism, strikes, commotion, disorder, lockouts or other industrial disturbances, embargoes, restraints or prohibitions or orders or regulations by any court, board, department, commission or agency of any state or country, any arrests or restraints.
- 14.2 In case of Force Majeure, the affected Party shall inform the other Party within seven (7) days after occurring such case. If the affected Party fails to send a Force Majeure Notification to the other Party, it loses the right to refer to these Force Majeure circumstances in future.
- 14.3 If a default due to an event of Force Majeure continues for more than six (6) months, the Parties shall be entitled to cancel the Contract partly or completely upon written notice to the other Party.
- 14.4 All indemnity claims based on partial or complete non-fulfillment of the affected Party obligations caused by an occurrence as aforementioned are excluded and invalid.

## **15 INSURANCE**

### **15.1 Third Party Liability**

ROSEN obtains General Third Party Liability Insurance.

### **15.2 Workman's Compensation**

ROSEN maintains a workman's compensation insurance for its personnel, according to the regulations of the native country of the personnel, which is also valid for the country of operation.

### **15.3 Insurance for ROSEN's Equipment**

Unless otherwise agreed on, the Company is liable for all damages which occur due to the improper handling of the Equipment during launching and receiving procedures on the Pipeline and for damages occurring during the Cleaning Runs and the Survey Runs resulting from the Pipeline conditions differing from the conditions previously stated in the Pipeline Questionnaire (especially as regards tool speed, operating pressure and operating temperature). The Company is obliged to insure the Equipment of ROSEN for the duration of the Contract and to provide ROSEN with a copy of the Certificate of such insurance before the commencement of the Survey.

## **16 INDEMNITIES AND LIABILITIES**

### **16.1 Company's Liability**

#### **Personnel and Property**

The Company shall indemnify, defend and hold ROSEN harmless from and against any and all claims, losses, costs, damages and expenses of every kind and nature including legal expenses with respect to sickness, injury or death of any person employed by Company and loss of or damage to its respective real and personal property and / or that of its contractors, subcontractors or of its guests or agents arising under or in connection with the undertaking of the Services and from any cause whatsoever except to the extent of any gross negligence or willful misconduct of ROSEN.

#### **Third Party Damages**

The Company shall indemnify, defend and hold ROSEN harmless from and against any and all claims, losses, costs, damages and expenses of every kind and nature with respect to personal injury or death, or disease or loss of or damage to the property of any third party to the extent and in the proportion that such any injury, loss or damage is caused by the negligence of the Company.

**16.2 ROSEN's Liability**

**Personnel and Property**

ROSEN shall indemnify, defend and hold Company harmless from and against any and all claims, losses, costs, damages and expenses of every kind and nature including legal expenses with respect to sickness, injury or death of any person employed by ROSEN and to loss of or damage to its respective real and personal property and / or that of its contractors, subcontractors or of its guests or agents arising under or in connection with the undertaking of the Services and from any cause whatsoever except to the extent of any gross negligence or willful misconduct of the Company.

**Third Party Damages**

ROSEN shall indemnify, defend and hold Company harmless from and against any and all claims, losses, costs, damages and expenses of every kind and nature with respect to personal injury or death, or disease or loss of or damage to the property of any third party to the extent and in the proportion that such any injury, loss or damage is caused by the negligence of ROSEN.

**16.3 Consequential Damages**

Notwithstanding the above mentioned, neither party shall be liable to the other party in contract or in tort (including negligence, breach of statutory duty or otherwise) for loss of use, loss of profit, loss of revenue or production, or for business interruption under / in connection with the contract or any error or defect therein, or of the performance, non-performance or delayed performance of the services or any indirect, consequential or economic loss suffered by the other party, whether or not foreseeable at the effective date of the Agreement.

**16.4 Limitation of Liability**

IN THE CASE OF SIMPLE NEGLIGENCE, ROSEN'S LIABILITY SHALL, IN RELATION TO ANY MATTERS ARISING PURSUANT TO WORK PERFORMED UNDER THIS CONTRACT, OTHER THAN IN RELATION TO DEATH, PERSONAL INJURY OR PRODUCT LIABILITY, WHETHER IN CONTRACT OR IN TORT (INCLUDING NEGLIGENCE, BREACH OR STATUTORY DUTIES) OR HOWSOEVER, BE LIMITED TO THE LOWER OF THE CONTRACT PRICE OR THE AMOUNT OF 1 MILLION EURO. IN THE CASE OF ROSEN'S SIMPLE NEGLIGENCE IN RELATION TO BREACH OF CARDINAL OBLIGATIONS, ROSEN'S LIABILITY SHALL BE LIMITED TO THE TYPICAL FOR THE CONTRACT'S FORESEEABLE DAMAGES. CARDINAL OBLIGATIONS SHALL MEAN THE OBLIGATIONS WHOSE FULFILLMENT MAKES THE CORRECT EXECUTION OF THE CONTRACT POSSIBLE AND ON WHOSE COMPLIANCE THE COMPANY CAN TRUST REGULARLY. THIS LIMITATION OF LIABILITY DOES NOT APPLY TO POSSIBLY AGREED GUARANTEES. THE PRECEDING SHALL ALSO APPLY TO ROSEN'S EMPLOYEES AND AFFILIATES.

**17 WARRANTY**

ROSEN warrants that the services provided hereunder will be performed in a good and workmanlike manner, in accordance with general accepted industry standards, with the level of care, skill, knowledge, and judgement required or reasonably expected of firms or persons performing comparable services, and in strict accordance with this Contract.

HOWEVER, ROSEN GIVES NO WARRANTY, EXPRESS OR IMPLIED, AS TO THE FITNESS FOR PURPOSE OR SUITABILITY OF ANY PROVIDED REPORTS AND IN ANY CASE SHALL HAVE NO LIABILITY TO THE COMPANY HOWSOEVER ARISING (IN CONTRACT OR IN TORT). THE COMPANY SHALL INDEMNIFY AND HOLD ROSEN HARMLESS IN RESPECT OF ANY CLAIM RELATED TO, ARISING FROM, OR CONNECTED WITH THE USE OF THE REPORTS (OR ANYTHING DERIVED THEREFROM) BY THE COMPANY OR ANY THIRD PARTY RECEIVING THE REPORTS FROM THE COMPANY.

**18 MISCELLANEOUS**

**18.1 Amendments and Modifications**

Any amendment or modification of any Terms and Conditions contained in the Contract Documents subsequent to the effective date of this Contract will be valid only if made by a subsequent written agreement. Such subsequent written agreement shall be signed by duly Authorized Representatives of

ROSEN and the Company. It shall specify by reference to the particular Contract Document that contains the Terms and Conditions to be amended by reference to the origin clause.

**18.2 Applicable Law and place of jurisdiction**

Unless otherwise provided in the Contract Documents, the Contract shall be governed by and construed according to German Law. Any suit, action or proceeding with respect to the Contract will be brought to a Court in Lingen, which will have jurisdiction and venue.

**18.3 Entire Agreement**

There are no understandings, agreements or representations, express or implied, not specified in the Contract and the Contract Documents containing the Entire Agreement between Company and ROSEN and set forth their respective rights, duties and obligations. Unless specifically enumerated in the Tender or Tender Documents or unless specifically executed as an Amendment, the Contract Documents do not include and will not be deemed to include any other documents or correspondence between Company and ROSEN, such as proposals, quotations, sample forms, bids, etc.

**18.4 Headings, Captions, and Marginal Notes**

The division of these Terms and Conditions or of anything else of the Contract Documents into articles, sections, paragraphs, parts and subparagraphs and the insertion of headings and marginal notes is for the convenience of reference only and will not affect the construction and interpretation of this Contract.

**18.5 Invalid, Illegal or Unenforceable Provisions; Severability**

In case any one or several of the provisions contained in the Contract Documents will for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision thereof and the Contract will be construed as if such invalid, illegal, or unenforceable provision had never been contained therein. The appropriate enforceable provision which complies with the intention of the party soonest will supersede that illegal provision.

**18.6 Notices, Consents, Approvals or Determinations**

Wherever in the Contract Documents provision is made for the giving of any notice, consent, approval or determination by any person, unless otherwise specified, such notice, consent, approval or determination will be in writing and words "notice", "notification", "notify", "consent", "determination", or "determine" will be construed accordingly. All notices, consents, approvals, determinations or other communications to be given or sent by either party shall be made in writing and sent by registered or certified mail, postage prepaid, return receipt requested, or by telex, telefax or telegram, charges prepaid. In order to be valid and binding on ROSEN, any notice, consent, approval or determination given by the Company to ROSEN at the Site will also be given by Company to ROSEN's principal office at the address shown in the Form of Agreement.

**18.7 Successors and Permitted Assigns**

The provisions of the Contract Documents will be binding upon and will enure to the benefit of ROSEN and Company and their respective successors and permitted assigns.

**18.8 Waiver**

Any failure by ROSEN to enforce or require strict compliance with any of the terms, covenants or conditions required by the Contract Documents will not constitute a waiver of any of such Terms and Conditions or of ROSEN's right to seek such remedies as it may have for any breach or breaches of such terms, covenants and conditions.

**18.9 Addresses of the Parties**

The addresses of Company and ROSEN will be as set forth in the Contract, until changed by notice to the other Party.