

# TERMS AND CONDITIONS FOR NDT 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 make any warranties nor be liable for any defects.

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. Conflicting or deviating terms and conditions of the Company shall not be binding on 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 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 Company

Means the company and/or organization that has entered into a contract with ROSEN for the provision of the services and associated works pursuant to these terms.

### 1.4 Contract

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

### 1.5 Contract Documents

Means the Service Agreement, the Inspection 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 (Inspection 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 Contract.

**1.6 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.

**1.7 Day**

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

**1.8 Final Inspection Report**

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

**1.9 Equipment**

Means all of ROSEN's property and equipment, including, without limitation, the inspection systems, 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.

**1.10 Inspection Object**

Means the object, device, appliance and/or item which shall be subjected to the inspection service (e.g. tanks, coiled tubing, pipelines etc.).

**1.11 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.

**1.12 Inspection Questionnaire**

Means ROSEN's Questionnaire furnished to the Company; to be completed by the Company prior to commencement of the Services in order to allow for proper preparation of the Equipment and performance of the Services.

**1.13 Party/Parties**

Means ROSEN and Company individually and collectively.

**1.14 Reports**

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

**1.15 ROSEN**

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

**1.16 Service**

Means the services performed on the Site as specified in the Contract Documents.

- 1.17 **Site**  
Means the premises and the location where the Services shall be performed.
- 1.18 **Tender or Tender Documents**  
Means the technical and commercial proposal submitted by ROSEN to the Company for the inspection services.
- 1.19 **Terms and Conditions**  
Means these Terms and Conditions for NDT Diagnostic Solutions of the ROSEN Group.
- 1.20 **Tool**  
Means all appliances, devices, equipment, instruments, scrapers or things of whatsoever nature that are used for performing various activities (depending on the Tool type) including, but not limited to, separating fluids, cleaning or inspecting the Inspection Object.
- 1.21 **Week**  
Means a full calendar week.
- 2 ROSEN'S SERVICES AND EQUIPMENT**
- 2.1 **Services**  
ROSEN's services and intended Equipment are specified in detail in the Contract Documents.
- 2.2 **Delivery of Equipment to Company**  
ROSEN shall have the option, but not the obligation, to deliver the Equipment to Company prior to the commencement of the Services or prior to the arrival of any of ROSEN's technicians or other personnel at the Site.
- 2.3 **Storage of Equipment**  
Except as otherwise agreed to between the Parties, upon the arrival of any of the Equipment at the Site, Company shall store the Equipment, at no cost to ROSEN, in a warehouse or store room ("Storage") and keep the Storage safe and secure to protect the Equipment against sunlight and extreme temperatures. Storage must be sufficiently secured to prevent tampering with ROSEN's computer Equipment or any of the Equipment and to prevent access by unauthorized persons. Upon the arrival of ROSEN's technician or authorized personnel of ROSEN, Company shall furnish to ROSEN the number of keys required by ROSEN. The Storage will be available to ROSEN for the complete duration of the Services. Company will be, at no charge to ROSEN, responsible for keeping the Equipment safe and secure during the times of the Services, including without limitation, any time the Services may be suspended.
- 2.4 **Access to the Equipment**  
Only personnel authorized by Company and/or ROSEN shall have access to workshops, the Storage rooms, and other places where the Equipment shall be stored and/or operated.
- 2.5 **Ownership of the Equipment**  
All of the Equipment shall be and remain property of ROSEN at all times and Company agrees on maintaining the Equipment free and clear of any and all liens, claims, attachments or encumbrances of any nature.
- 2.6 **Cleaning of Equipment between and after Inspections**  
The Company will be responsible, at its own costs, for the proper cleaning of the Equipment after an inspection or between inspections 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 Equipment 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 Equipment.

## 2.7 **Maintenance and repair of Inspection Equipment**

ROSEN shall maintain and repair the Equipment. Company shall indemnify ROSEN for all of the Equipment that is not returned by Company to ROSEN.

## 2.8 **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.

## 3 **INSPECTION CONDITIONS**

### 3.1 **Condition of the Inspection Object**

Dimensions of the object to be inspected (such as wall thickness, the outer diameter of manholes, presence of heating coils, nominal plate thickness, roof height and the material used in the construction) have to correspond with the information supplied in the Inspection Questionnaire. If ROSEN, in its sole opinion, determines that the Inspection Object is not suitable for the Inspection, ROSEN will have the right to terminate the Contract in accordance with the clause – "Termination by ROSEN".

### 3.2 **Conditions of the Site**

Company shall be responsible for maintaining the Site and keeping it reasonably free from all unnecessary obstruction and debris. Company shall be responsible, at its own cost, for the removal and proper disposal of all debris and rubbish resulting from the work and restoring the Site to its original condition.

### 3.3 **Placement of auxiliary material**

Company shall place the parts of Equipment required for the Services, according to ROSEN's instructions.

### 3.4 **Advance notice in case of hazardous waste/materials**

Company shall notify ROSEN in advance in the event of actual or suspected hazardous and/or toxic substances or waste is in or around the Inspection Object. Company shall comply with special instructions and requests furnished by ROSEN before ROSEN will commence the Service. Company will provide proper safety apparel to ROSEN's personnel. Company shall be liable for any and all damages of the Equipment caused by the presence of a toxic environments such as, but not limited to hydrogen sulfide (H<sub>2</sub>S), exceeding the amount specified by Company in the Inspection Questionnaire, or, if the presence of hydrogen sulfide was denied in such questionnaire, then Company shall be liable for any damages caused by such presence.

### 3.5 **Security on the Site**

Company shall at all times be responsible for the safety of all personnel present on Site and shall keep the Site in an orderly state to avoid danger to such persons at all times. Company, at its own charge, shall provide and maintain all lights, guards, fencing, warning signs and security personnel when and wherever necessary or required by any duly constituted authority for the protection of the Site, the coiled tubing, the Equipment or for the safety and convenience of the public or others.

## 4 **INSPECTION QUESTIONNAIRE**

Company shall furnish all data requested by ROSEN in the Inspection Questionnaire. ROSEN will rely on the aforementioned data. Unless otherwise agreed in writing with ROSEN's representative during the Services, Company warrants that the operational data of the Inspection Object including, without limitation, material type, manhole diameter, roof height, presence heating coils, temperature, pressure and flow rate shall not vary from the information set out in the Inspection Questionnaire.

## **5 COMPANY'S OBLIGATIONS**

### **5.1 Authorized Representative**

An Authorized Representative (or his nominated deputy) of Company shall be present on the Site during all times while Services are made. The Authorized Representative (or his nominated deputy) will be familiar with the condition and operation of the Inspection Object and will have authority to make decisions on the Site concerning Company's personnel and the operation of the Inspection Object. If the person of the Authorized Representative (or his nominated deputy) will change, Company will immediately give written notice thereof to ROSEN.

### **5.2 Skilled personnel**

Company will furnish personnel that are skilled and experienced in their respective callings and competent to fulfill the obligations of Company under the Contract and to handle the Equipment, including the inspection systems without limitation.

### **5.3 Personnel under Company's control at all times**

The personnel of Company and any other personnel of any third party at the Site shall be under the control and management of Company at all times and will never be, nor deemed to be under the management or control of ROSEN.

### **5.4 ROSEN's responsibility**

At all times where Company is handling any of the Equipment and/or ROSEN furnishes general instructions on how to handle the Equipment, including, and without limitation erecting and dismantling of the Equipment, ROSEN will never supervise and will never be deemed to be supervising Company or any of its personnel in these activities.

### **5.5 Representations by Company**

Any and all representations and warranties made by Company will be true and correct as of the dates on which any of the Services are rendered by ROSEN.

### **5.6 Notification in case of accidents**

If any of ROSEN's personnel are involved in any accident or occurrence on Site which results in injury to persons or damage to property, Company will immediately notify ROSEN.

## **6 REPORTS**

### **6.1 On-site report**

During the inspection activities, ROSEN shall make preliminary results available to Company. After completion of each inspection activity, ROSEN shall submit a document as a preliminary on-site report of the performed activities. Findings stated in any preliminary reports submitted on site, on-line or off-line may be superseded by the final report.

### **6.2 Final Report**

ROSEN shall deliver a final report to Company's Authorized Representatives. Any reports, records, evaluations and/or recommendations made by ROSEN concerning the condition of the Inspection Object will be the good-faith opinion of ROSEN only and will not be construed as a warranty or guarantee, express or implied, of merchantability, quality, classification, or fitness for use or purpose.

### **6.3 Inconclusive results**

In the event that the results of the inspection are inconclusive or incomplete due to a malfunction or malperformance of the inspection Equipment, or if ROSEN expresses the necessity to make an additional inspection to confirm the results from the previous inspection, ROSEN shall not charge Company for such additional Service. Where inconclusive or incomplete results are caused by operating conditions not in accordance with those stated in the Inspection Questionnaire, Company will bear the re-inspection costs as specified in Contract Price.

## **7 QUALITY OF SERVICES**

ROSEN warrants that the Services provided hereunder will be performed in a good and workmanlike manner, in accordance with general accepted 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.

## **8 WARRANTIES**

ROSEN'S EXPRESS WARRANTY STATED ABOVE WILL BE EXCLUSIVE AND THERE WILL BE NO OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE BY TRADE OR PRACTICE.

## **9 LIABILITY**

### **9.1 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.

### **9.2 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.

### **9.3 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.

9.4 **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.

**10 CONFIDENTIALITY**

10.1 **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.

10.2 **Proprietary Information**

The Company acknowledges the highly secretive and valuable nature of all proprietary inventions, methods, processes, designs, know-how and trade secrets (the "Confidential Data") embodied in the 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 the 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 Services. The Company shall obtain written agreements from such employees, obligating them not to make any unauthorized use or disclosure thereof.

10.3 **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.

10.4 **Surviving Obligations**

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

10.5 **Damages**

In the event of a breach or misuse of Confidential Data or Information under the Contract by Company, Company agrees that damages alone may not be an adequate remedy. The Company therefore agree that in addition to the damages which could arise, ROSEN may apply for injunctive relief. 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.

10.6 **Promotion of Services**

ROSEN is allowed to take pictures and videos before, during and after the completion of the Services. 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.

## **11 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.

## **12 INSURANCE**

ROSEN shall obtain General Third Party Liability Insurance.

## **13 PAYMENT**

### **13.1 Currency and place of payment**

All amounts payable to ROSEN shall be paid in the currency specified in the Contract Documents and shall be payable to ROSEN's bank account indicated on the invoice.

### **13.2 Payment due date and procedure**

All invoices from ROSEN shall be due and payable by Company within thirty (30) days after date of invoice, unless agreed on otherwise. Payments shall be made in accordance to the project steps as specified in the Contract Documents.

### **13.3 Past due payments**

ROSEN may charge an interest rate of two (2) % above the actual EURIBOR for all past-due payments under the Contract

### **13.4 Permits, fees and taxes**

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 Services. Company shall pay all sales, consumer, use and other similar taxes, whether or not yet effective or merely scheduled to go into effect. Company shall indemnify ROSEN for any penalty and liability of every kind for breach of any such provisions or non-compliance with such requirements.

### **13.5 Customs clearance of the Equipment.**

If the Contract Documents obligate Company to clear the Equipment through customs either for bringing the Equipment into the country or for re-export, Company shall do so promptly. If customs clearance of the Equipment will last longer than seven (7) days, Company will pay the standby fees for the Equipment to ROSEN specified in the Contract Price of the Agreement, commencing on the eighth day that the Equipment is not cleared or re-exported through customs.

## **14 COMMENCEMENT AND DELAY**

14.1 The estimated commencement date specified in the Tender or Tender Documents is an approximation only. The date of actual commencement of the Services depends on the availability of the Equipment and the conditions and operations of the Inspection Object. Company shall notify ROSEN as soon as possible of a desired date for commencement of the Services.

14.2 Notification periods may be stated in the Tender or Tender Documents or in Company's order. Company and ROSEN shall agree on a mutually suitable commencement date, which will be approximate in nature. ROSEN will make its best effort to meet the requested commencement date.



14.3 In the event that Company is unable to meet the agreed commencement date for any reason, ROSEN shall make its best effort to make the Equipment available to Company on a later date depending on the availability of the Equipment.

## **15 SUSPENSION AND TERMINATION**

### **15.1 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 Services 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 Services 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.

### **15.2 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.

### **15.3 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.

### **15.4 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.

## **16 FORCE MAJEURE**

16.1 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.

16.2 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.

16.3 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.

16.4 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.

## **17 MISCELLANEOUS**

### **17.1 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 both 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 original clause.

### **17.2 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 Linen, which will have jurisdiction and venue.

### **17.3 Assignment**

Neither Party may assign, directly or indirectly, any of their respective rights and obligations under the Contract and the Contract Documents to any other Party without the prior written consent of the other Party whose approval will not be unreasonably withheld or delayed.

### **17.4 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.

### **17.5 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.

### **17.6 Invalid, Illegal or Unenforceable Provisions; Severability**

In case any one or several of the provisions contained in the Contract Documents are for any reason 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.

### **17.7 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.

### **17.8 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.

### **17.9 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.

17.10

**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.