



Naval Architecture and Project Engineering
Terms & Conditions of sale

Document Number: MOR-001-POL-001

Revision: 02

MOREK ENGINEERING LTD
GENERAL CONDITIONS OF
CONTRACT

2023



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1 Definitions and interpretation

1.1 In these Conditions the following definitions apply:

Affiliate	means any entity that directly or indirectly Controls, is Controlled by or is under common Control with, another entity;
Bribery Laws	means the Bribery Act 2010 and associated guidance published by the Secretary of State for Justice under the Bribery Act 2010;
Business Day	means a day other than a Saturday, Sunday or bank or public holiday;
Conditions	means Morek's terms and conditions of supply set out in this document;
Confidential Information	means any commercial, financial or technical information, information relating to the Services, plans, know-how or trade secrets which is obviously confidential or has been identified as such, or which is developed by a party in performing its obligations under, or otherwise pursuant to the Contract;
Contract	means the agreement between Morek and the Customer for the supply and purchase of Services incorporating these Conditions and the Proposal;
Control	means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company;
Controller	shall have the meaning given to it in applicable Data Protection Laws from time to time;
Customer	means the person who purchases the Services from Morek and whose details are set out in the Proposal;
Data Protection Laws	means, as binding on either party or the Services: (a) the GDPR; (b) the Data Protection Act 2018; (c) any laws which implement any such laws; and (d) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing;
Data Subject	shall have the meaning given to it in applicable Data Protection Laws from time to time;
Force Majeure	means an event or sequence of events beyond a party's reasonable control (after exercise of reasonable care to put in place robust back-up and disaster recovery arrangements) preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other



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natural disaster, war, riot or civil unrest, interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service, or material required for performance of the Contract, strike, lockout or boycott or other industrial action including strikes or other industrial disputes involving Morek's or its suppliers' workforce, but excluding the Customer's inability to pay or circumstances resulting in the Customer's inability to pay;

GDPR means the General Data Protection Regulation, Regulation (EU) 2016/679;

Intellectual Property Rights means copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in goodwill, rights in confidential information, rights to sue for passing off, domain names and all similar rights and, in each case:

- (a) whether registered or not;
- (b) including any applications to protect or register such rights;
- (c) including all renewals and extensions of such rights or applications;
- (d) whether vested, contingent or future;
- (e) to which the relevant party is or may be entitled, and
- (f) in whichever part of the world existing;

Morek means Morek Engineering Ltd, registered in England & Wales under company number 12013747, whose registered office is at 5 Woodlane, Falmouth, Cornwall, England, TR11 4RG;

Personal Data shall have the meaning given to it in applicable Data Protection Laws from time to time;

Price has the meaning set out in clause 3.1;

processing has the meaning given to it in applicable Data Protection Laws from time to time (and related expressions, including **process**, **processing**, **processed**, and **processes** shall be construed accordingly);

Processor shall have the meaning given to it in applicable Data Protection Laws from time to time;

Proposal the proposal for the Services agreed between the Company and the Customer;

Protected Data means Personal Data received from or on behalf of the Customer in connection with the performance of Morek's obligations under the Contract;



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Services	means the Services set out in the Proposal and to be performed by Morek for the Customer;
Specification	means the description or specification of the Services set out or referred to in the Proposal;
Supplier Personnel	means all employees, officers, staff, other workers, agents and consultants of Morek, its Affiliates and any of their sub-contractors who are engaged in the performance of the Services from time to time; and
VAT	means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Services.

1.2 In these Conditions, unless the context requires otherwise:

- 1.2.1 any clause, schedule or other headings in these Conditions is included for convenience only and shall have no effect on the interpretation of the Conditions;
- 1.2.2 a reference to a 'party' includes that party's personal representatives, successors and permitted assigns;
- 1.2.3 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;
- 1.2.4 a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.2.5 words in the singular include the plural and vice versa;
- 1.2.6 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words; and
- 1.2.7 a reference to legislation is a reference to that legislation amended, extended, re-enacted or consolidated from time to time; and includes all subordinate legislation made from time to time under that legislation.

2 Application of these Conditions

- 2.1 These Conditions apply to and form part of the Contract between Morek and the Customer. They supersede any previously issued terms and conditions of purchase or supply.
- 2.2 No terms or conditions endorsed on, delivered with, or contained in the Customer's purchase conditions, order, specification or other document shall form part of the Contract except to the extent that Morek otherwise agrees in writing.
- 2.3 No variation of these Conditions or to a Proposal or to the Contract shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of Morek.

- 2.4 A Proposal shall not be agreed, and no binding obligation to supply any Services shall arise, until the earlier of:
- 2.4.1 Morek's written confirmation of agreement of the Proposal; or
 - 2.4.2 Morek performing the Services or notifying the Customer that they are ready to be performed (as the case may be).
- 2.5 Marketing and other promotional material relating to the Services are illustrative only and do not form part of the Contract.

3 Price

- 3.1 The price for the Services shall be as set out in the Proposal or, in default of such provision, shall be calculated in accordance with Morek's scale of charges in force from time to time (**Price**).
- 3.2 The Prices are exclusive of VAT (or equivalent sales tax).
- 3.3 The Customer shall pay any applicable VAT to Morek on receipt of a valid VAT invoice.

4 Payment

- 4.1 Morek shall invoice the Customer for the Services at any time.
- 4.2 The Customer shall pay all invoices:
- 4.2.1 in full without deduction or set-off, in cleared funds within 30 days of the date of each invoice; and
 - 4.2.2 to the bank account nominated by Morek.
- 4.3 Time of payment is of the essence. Where sums due under these Conditions are not paid in full by the due date:
- 4.3.1 Morek may, without limiting its other rights, charge interest on such sums at 4% a year above the base rate of Lloyds TSB plc from time to time in force, and
 - 4.3.2 interest shall accrue on a daily basis and apply from the due date for payment until actual payment in full, whether before or after judgment.

5 Performance

- 5.1 The Services shall be deemed performed on completion of the performance of the Services as specified in the Proposal.
- 5.2 Morek may perform the Services in instalments. Any delay in performance or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 5.3 Time of performance of the Services is not of the essence. Morek shall use its reasonable endeavours to meet estimated dates for performance, but any such dates are approximate only.
- 5.4 Morek shall not be liable for any delay in or failure of performance caused by:

5.4.1 the Customer's failure to provide Morek with adequate instructions, information or documentation for performance; or

5.4.2 Force Majeure.

6 Warranty

6.1 Morek warrants that, for a period of six months from performance (the **Warranty Period**), the Services shall:

6.1.1 conform in all material respects to their description and the Specification;

6.1.2 be free from material defects;

6.1.3 be supplied with reasonable care and skill within the meaning of the Supply of Goods and Services Act 1982, Part II s 13; and

6.1.4 in the case of media on which the results of the Services are supplied, be of satisfactory quality within the meaning of the Sale of Goods Act 1979.

6.2 The Customer warrants that it has provided Morek with all relevant, full and accurate information as to the Customer's business and needs.

6.3 Morek shall, at its option, remedy, re-perform or refund the Services that do not comply with clause 6.1, provided that:

6.3.1 the Customer serves a written notice on Morek not later than five Business Days from performance in the case of defects discoverable by a physical inspection, or within a reasonable period of time from performance in the case of latent defects; and

6.3.2 such notice specifies that some or all of the Services do not comply with clause 6.1 and identifies in sufficient detail the nature and extent of the defects; and

6.3.3 the Customer gives Morek a reasonable opportunity to examine the claim of the defective Services.

6.4 The provisions of these Conditions shall apply to any Services that are remedied or re-performed with effect from performance of the remedied or re-performed Services.

6.5 Except as set out in this clause 6:

6.5.1 Morek gives no warranties and makes no representations in relation to the Services; and

6.5.2 Morek shall have no liability for its failure to comply with the warranty in clause 6.1 and all warranties and conditions (including the conditions implied by ss 12-16 of the Supply of Goods and Services Act 1982), whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.

6.6 The Customer shall be entitled to exercise its rights under clause 6 notwithstanding that the Services were not rejected following any initial inspection.

7 Anti-bribery

- 7.1 For the purposes of this clause 7 the expressions '**adequate procedures**' and '**associated with**' shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it.
- 7.2 Each party shall comply with applicable Bribery Laws including ensuring that it has in place adequate procedures to prevent bribery and ensure that:
- 7.2.1 all of that party's personnel;
 - 7.2.2 all others associated with that party; and
 - 7.2.3 all of that party's sub-contractors;
- involved in performing the Contract so comply.
- 7.3 Without limitation to clause 7.2, neither party shall make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment, or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and shall implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.
- 7.4 Each party shall immediately notify the other as soon as it becomes aware of a breach of any of the requirements in this clause 7.

8 Anti-slavery

The Customer undertakes, warrants and represents that it shall comply with the Modern Slavery Act 2015.

9 Indemnity and insurance

- 9.1 The Customer shall indemnify, and keep indemnified, Morek from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by Morek as a result of or in connection with the Customer's breach of any of the Customer's obligations under the Contract.
- 9.2 The Customer shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom to cover its obligations under these Conditions. On request, the Customer shall supply, so far as is reasonable, evidence of the maintenance of the insurance and all of its terms from time to time applicable. The Customer shall on request assign to Morek the benefit of such insurance.

10 Limitation of liability

- 10.1 The extent of the parties' liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 10.
- 10.2 Subject to clauses 10.5 and 10.6, Morek's total liability shall not exceed the total Price paid to Morek pursuant to the Contract.



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- 10.3 Subject to clauses 10.5 and 10.6, Morek shall not be liable for consequential, indirect or special losses.
- 10.4 Subject to clauses 10.5 and 10.6, Morek shall not be liable for any of the following (whether direct or indirect):
- 10.4.1 loss of profit;
 - 10.4.2 loss or corruption of data;
 - 10.4.3 loss of use;
 - 10.4.4 loss of production;
 - 10.4.5 loss of contract;
 - 10.4.6 loss of opportunity;
 - 10.4.7 loss of savings, discount or rebate (whether actual or anticipated);
 - 10.4.8 harm to reputation or loss of goodwill.
- 10.5 The limitations of liability set out in clauses 10.2 to 10.4 shall not apply in respect of any indemnities given by either party under the Contract.
- 10.6 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:
- 10.6.1 death or personal injury caused by negligence;
 - 10.6.2 fraud or fraudulent misrepresentation; or
 - 10.6.3 any other losses which cannot be excluded or limited by applicable law.

11 Intellectual property

- 11.1 Morek shall indemnify the Customer from and against any losses, damages, liability, costs and expenses (including reasonable professional fees) incurred by it as a result of any action, demand or claim that performance of benefit of the Services infringes the Intellectual Property Rights of any third party (**IPR Claim**), provided that Morek shall have no such liability if the Customer:
- 11.1.1 does not notify Morek in writing setting out full details of any IPR Claim of which it has notice as soon as is reasonably possible;
 - 11.1.2 makes any admission of liability or agrees any settlement or compromise of the relevant IPR Claim without the prior written consent of Morek;
 - 11.1.3 does not let Morek at its request and own expense have the conduct of or settle all negotiations and litigation arising from the IPR Claim at its sole discretion;
 - 11.1.4 does not take all reasonable steps to minimise the losses that may be incurred by it or by any third party as a result of the IPR Claim;
 - 11.1.5 does not, at Morek's request, provide Morek with all reasonable assistance in relation to the IPR Claim (at the Customer's expense) including the provision of

prompt access to any relevant premises, officers, employees, contractors or agents of the Customer.

- 11.2 If any IPR Claim is made or is reasonably likely to be made, Morek may at its option:
- 11.2.1 procure for the Customer the right to continue receiving the benefit of the relevant Services; or
 - 11.2.2 modify or replace the infringing part of the Services so as to avoid the infringement or alleged infringement, provided the Services remain in material conformance to their Specification.
- 11.3 Morek's obligations under clause 11.1 shall not apply to Services modified or used by the Customer other than in accordance with the Contract or Morek's instructions. The Customer shall indemnify Morek against all losses, damages, liability, costs and expenses (including reasonable legal fees) incurred by Morek in connection with any claim arising from such modification or use.

12 Confidentiality and announcements

- 12.1 The Customer shall keep confidential all Confidential Information of Morek and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:
- 12.1.1 any information which was in the public domain at the date of the Contract;
 - 12.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;
 - 12.1.3 any information which is independently developed by the Customer without using information supplied by Morek; or
 - 12.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.
- 12.2 This clause shall remain in force for a period of five years from the date of the Contract and, if longer, three years after termination of the Contract.
- 12.3 The Customer shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.
- 12.4 To the extent any Confidential Information is Protected Data (as defined in clause 13) such Confidential Information may be disclosed or used only to the extent such disclosure or use does not conflict with any of the provisions of clause 13.1.

13 Processing of personal data

- 13.1 The parties agree that the Customer is a Controller and that Morek is a Processor for the purposes of processing Protected Data pursuant to the Contract. The Customer shall at all times comply with all Data Protection Laws in connection with the processing of Protected Data. The Customer shall ensure all instructions given by it to Morek in respect of Protected Data (including the terms of the Contract) shall at all times be in accordance with Data

Protection Laws. Nothing in this Agreement relieves the Customer of any responsibilities or liabilities under any Data Protection Laws.

13.2 Morek shall process Protected Data in compliance with the obligations placed on it under Data Protection Laws and the terms of the Contract.

13.3 The Customer shall indemnify and keep indemnified Morek against all losses, claims, damages, liabilities, fines, sanctions, interest, penalties, costs, charges, expenses, compensation paid to Data Subjects, demands and legal and other professional costs (calculated on a full indemnity basis and in each case whether or not arising from any investigation by, or imposed by, a supervisory authority) arising out of or in connection with any breach by the Customer of its obligations under this clause 13.

14 Force Majeure

14.1 A party shall not be liable if delayed in or prevented from performing its obligations due to Force Majeure, provided that it:

14.1.1 promptly notifies the other of the Force Majeure event and its expected duration; and

14.1.2 uses best endeavours to minimise the effects of that event.

14.2 If, due to Force Majeure, a party:

14.2.1 is or shall be unable to perform a material obligation; or

14.2.2 is delayed in or prevented from performing its obligations for a continuous period exceeding 30 days or a total of more than 60 days in any consecutive period of 120 days;

the other party may, within 30 days, terminate the Contract on immediate notice.

15 Termination

15.1 Morek may terminate the Contract at any time by giving notice in writing to the Customer if:

15.1.1 the Customer commits a material breach of Contract and such breach is not remediable;

15.1.2 the Customer commits a material breach of the Contract which is capable of being remedied and such breach is not remedied within 7 days of receiving written notice of such breach;

15.1.3 the Customer has failed to pay any amount due under the Contract on the due date and such amount remains unpaid within 30 days after Morek has given notification that the payment is overdue; or

15.1.4 any consent, licence or authorisation held by the Customer is revoked or modified such that the Customer is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled.

- 15.2 Morek may terminate the Contract at any time by giving notice in writing to the Customer if the Customer:
- 15.2.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
 - 15.2.2 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if Morek reasonably believes that to be the case;
 - 15.2.3 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
 - 15.2.4 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
 - 15.2.5 has a resolution passed for its winding up;
 - 15.2.6 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
 - 15.2.7 is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within [*seven*] days of that procedure being commenced;
 - 15.2.8 has a freezing order made against it;
 - 15.2.9 is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title to those items; or
 - 15.2.10 is subject to any events or circumstances analogous to those in clauses 15.2.1 to 15.2.9 in any jurisdiction.
- 15.3 Morek may terminate the Contract any time by giving not less than four weeks' notice in writing to the Customer if the Customer undergoes a change of Control.
- 15.4 If Morek becomes aware that any event has occurred, or circumstances exist, which may entitle the Customer to terminate the Contract under this clause 15, it shall immediately notify the Customer in writing.
- 15.5 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of Morek at any time up to the date of termination.

16 Dispute resolution

- 16.1 Any dispute arising between the parties out of or in connection with the Contract shall be dealt with in accordance with the provisions of this clause 16.
- 16.2 The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.
- 16.3 The parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedures:

- 16.3.1 within 7 days of service of the notice, the contract managers of the parties shall meet to discuss the dispute and attempt to resolve it.
- 16.3.2 if the dispute has not been resolved within 7 days of the first meeting of the contract managers, then the matter shall be referred to the chief executives (or persons of equivalent seniority). The chief executives (or equivalent) shall meet within 7 days to discuss the dispute and attempt to resolve it.
- 16.4 If the dispute has not been resolved within 14 days of the first meeting of the chief executives (or equivalent) under clause 16.3.2 then the matter may be referred to mediation in accordance with the London Court of International Arbitration Mediation Rules.
- 16.5 Until the parties have completed the steps referred to in clauses 16.3 and 16.4, and have failed to resolve the dispute, neither party shall commence formal legal proceedings except that either party may at any time seek urgent interim relief from the courts or emergency arbitrator relief.

17 Notices

- 17.1 Any notice given by a party under these Conditions shall:
- 17.1.1 be in writing and in English;
- 17.1.2 be signed by, or on behalf of, the party giving it (except for notices sent by email); and
- 17.1.3 be sent to the relevant party at the address set out in the Contract.
- 17.2 Notices may be given, and are deemed received:
- 17.2.1 by hand: on receipt of a signature at the time of delivery;
- 17.2.2 by Royal Mail Recorded Signed For post: at 9.00 am on the second Business Day after posting;
- 17.2.3 by Royal Mail International Tracked & Signed OR Royal Mail International Signed post: at 9.00 am on the fourth Business Day after posting; and
- 17.2.4 by email to the correct address: on receipt (in the absence of a notification of failed delivery).
- 17.3 Any change to the contact details of a party as set out in the Contract shall be notified to the other party in accordance with clause 17.1.
- 17.4 All references to time are to the local time at the place of deemed receipt.
- 17.5 This clause does not apply to notices given in legal proceedings or arbitration.

18 Cumulative remedies

The rights and remedies provided in the Contract for Morek only are cumulative and not exclusive of any rights and remedies provided by law.

19 Further assurance

The Customer shall at the request of Morek, and at the Customer's own cost, do all acts and execute all documents which are necessary to give full effect to the Contract.

20 Entire agreement

The parties agree that the Contract and any documents entered into pursuant to it constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.

21 Variation

No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and these Conditions and is duly signed or executed by, or on behalf of, Morek.

22 Assignment

The Customer may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without Morek's prior written consent.

23 Set off

23.1 Morek shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Customer under the Contract.

23.2 The Customer shall pay all sums that it owes to Morek under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

24 No partnership or agency

The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

25 Severance

25.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.

25.2 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

26 Waiver

- 26.1 No failure, delay or omission by the Contract in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.
- 26.2 No single or partial exercise of any right, power or remedy provided by law or under the Contract by Morek shall prevent any future exercise of it or the exercise of any other right, power or remedy by Morek.

27 Compliance with law

The Customer shall comply with all laws, enactments, regulations, regulatory policies, guidelines and industry codes applicable to it and shall maintain such authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract.

28 Conflicts within contract

If there is a conflict between the terms contained in the Conditions and the terms of the Proposal, schedules, appendices or annexes to the Contract, the terms of the Proposal shall prevail.

29 Third party rights

- 29.1 Except as expressly provided for in clause 29.2, a person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.
- 29.2 Any Affiliate of Morek shall be entitled under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract. The consent of any such Affiliate is not required in order to rescind or vary the Contract or any provision of it.

30 Governing law

The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

31 Jurisdiction

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims).