

GENERAL TERMS AND CONDITIONS OF TESTING AT PROLABNL (PROCESS LABORATORIES THE NETHERLANDS) BV

These Terms and Conditions can be found on the Internet under <http://www.prolabnl.com/home/terms-and-conditions/>

1. GENERAL

1.1 Definitions

“**BUYER**” means an individual or entity which signs the CONTRACT documents as counterpart to PROLABNL.

“**CONTRACT**” means the PURCHASE ORDER plus all documents referred to therein.

“**GENERAL TERMS**” means these General Terms and Conditions of Testing at PROLABNL.

“**ORDER CONFIRMATION**” means the document provided by PROLABNL to BUYER as a response to BUYER’S purchase order documents either by e-mail, facsimile or as a hardcopy.

“**PURCHASE ORDER**” means the purchase order documents issued by BUYER in the version confirmed by PROLABNL in the ORDER CONFIRMATION. In case of non-substantial deviations between said purchase order documents and the ORDER CONFIRMATION, the version of the ORDER CONFIRMATION shall become the binding PURCHASE ORDER unless BUYER expresses its dissent within three (3) working days after receipt of the ORDER CONFIRMATION.

TESTING SERVICES “PROLABNL” means the company pertaining to the ProLabNL Division which issued the ORDER CONFIRMATION.

“**RAW TEST DATA**” means test data resulting from TESTING SERVICES.

“**TEST DATA**” means data resulting from TESTING SERVICES, which will be disclosed to BUYER in the way of a test report. “**TESTING SERVICES**” means testing services for oil & gas process equipment, consultancy services and the pertaining documentation, including engineering, purchasing and assembly of the required test setups and instrumentation for testing of BUYER equipment (including installation, commissioning and decommissioning thereof), and test fluids, to the extent explicitly specified in the PURCHASE ORDER and agreed upon by both parties.

1.2 These GENERAL TERMS apply to all work provided by PROLABNL.

BUYER is hereby given notice that any deviations from these GENERAL TERMS are expressly rejected unless such deviations are otherwise agreed upon in a mutually signed document.

The validity of offer is for a period of thirty (30) days commencing with the date of the offer, unless otherwise specified in writing by PROLABNL.

1.3 The delivery encompasses the TESTING SERVICES and will be made in accordance with the PURCHASE ORDER.

1.4 In case of contradiction between CONTRACT documents, the following order of precedence shall apply:

- a) PURCHASE ORDER in the version accepted in the ORDER CONFIRMATION or other negotiated, agreed and mutually signed document, including all documents made a part thereof
- b) PROLABNL’S offer
- c) These GENERAL TERMS
- d) BUYER’S request for an offer
- e) BUYER’S Purchase Terms and Conditions

1.5 All documents making part of the CONTRACT can be changed only by a written, duly signed document.

1.6 All information and data contained in brochures and price lists of PROLABNL are only binding to the extent that they are by reference expressly included in the CONTRACT.

1.7 PROLABNL shall be entitled to engage sub-suppliers for the performance of the CONTRACT.

2. DELIVERY

2.1 The delivery time is not of the essence, but ProLabNL recognizes the importance of timely delivery of the Services and/or Equipment and will do its utmost best to deliver on, or prior to, the agreed date of delivery.

2.2 BUYER acknowledges and agrees that the provision of the TESTING SERVICES may be delayed and rescheduled in order to accommodate delays caused by:

- a) Events of Force Majeure as defined in this CONTRACT;
- b) Failure of BUYER or BUYER’S representative to timely make any required advance payments;
- c) Failure of BUYER or BUYER’S representative to timely provide;
 - I. revised or additional specifications;
 - II. approval drawings; or
 - III. other items, documentation or materials necessary to complete the TESTING SERVICES.
- d) Any other reasons beyond PROLABNL’s control

- 2.3 TESTING SERVICES are scheduled after the order receipt and clarification of required technical information, including client approval of drawings when required. Testing dates are estimates, made to the best of PROLABNL's ability based on conditions prevailing at the time of quotation, and are not guaranteed. Unanticipated or different equipment tests, additional control or inspections, analysis and safety checks, and overhaul of equipment or BUYERS request for variations of TESTING SERVICES will postpone the anticipated testing date and shall release PROLABNL from delivery time obligations.
- 2.3 PROLABNL reserves the right to suspend provision of the TESTING SERVICES or terminate the CONTRACT in the event that BUYER fails to provide any required advance payments and/or to issue Letter(s) of Credit as agreed in the PURCHASE ORDER within fourteen (14) days of the due date of the advanced payment or Letter(s) of Credit.
- In such event, PROLABNL reserves the right to charge BUYER for all losses and damages suffered by PROLABNL by reason of such default.
- 2.4 Unless otherwise expressly agreed in writing in a document signed by PROLABNL, PROLABNL shall not be subject to any claim for liquidated damages or penalties related to the late delivery of the TESTING SERVICES. In case the BUYER fails to timely fulfil any of its contractual obligations including failure to make payments on time or failure to take delivery when called upon to do so by PROLABNL or failure to provide necessary infrastructure and facilities to commence the perform of the CONTRACT, PROLABNL is entitled to terminate the CONTRACT. In this case BUYER shall pay to PROLABNL the costs and expenses incurred by PROLABNL connected with work or services performed prior to the date of termination, including a reasonable margin as well as other costs and expenses, including cancellation charges under subcontracts, as PROLABNL may incur in connection with such cancellation.
- 2.5 The title to the Services and TEST DATA hereunder, and to any additions, replacements, substitutions and accessories thereto, shall remain in PROLABNL until the Client has paid the full purchase price, plus accrued interest, if any.
- 2.6 Unless otherwise agreed, equipment for TESTING SERVICES supplied by BUYER shall be delivered DDP ProLabNL B.V. facility, Arnhem, Netherlands. After completion of TESTING SERVICES, the equipment will be collected by BUYER EX WORKS ProLabNL B.V. facility,

Arnhem, Netherlands. Equipment cannot be shipped to ProLabNL B.V. before written approval by ProLabNL B.V. Trade terms like DDP, EX WORKS, etc. shall be interpreted in accordance with the INCOTERMS 2010 or, after replacement thereof, the then effective INCOTERMS.

3. PRICE AND PAYMENT

- 3.1 The prices for the TESTING SERVICES are those stated in the CONTRACT and are fixed and firm until fulfillment of CONTRACT. Prices change caused by changes of TESTING SERVICES must be agreed in writing. For work carried out on a time basis, the prices shall be determined in accordance with the hourly rates specified in the CONTRACT. If no agreement on hourly rates has been made, the hourly rate applied by PROLABNL for other customers and comparable work shall apply. All prices are exclusive of excise duties, VAT, sales or similar taxes and duties.
- 3.2 Unless otherwise agreed in writing, full payment for the TESTING SERVICES shall be due within thirty (30) days of issue of an invoice by PROLABNL.
- 3.3 If BUYER disputes any item or charge listed in the invoice, BUYER shall state the item or amount of the charge in dispute and the reasons for such dispute in writing within such thirty (30) day time period. However, all undisputed amounts shall remain due as specified above.
- 3.4 At PROLABNL'S discretion, an interest charge of six percent (6%) per annum will be charged against any outstanding balance effective as of the due date of the balance.
- 3.5 Unless otherwise agreed in writing, all uncontested payments shall be made according to the agreed terms of payment without any deductions for discounts, set-offs or otherwise.
- 3.6 In case of late payment, PROLABNL may, after having notified the BUYER in writing, suspend its performance of the TESTING SERVICES until the open and due invoices have been paid.
- 3.7 If BUYER and PROLABNL agreed on issuing a Letter of Credit by BUYER in favor of PROLABNL, such Letter of Credit shall be irrevocable, unconditional, and issued by a first class worldwide active bank. The Letter of Credit shall remain valid until the delivery of the entire of TESTING SERVICES plus ninety (90) days. PROLABNL reserves the right to approve the issuing bank. Withdrawal of the money shall be against the documents that are mutually agreed upon in writing.

4. INTELLECTUAL PROPERTY

- 4.1 BUYER shall provide the technical documentation (e.g. testing requirements, up-to-date drawings, descriptions, charts, instructions, etc.) that is necessary for the performance of the TESTING SERVICES and is specified in the CONTRACT. BUYER confirms that BUYER is fully authorized to use (or have used) the technical documentation provided to PROLABNL for the performance of the TESTING SERVICES by PROLABNL or its sub-suppliers, respectively. In case BUYER would not be authorized to order said performance from PROLABNL without violation of intellectual property rights of third parties, or if such right should be challenged, BUYER shall inform PROLABNL without any delay. In this case, PROLABNL shall stop the work until the approvals needed for the performance have been obtained.
- 4.2 Each party to the CONTRACT retains all rights to any technical documents provided to the other party. The party receiving such documents recognizes these rights and shall, without previous written consent of the other party, not make these documents available to any third party, either in whole or in part, nor use them for any purpose other than to fulfill the CONTRACT.
- 4.3 Any know-how, inventions, patents or copyrights or the like belonging to or provided by PROLABNL in respect of the TESTING SERVICES shall remain PROLABNL'S property, and no ownership shall be transferred to BUYER with respect to such know-how, inventions, patents and copyrights. Unless otherwise agreed between the parties in writing, the TEST DATA will be fully owned by BUYER and BUYER shall be allowed to use the TEST DATA without restriction.
- 4.4 To the best knowledge of PROLABNL the TESTING SERVICES and any part thereof, in the particular form sold by PROLABNL, shall not infringe any intellectual property rights of third parties. In the event of any patent infringement relating to the said TESTING SERVICES, PROLABNL may, in its sole discretion, procure the right to use the TESTING SERVICES without impairing its suitability, or modify or replace it so that it is rendered non-infringing. The obligations of PROLABNL set forth herein are contingent upon (i) PROLABNL receiving prompt written notice from BUYER of such infringement; (ii) PROLABNL receiving assistance from BUYER in the defense; and (iii) the right of PROLABNL to settle or defend.

5. RESPONSIBILITIES

- 5.1 Representations, promises, or guarantees not contained in this Contract and/or any modifications to this Contract

shall have no force and effect unless in writing signed by PROLABNL and BUYER.

- 5.2 If any part or provision is deemed to be contrary to, prohibited by, held unenforceable, invalid or in conflict with the laws or regulations of any jurisdiction, such provision shall be deemed inapplicable and omitted to the extent contrary, prohibited or invalid, but the validity of the remaining parts or provisions shall not be affected.
- 5.3 PROLABNL'S obligations consist of using proper care and skills in performing the TESTING SERVICES. Unless otherwise explicitly agreed upon in writing, PROLABNL shall not take any responsibility for successful achievement of the results envisaged in the CONTRACT. Deficiencies arising from faulty TESTING SERVICES arising during execution thereof shall be re-performed by PROLABNL at its own cost.
- 5.4 Unless explicitly agreed upon in writing in the CONTRACT, PROLABNL shall not provide performance guarantees.
- 5.5 PROLABNL makes no warranty or representation to the TESTING SERVICES other than specified in the CONTRACT. All other warranties, express or implied, including but not limited to the implied warranties of merchantability and fitness for a particular purpose, are hereby disclaimed.
- 5.6 BUYER and PROLABNL acknowledge that each have respective obligations with respect to maintaining compliance with all safety and health related regulations concerning BUYER'S participation at TESTING SERVICES at PROLABNL'S facilities. BUYER is familiar with the TESTING SERVICES and acknowledges its separate and independent knowledge of such risks. BUYER shall maintain compliance with all safety and health related requirements concerning TESTING SERVICES and shall take all reasonable and practical steps to inform, warn, and familiarize its employees, with all hazards associated therewith. BUYER assumes as to its own employees all responsibility for any and all necessary warnings or other precautionary measures. BUYER shall defend at its own expense, indemnify fully and hold harmless PROLABNL and its parents, subsidiaries, and affiliates and its and their agents, officers, directors, employees, representatives, successors, and assigns from and against any and all liabilities, losses, damages, demands, claims, penalties, fines, actions, suits, legal, administrative or arbitration proceedings, judgments of any jurisdiction, costs and expenses (including, but not limited to, attorney's fees and related costs) arising out of or in any manner related to BUYER'S failure to provide

necessary warnings or other precautionary measures in connection with the TESTING SERVICES.

6. OVERALL LIMITATION OF LIABILITY

- 6.1 Notwithstanding anything to the contrary in this CONTRACT, including all documents making part thereof and to the maximum extent permitted by law, in no event shall PROLABNL be liable to the BUYER for loss of profit or revenue, loss of use, interruption of production, cost of capital, cost of purchased or replacement power, any and all costs related to delay, or for indirect, punitive, special, incidental or consequential damages, or claims by the BUYER'S customers for such damages, in connection with the CONTRACT, whether such liability is based on contract, tort (including negligence), statute or any other basis of legal liability.
- 6.2 PROLABNL'S liability, including that for breach of contract, negligence, strict liability in tort, or otherwise, for its Services and/or Equipment, and BUYER'S exclusive remedy shall be limited to the repair or replacement of Services and/or Equipment found defective by PROLABNL. The remedies of BUYER set forth herein are exclusive, and PROLABNL'S liability with respect to any contract, indemnity, tort (including negligence), under any warranty, strict liability or otherwise shall not exceed 100% of the CONTRACT price, unless claims arise from gross negligence or willful misconduct of PROLABNL.
- ## **7. EXPORT AND OTHER GOVERNMENTAL DOCUMENTS**
- 7.1 PROLABNL undertakes to provide the documents required by the authorities at PROLABNL'S place for the execution of the TESTING SERVICES.
- 7.2 PROLABNL, BUYER and any end user shall support and assist each other without undue delay with obtaining any necessary information or documentation required by any authority in connection with the CONTRACT. PROLABNL'S acceptance of the CONTRACT shall be subject to the receipt of all necessary authorizations required from any governmental authority which has jurisdiction over this CONTRACT.
- 7.3 The BUYER hereby represents and warrants that it is and will remain in compliance with the requirements of all applicable export laws and regulations, including but not limited to the U.S. Export Administration Regulations and International Traffic in Arms Regulations. Such requirements include but are not limited to obtaining all required authorizations or licenses for the export or re-export of any controlled item, product, article, commodity,

software or technology. Without limiting the generality of the foregoing, the BUYER hereby represents and warrants that it has not been, and is not currently, debarred, suspended or otherwise prohibited or restricted from exporting, re-exporting, receiving, purchasing, processing or otherwise obtaining any item, product, article, commodity, software or technology regulated by any agency of the United States or any other state. The BUYER agrees to indemnify and hold harmless PROLABNL from any costs, penalties or other losses caused by, or related to, any violation or breach of the warranties contained in this provision.

8. FORCE MAJEURE

- 8.1 PROLABNL shall not be liable for any non-performance, loss, damage, or delay due to acts of God such as but not limited to severe weather conditions, fire, flood or war, riots, strikes or labor difficulty, governmental acts such as but not limited to trade restrictions including embargoes, acts of the BUYER or any end user, delays in transportation, inability to obtain necessary labor or materials from usual sources, or other causes beyond the reasonable control of PROLABNL. In the event of delay in performance due to any such cause, the date of delivery or time for completion will be extended to reflect the length of time lost by reason of such delay. If the grounds for Force Majeure continue for more than six (6) months, either PROLABNL or BUYER may terminate the CONTRACT upon seven (7) days' written notice to the other party.
- 8.2 PROLABNL shall be entitled to be compensated for the extra costs caused by the interruption, or, in case of termination, for the work done prior to termination and the expenses for non-cancelable procurements. BUYER shall be entitled to receive the work for which it has paid.

9. FREE ISSUE MATERIALS

Materials supplied by BUYER to PROLABNL (e.g. test equipment, samples to be processed or tested, product for usage in performance tests, etc.) shall at all times remain the property of BUYER and shall be sufficiently covered under BUYER'S property insurance policy. Subject to the provisions hereinabove, PROLABNL shall be solely liable for damages caused to these materials in case of gross negligence.

10. CANCELLATION

- 10.1 Cancellation by PROLABNL
Upon written notice to BUYER, PROLABNL may cancel

all or any part of the CONTRACT or suspend the performance under the CONTRACT, without any liability to BUYER, (a) If BUYER (i) cancels the CONTRACT, breaches, or threatens to breach any of the terms of the CONTRACT, (ii) fails to accept or threatens not to accept the TESTING SERVICES in accordance with the CONTRACT, or (iii) fails to make timely payment, or (b) upon the occurrence or threat of insolvency or bankruptcy of BUYER.

Upon cancellation of the CONTRACT by PROLABNL: (A) PROLABNL shall be relieved of any further obligation to BUYER under this CONTRACT; (B) BUYER shall be liable to PROLABNL for the immediate payment of amounts then invoiced to date by PROLABNL to BUYER; (C) BUYER shall purchase and pay PROLABNL immediately for all unique raw materials, work in process and finished goods under the CONTRACT; (D) BUYER shall reimburse PROLABNL for any unreimbursed and unamortized research and development costs, capital equipment, and supplies that are unique to the TESTING SERVICES; and (E) BUYER shall reimburse PROLABNL for all preparation and other expenses incurred by PROLABNL or its subcontractors in connection with the BUYER and for all other losses or costs arising from termination.

10.2 Cancellation by BUYER

a. Cancellation before 12 weeks of estimated test slot start date or week in CONTRACT:

In the event that BUYER, by written instruction, cancels the delivery of the TESTING SERVICES for his convenience or for other reasons attributable to BUYER, BUYER shall compensate PROLABNL for the established costs and expenses directly connected with the work performed including a reasonable allowance for PROLABNL'S overhead and profit.

b. Cancellation within 12 weeks of estimated test slot start date or week in CONTRACT:

In case a slot of the TESTING SERVICES is cancelled within 12 weeks of the estimated test slot start date by the BUYER, then PROLABNL will invoice BUYER in addition to the cost for the work actually performed and 75% of all committed test shifts or rental fee as agreed in the CONTRACT.

10.3 Suspension by BUYER

If BUYER decides to suspend the CONTRACT, PROLABNL shall be entitled to be compensated for any costs caused by the suspension. In case of suspension by Buyer, prices, cost calculations and terms of delivery shall be adjusted accordingly. PROLABNL shall provide

evidence of such costs. If the suspension lasts more than one (1) year, the CONTRACT shall be deemed to be terminated for convenience of BUYER if BUYER and PROLABNL should not agree otherwise.

11. MISCELLANEOUS

11.1 Applicable Laws and Jurisdiction

The CONTRACT shall be construed and shall be interpreted in accordance with the laws of the Netherlands excluding and without application of any conflict of law rules.

Nothing contained in this CONTRACT shall limit the rights of PROLABNL available under the applicable law. In case of a dispute, the parties shall make their best efforts to resolve such dispute amicably. If an amicable resolution should not be possible, the competent court at PROLABNL's location shall have exclusive jurisdiction. However, PROLABNL reserves the right to initiate a claim against BUYER at BUYER'S location.

11.2 Assignment

Any attempt to assign, transfer, or delegate any of the rights, duties or obligations herein to a third party without prior written consent of the other party shall render such attempted assignment or transfer null and void.

11.3 Waiver of Rights

PROLABNL'S or BUYER'S failure to exercise any of its rights shall not constitute or be deemed a waiver or a forfeiture of such rights.

11.4 Severability

If a provision of the CONTRACT is determined to be void or unenforceable, this finding shall not render other provision void or unenforceable, and PROLABNL and BUYER shall make their best endeavors to replace such provision by a valid one covering the original commercial intention as far as legally possible.

12. MATERIALS DESTRUCTION

Unless otherwise agreed, ProLabNL stores project related materials; test data, videos, pictures, report, samples for 6 months after the final test data or report submission date. When the time has elapsed, project related materials are destructed.

BUYER understands and agrees that once ProLabNL have completed materials destruction there is no going back and recovering the data