

European ROV Services Contracting Principles



The International Marine Contractors Association (IMCA) is the international trade association representing offshore, marine and underwater engineering companies.

IMCA promotes improvements in quality, health, safety, environmental and technical standards through the publication of information notes, codes of practice and by other appropriate means.

Members are self-regulating through the adoption of IMCA guidelines as appropriate. They commit to act as responsible members by following relevant guidelines and being willing to be audited against compliance with them by their clients.

There are two core activities that relate to all members:

- ◆ Competence & Training
- ◆ Safety, Environment & Legislation

The Association is organised through four distinct divisions, each covering a specific area of members' interests: Diving, Marine, Offshore Survey, Remote Systems & ROV.

There are also five regional sections which facilitate work on issues affecting members in their local geographic area – Asia-Pacific, Central & North America, Europe & Africa, Middle East & India and South America.

IMCA R 007

The European ROV Services Contracting Principles have been developed by the Remote Systems & ROV Division of IMCA to raise awareness on contracting matters among its members and their clients. They are not binding. Each IMCA member is free to enter into whatever contracts it deems to be in its own interests.

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The information contained herein is given for guidance only and endeavours to reflect best industry practice. For the avoidance of doubt no legal liability shall attach to any guidance and/or recommendation and/or statement herein contained.

Preface

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1 Cross Indemnification

Reciprocal Indemnification for loss of or damage to property and injury to or death of personnel, including clients, other contractors, their employees, directors and co-venturers, irrespective of cause.

2 Consequential Loss

Each party should mutually exclude from the agreement the liability for the consequential loss of the other. Consequential loss should be covered by an exclusion as opposed to an indemnity. Further, for a consequential loss clause to provide the desired protection, it should be drafted unambiguously and should specify what a consequential loss under that particular contract is.

3 Third Party Liability

Contracts should be silent on the subject of third party liability, i.e. delete any clauses which make reference to the subject.

If reference to third party liability must be made then a statement should be included that third party liability will be dealt with in accordance with applicable law.

4 Defective Work

Liability for defective work should be limited to re-performance of same, preferably by the defaulting party, but by a third party as a last resort provided such defective work is notified before leaving the site.

Liability for reperformance of defective work by a third party should be limited to an agreed sum, equivalent to a maximum of 100% of the contract value. Liability for reperformance of defective work by the defaulting party should be unlimited.

The defaulting party should have no liability in respect of defective work notified after leaving the site.

5 Breakdown

In the event of breakdown liability should be limited to suspension of equipment hire charges after expiration of any downtime/maintenance provision agreed in the Contract.

6 Pollution Liability

The Parties should only accept liability for pollution originating from its own equipment or vessels. The liability cap required will normally be dictated by the limits set in the vessels P&I policy.

The client should provide an indemnity for all other forms of pollution.

7 Overall Limitation of Liability

The Parties total aggregate liability under the contract should always be limited to an agreed sum, equivalent to a maximum of 100% of the value of the contract. In the case of long term service agreement this liability cap shall apply to the value of individual work orders.

8 Guarantees and Warranties

Where appropriate, warranty for data acquisition and positioning phases of ROV work to extend only until demobilisation from site.

Where appropriate, warranty in respect of post-processing, reporting and charting to extend only until 30 days after delivery of Final Report.

9 Parent Company Guarantees:

9.1 Bank Guarantees/Performance Bonds: Retention

Only one form of security should be given, i.e. PCG or Bank Guarantee/ Performance Bond or Retention. Any combination of the securities should be strongly resisted; the worst case should be provision of two securities only one of which should be a monetary guarantee (i.e. one should be a Parent Company Guarantee).

Bank Guarantees'/Performance Bonds' validity period should be limited as appropriate to the scope of work. In practice the guarantee/bond should bear an expiry date.

Bank Guarantees/Performance Bonds should be limited to an agreed sum, equivalent to 10% of the contract value and release on completion of the work.

Retention money should be released upon completion of the work.

Cost of provision of guarantees/bonds should be to client account.

9.2 Liquidated Damages for Lateness/Delay

Liability for LDs should only be accepted:

- i) if they cause the Main Contractor/Client to incur additional costs;
- ii) if they are due to circumstances within the defaulting party's control (i.e. excluding weather, lack of access to work site, etc.);
- iii) if they are the sole liability for lateness/delay.

LDs should be stated as monetary amounts even where negotiated as percentages of contract value. This is necessary to reinforce the principle of the LDs being a pre-estimate of Main Contractor's or Client's losses.

LDs should have a cap on aggregate value. This should be a reasonable amount which will depend on contract value and scope of work.

"Time is of the essence" phrases in contracts should be deleted with LDs becoming the sole remedy of the Main Contractor/Client with regard to lateness/delay.

10 Termination of Contract for Convenience

If the Main Contractor/Client insists upon the right to terminate for his own convenience, it is reasonable for the other party to require the following compensation:

payment of all scheduled demobilisation charges plus

- i) reimbursement of committed costs such as vessel charters and major equipment hires (subject to mitigation of costs e.g. if replacement work can be secured for a vessel, the charge to the client would be reduced by an equivalent number of days); plus
- ii) a termination fee equal to, say, 5% of the value of the outstanding work.

11 Payment Terms

The Parties should resist payment periods in excess of 30 days.

Payment conditions which link sub-contract payments with main contract payments, i.e. “pay when paid” should not be accepted.

Late payment of invoices should be subject to interest charges.

Where invoices are disputed in part the undisputed portion should be paid within the agreed time, disputes should be notified and resolved promptly.

12 Suspension

Clauses which allow Main Contractors/Clients to suspend the work for any reason other than the other party's default should be resisted. Where such clauses are unavoidable parties should require that resumption of services is subject to the same notification procedures for the initial mobilisation and to availability of sub-contractors resources at date of notice, and revalidation of rates.

Where Client suspends for convenience, an agreed rate should be payable during suspension.

In the event of any suspension, the parties should meet or make contact at not more than three day intervals, with a view to agreeing a mutually acceptable course of action.

13 Force Majeure

In the event of a force majeure, the parties should communicate at not more than three day intervals with a view to agreeing a mutually acceptable course of action. A definition of *force majeure* should be included in the contract.

14 Intellectual Property

Protection should be sought in respect of any intellectual property rights, trademarks or confidential know how brought into the job. Further it is prudent to seek a mutual indemnity from all losses, costs etc. in respect of any alleged patent design or copyright infringement asserted against either party whether directly or indirectly arising out of the contract.

In the event of any discovery, invention etc on the part of Contractor whilst on the job, that rights in such should vest equally with both parties.

Any suggestion of world-wide rights or royalty free irrevocable licences should be discouraged.

15 Contracts (Rights of Third Parties) Act 1999

Where contracts are agreed under English law, the Contracts (Rights of Third Parties) Act 1999 should be addressed in the contract by way of an exclusion clause to the effect that the Act shall only apply to Indemnities, and only in so far as it relates to indemnities given the Client Group and the Contractor Group respectively. The clause should also assert that the Company or Contractor may rescind or vary the Contract without the consent of any third party.