



The International Marine
Contractors Association

European Survey Work 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:

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

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 four regional sections which facilitate work on issues affecting members in their local geographic area – Americas Deepwater, Asia-Pacific, Europe & Africa and Middle East & India.

IMCA S 001

The European Survey Work Contracting Principles have been developed by the Offshore Survey 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.

www.imca-int.com/survey

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.

Cross Indemnification

- ◆ Reciprocal Indemnification for loss of or damage to property and injury to or death of personnel.
- ◆ Where sub-contractor is required to provide primary insurance to cover damage to client property, such cover should be limited to a total sum of £1,000,000.

Consequential Loss

- ◆ The sub-contractor and contractor must each mutually exclude from the agreement the consequential loss of the other. Consequential loss must be covered by an exclusion and not by an indemnity.

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.

Defective Work

- ◆ Liability for defective work should be limited to re-performance of same, preferably by sub-contractor himself, but by third party as a last resort provided such defective work is notified before expiry of warranty period (see below).
- ◆ Liability for reperformance of defective work by a third party should be limited to 100% of the contract value. Liability for reperformance of defective work by the sub-contractor should be unlimited.
- ◆ Sub contractor will have no liability in respect of defective work after expiry of warranty period.
- ◆ In the event of breakdown sub-contractor's liability should be limited to suspension of hire charges.

Pollution Liability

- ◆ Sub-contractor should only accept liability for pollution emanating from its own equipment or vessels. The liability cap required will normally be dictated by the limits set in the vessels P&I policy.
- ◆ Contractor/client should provide an indemnity for all other forms of pollution.

Overall Limitation of Liability

- ◆ Sub-contractors total aggregate liability under the contract should always be limited 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.

Guarantees and Warranties

- ◆ Sub-contractors warranty for data acquisition and positioning phases of Survey work to extend only until demobilisation from site.
- ◆ Sub-contractors warranty in respect of post-processing, reporting and charting to extend only until 30 days after delivery of Final Report.
- ◆ Sub-contractors to avoid giving blanket warranties in respect of "Year 2000 Performance".

Parent Company Guarantees

Bank Guarantees/Performance Bonds: Retention

- ◆ Sub-contractor should give only one form of security i.e. PCG or Bank Guarantee/ Performance Bond or Retention. Any combination of the securities is to 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 should be valid only until expiry of the warranty period. In practice the Guarantee/Bond would bear an expiry date which is designed to accommodate the warranty period plus a short allowance for slippage of the work schedule.
- ◆ Bank Guarantees/Performance Bonds should be limited to 10% of the contract value.
- ◆ Retention money should be released on expiry of the warranty period.

Liquidated Damages for Lateness/Delay

- ◆ Sub-contractors should only accept liability for LDs for lateness/delay:-
 - if they cause the Main Contractor/Client to incur additional costs.
 - if they are due to circumstances within sub-contractors control (i.e. excluding weather, lack of access to work site, etc.).
 - 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 must have a cap on aggregate value. This should be a reasonable amount which will depend on contract value. For smaller contracts (say up to £500,000) it might be acceptable to cap liability at 10% of the contract price; for major work (say £5 million) a cap of between 1% and 2% would be acceptable.
- ◆ "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.

Termination of Contract for Convenience

- ◆ If the Main Contractor/Client insists upon the right to terminate for his own convenience, it is reasonable for Sub-contractors to require the following compensation:
 - payment of all scheduled demobilisation charges plus
 - 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
 - a termination fee equal to, say, 5% of the value of the outstanding work.

Payment Terms

- ◆ Sub-contractors 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" are totally unacceptable.
- ◆ 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.

Suspension

- ◆ Clause which allow Main Contractors/Clients to suspend the work for any reason other than sub-contractors default should be strongly resisted. Where such clauses are unavoidable sub-contractors should insist 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.