

# Statement of Principles

## Termination

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This document includes the Statement of Principles, a description of the issues (with examples) and contractual language.

## Statement of Principles

### Key Words:

- Area of Operations
- Client
- Contract
- Contractor
- Force Majeure
- Geophysical Services
- Subcontractor
- Tender
- Third Party(ies)

Terms that are in bold type are defined in the Glossary of Terms which forms part of this family of Statements of Principles.

In agreeing to a **Contract** for **Geophysical Services** it should be recognized that the **Contractor** is committing significant resources in good faith and with due regard to the requirements associated with a pre-defined scope of work relevant to the **Geophysical Services**. In return, the **Client** should accept that under the **Contract** it would be held to its commitment in carrying through that scope of work relevant to the **Geophysical Services**.

### 1. Client Rights of Termination With Cause:

- Termination for **Contractor's** default should be restricted to material breaches of the terms of the **Contract** (i.e. clearly state to apply only to those breaches that materially affect the performance of the **Geophysical Services**).
- **Contractor** should be given written notice of any material breach of **Contract** and allowed reasonable time (judged according to the prevailing circumstances) in which to commence remedy of and thereafter to remedy, such defaults before **Client** may exercise the right to terminate. Termination due to late mobilization should specifically exclude delays due to circumstance beyond the **Contractor's** control.
- **Contractor's** subsequent liability following Termination With Cause may be linked to the additional cost incurred by the **Client** in having the **Geophysical Services** completed by a **Third Party**, over and above (i.e. excluding) the charges that would have been payable to the **Contractor**, had the **Contractor** completed the **Geophysical Services**. Such amount should include an element of reasonableness to those charges and a cap on the **Contractor's** total potential liability should be included in the **Contract**; generally the equivalent amount that would have been payable to **Contractor** had the **Contractor** completed the **Geophysical Services** plus a minimal percentage (i.e. 5%). **Contractor's** liability for Termination With Cause should be exclusive to all other rights under the **Contract** or at law.

- The imposition of liquidated damages following Termination With Cause is not acceptable. **Contracts** provide **Client** with protection and remedies in such scenarios and the addition of punitive terms, such as liquidated damages, are not fair or reasonable.
- Upon exercising **Client's** right of Termination With Cause, it is **Client's** responsibility to pay **Contractor** any outstanding sums in respect of the **Geophysical Services** performed in accordance with the terms of the **Contract** up to and including the date of termination.

## 2. **Contractor** Rights of Termination With Cause:

- **Contractor** has the right to terminate the **Contract**, with recompense and no penalty, where **Client** has failed to meet its financial payment obligations on a timely basis. **Client** should be given written notice of such payment default and allowed reasonable time (i.e. 15 days) in which to remedy such default before **Contractor** may exercise the right to terminate.
- **Contractor** has the right to terminate the **Contract** in situations involving the insolvency or winding up of the **Client**.
- **Contractor** has the right to terminate the **Contract** if **Client** commits any breach of its material obligations under this **Contract** which impairs **Contractor's** ability to perform its obligations under this **Contract**.
- In the event of Termination With Cause by **Contractor** due to any of the above three events, **Contractor** has the right to be compensated in accordance with the compensation terms for "**Client** Termination Without Cause" as stated in item 3 below.

## 3. **Client** Rights of Termination Without Cause:

- As a basic principle, **Client** Rights of Termination Without Cause should be excluded from **Contracts** for **Geophysical Services**; however, any such clause incorporated into a **Contract** should be subject to terms based on the following principles:
- **Contractor** should be given written notice of **Client's** intent to Terminate Without Cause, sufficient to allow **Contractor** to commence rescheduling its operations and/or secure other work or payment in full shall be made in lieu of same.
- Upon exercising **Client's** right of Termination Without Cause, it is **Client's** responsibility to pay **Contractor** (i) any outstanding sums in respect of the **Geophysical Services** performed in accordance with the terms of the **Contract** up to and including the date of termination; and (ii) reimburse **Contractor** for reasonable costs and expenses incurred by **Contractor** arising directly or indirectly as a result of such early termination (i.e. cost and expenses paid to any **Subcontractor** in respect of the termination by **Contractor** of any subcontracts and to **Third Parties** directly or indirectly associated with such early termination); (iii) an early termination fee equivalent to a designated rate times the lesser of (a) the period of time it takes for **Contractor** to acquire and start alternative work or (b) the number of days between the actual termination date and the estimated date of completion of the **Contract** had it not been terminated; and (iv) the demobilisation fee.
- Consideration should be given to the principles of Termination Without Cause when considering a **Client's** right to vary the scope of work relevant to the **Geophysical Services** to be performed under the **Contract**.

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- In the event **Client** suspends the **Geophysical Services** without cause and such suspension continues past an agreed maximum period, **Contractor** has the right to terminate the **Contract** and such termination will be considered **Client Termination Without Cause** and **Contractor** shall be compensated accordingly.

#### 4. **Client and Contractor Rights of Termination Due to Force Majeure:**

- Under circumstances of **Force Majeure**, both **Client** and **Contractor** should have the right to terminate the **Contract**. In principle, **Contractor** should be compensated for time lost during a **Force Majeure** event, up to and including the date of termination if either party should decide to terminate, along with compensation for any outstanding sums in respect of the **Geophysical Services** performed in accordance with the terms of the **Contract** and the demobilization fee.

## Commercial Context

It has long been recognized and accepted by **Clients** and **Contractors** that, under certain pre-defined circumstances (i.e. material default under a **Contract** by a contracting party or exceptionally, an event beyond the control of either contracting party) an ultimate right to terminate a **Contract** should be available as recourse.

In recent years, **Clients** have also taken the position that their rights of termination should be extended to include Termination Without Cause (i.e. for their convenience at any time) to be used under exceptional circumstances at **Client's** sole discretion.

The **Contractors** have concerns that such **Contract** terms fail to recognize **Contractor's** significant pre-survey commitments in support of undertakings associated with the **Geophysical Services** and the **Contractor's** commercial exposure following such termination.

**Contractor's** pre-survey commitments generally include:

- Withdrawal from the **Tender** market of significant resources (vessels, equipment and personnel) for the time frame committed to the **Contract**.
- Investment in materials, equipment, upgrades, etc. that may be required for the contracted **Geophysical Services**.
- Substantial mobilization costs in transporting vessels, equipment and personnel to the **Area of Operations**.
- Entering into subcontracts in relation to the **Geophysical Services** obligating **Contractor** to specific services, supplies, or equipment.

**Contractor's** exposure following early termination of a **Contract** commitment generally includes:

- Demobilisation from the survey area.
- Loss of production revenue and its resultant impact on **Contractor's** financial results.
- Increase in the cost base where termination reduces the scope of a commitment.

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- Costs associated with the early cancellation of subcontracts or purchase orders relative to the survey.
- Depreciation cost of equipment specific to the survey.
- Opportunity cost of surveys declined in the timeframe committed to the Contract being terminated.
- Cost of resources originally committed to a Contract remaining idle while seeking and securing alternative work.
- Consequences relevant to adjusting future revenue forecasting and CAPEX based on the expected value of the **Contract**.

As noted above, the inclusion of Termination Without Cause in a **Contract** can severely affect **Contractor's** commercial success; therefore, when such terms are included in a **Contract**, it is imperative that **Contractor** is fairly compensated to mitigate such losses.

## Contractual Language

Below are examples of standard contractual language used in the **Geophysical Industry** for **Geophysical Service Contracts**.

### 1. Company Rights of Termination With Cause:

- **Company** shall be entitled to terminate this **Contract** by written notice to **Contractor** if:
  - **Contractor** commits any breach of its material obligations under this **Contract** that impairs the performance of the **Contract**; provided that, if such breach is capable of remedy the **Contractor** does not, within [xx] days of receipt of such notice identifying the breach in question, commence and thereafter continuously take action to remedy; or
  - **Contractor** becomes insolvent or goes into liquidation, either compulsory or voluntary (save for the purposes of a bona fide solvent reconstruction or amalgamation), or if an administrator, administrative receiver or receiver is appointed in respect of the whole or any substantial part of its assets or if **Contractor** makes an assignment for the benefit of, or composition with, its creditors generally or if any similar occurrence under any jurisdiction affects the **Contractor's** ability to complete the **Geophysical Services**.
- If **Company** validly terminates this **Contract** pursuant to Clause [xx] – Termination With Cause:
  - **Contractor** shall be entitled to immediate payment as set out in Appendix [xx] – Remuneration for that part of the **Geophysical Services** performed in all material respects in accordance with this **Contract** up to and including the date of termination. **Contractor** shall deliver all data upon receipt of such payment; and
  - **Company** shall be entitled to recover from **Contractor** and **Contractor's** total liability to the **Company** whether under contract, tort, breach of statutory duty or otherwise shall be limited to the amount by which the actual and reasonable costs incurred by the **Company** in having the **Geophysical Services** completed by a **Third Party** exceed the costs that would

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have been incurred by the **Company** had the **Geophysical Services** been completed by the **Contractor** provided always that the maximum liability of **Contractor** shall not exceed [xx%] of that portion of the **Geophysical Services** which remains to be performed at the date of termination and which is actually carried out by any such **Third Party**.

- o For the avoidance of doubt, at no time including but not limited to following any termination of this **Contract**, shall the **Company** be entitled to take possession of, arrest, or place any form of lien, charge or encumbrance over any equipment or vessels of **Contractor**, or the services of any **Contractor** personnel, to enable the **Company** to complete the **Geophysical Services**.
- o Notwithstanding any other provision of this **Contract**, **Company** shall not be entitled to terminate this **Contract** by reason of any failure on the part of **Contractor** to commence mobilisation on or before any particular date if **Contractor's** failure to do so is due in whole or in part to any reason beyond **Contractor's** control, including but not limited to:
  - Any delay in completing any **Geophysical Services** carried out by **Contractor** for any **Third Party** resulting from any event or occurrence beyond the reasonable control of **Contractor** including, without limitation, weather conditions or **Third Party** interference; or
  - Any **Geophysical Services** being conducted on behalf of any **Third Party** being extended by such **Third Party** under a contractual right in favor of such **Third Party**; or
  - **Company's** failure to have relevant permits in place.

## 2. **Contractor Rights of Termination With Cause:**

- **Contractor** shall be entitled to terminate this **Contract** by written notice to **Company** if:
  - o **Company** fails to pay amounts due to **Contractor** within the payment period stated herein and does not, within [xx] days of receipt of a written notice from **Company** pay such amount to **Contractor**; or
  - o **Company** commits any breach of its material obligations under this **Contract** which impairs **Contractor's** ability to perform its obligations under this **Contract**; provided that, if such breach is capable of remedy the **Company** does not, within [xx] days of receipt of such notice identifying the breach in question, commence and thereafter continuously take action to remedy; or
  - o **Company** becomes insolvent or goes into liquidation, either compulsory or voluntary (save for the purposes of a bona fide solvent reconstruction or amalgamation), or if an administrator, administrative receiver or receiver is appointed in respect of the whole or any substantial part of its assets or if **Company** makes an assignment for the benefit of, or composition with, its creditors generally or if any similar occurrence under any jurisdiction.

## 3. **Company Rights of Termination Without Cause:**

- **Company** shall be entitled to terminate this **Contract** by giving not less than [xx] days' written notice to **Contractor**, or in the event of termination before mobilisation by giving no less than [xx] days' written notice.

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- During the notice period referred to in Clause [xx] above, **Company** shall continue to co-operate with **Contractor** in the performance by **Contractor** of the **Geophysical Services**.
- If **Company** exercises its rights of termination under this Clause [xx] **Contractor** shall be entitled to:
  - Immediate payment as set out in Appendix [xx] – Remuneration for that part of the **Geophysical Services** performed in accordance with the **Contract** up to and including the date of actual termination; and
  - Payment for such reasonable costs and expenses incurred by **Contractor** arising directly or indirectly as a result of such termination including (i) any costs and expenses payable by **Contractor** to any **Subcontractor** in respect of the early termination by **Contractor** of any subcontracts; (ii) all and any other costs and expenses payable to any **Third Party** directly or indirectly associated with such termination; and
  - Payment of an early termination fee as per an agreed schedule set out in Appendix [xx] – Remuneration for the period from the date of actual termination until the earlier of (i) the date **Contractor's** vessels, equipment, and personnel all commence **Geophysical Services** for any **Third Party** and (ii) the date on which **Contractor** reasonably estimates as the date that it would have completed the **Geophysical Services** originally contracted to be provided under the terms of this **Contract** ("the Estimated Completion Date"); and
  - Payment of the demobilisation fee as set out in Appendix [xx] – Remuneration.

#### 4. Termination Due To Force Majeure:

- If an event of **Force Majeure** prevents or delays the performance of the **Geophysical Services** for a continuous period of [xx] days either party shall be entitled at any time thereafter, but while such event of **Force Majeure** is continuing, to terminate this **Contract** forthwith by written notice to the other.
- If either party exercises its rights of termination due to **Force Majeure**, **Contractor** shall be entitled to:
  - Immediate payment as set out in Appendix [xx] – Remuneration for that part of the **Geophysical Services** performed in accordance with the **Contract** up to and including the date of actual termination; and
  - Payment of the demobilisation fee as set out in Appendix [xx] – Remuneration.