

Memorandum of Information N° 1				
Enquiry nr.	In regard to Chapter / Paragraph / Page	Document	Question	Answer
Question 1	Article 3.2. – Delivery	Appendix C- Draft Contract	<i>The Contractor will deliver the three (3) gliders Cost, Insurance and Freight Incoterms 2020 (hereinafter: 'CIF')</i> Could the Incoterm be changed to CIP?	Yes, NIOZ agrees to change this to CIP.
Question 2	Article 3.5 – Liquidated Damages	Appendix C- Draft Contract	Could the following wording be acceptable: The Contractor owes the Principal a penalty without further notice of default if the Contractor does not deliver the three (3) gliders or does not deliver it on time. The penalty during this agreement in the event of late delivery is 0.5% of the late item for each day of delay, to commence after a two (2) week grace period up to a maximum of 10% of the late item .	NIOZ will allow a grace period of 2 weeks, but the proposed wording 'late item' will not be taken over by NIOZ.
Question 3	Article 3.8 - SAT	Appendix C- Draft Contract	We will propose its own SAT procedure.	The SAT procedure will be determined in mutual consultation between NIOZ and the Contractor.
Question 4	5 - Warranty	Appendix C- Draft Contract	We would like to suggest the following replacement clause: LIMITED WARRANTY. Seller warrants that all Goods delivered under Buyer's Order shall be free from defects in material and workmanship, and conform to Seller's specifications for a period of twelve (12) months for gliders, ninety (90) days for spare parts,	No, your suggested replacement clause will not be taken over by NIOZ.

			and six (6) months for all other Goods from the date of original shipment. All Goods must be returned to Seller's factory for inspection prior to Seller's confirmation of warranty coverage. This warranty does not apply to any Goods that, upon examination by Seller, or Seller's authorized service provider, are found to have been (i) mishandled, misused, abused, or damaged by Buyer or any third party; (ii) altered from their original state; (iii) repaired by a party other than Seller without Seller's prior written approval; or (iv) improperly stored, installed, operated, or maintained in a manner inconsistent with Seller's instructions. This warranty does not apply to defects attributed to (i) normal wear and tear or (ii) failure to comply with Seller's safety warnings. Seller, at its sole option, shall either repair or replace defective Goods, or issue Buyer a credit for the original price of the defective Goods. Such repair, replacement, or credit shall be Buyer's sole remedy for defective Goods and Services. Any defects or failures deemed by Seller to be directly attributed to a failure or defect in a component purchased by Seller and installed on or in Seller's Goods for the purpose of environmental sensing, including, but not limited to, capillary tube assemblies, pressure sensors, and hydrophones, which lead to loss or degradation of data, failure of environmental sensors, or complete failure or loss of Goods, shall not be covered by Seller's warranty. Seller will replace or repair environmental sensors per the original sensor manufacturer's warranty provided the sensor and Seller's Goods are returned to Seller within the sensor's original warranty period. Under no	
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			circumstances is Seller liable for recall, retrieval, removal, dismantling, re-installation, redeployment, or re-commissioning of any defective Goods or any costs associated therewith including, but not limited to, any subsea work performed below the waterline, heavy lift operations, or the transportation to or from offshore locations. Consumables obtained from third parties shall bear the warranty of their manufacturer. The warranty period for repaired or replaced Goods or re-performed Services shall be the greater of (i) ninety (90) days or (ii) the unexpired portion of the original warranty period. The warranty period for repair work performed on Goods that are not covered by the original warranty is ninety (90) days from the date of return shipment and applies only to that portion of the Goods that was repaired. Seller warrants that Services will be competently performed by persons reasonably skilled in their performance. Any claim for breach of this warranty must be made within ninety (90) days after completion of the specific Services for which breach is claimed. Seller shall re-perform defective Services if timely claimed, and such re-performance by Seller shall be Buyer's sole remedy for such breach. THESE EXPRESS WARRANTIES, INCLUDING THE REMEDIES SET FORTH HEREIN, ARE EXCLUSIVE AND ARE IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IS INTENDED OR GIVEN. IN THE CASE OF GOODS OTHER THAN THOSE OF SELLER'S OWN MANUFACTURE, SELLER MAKES NO WARRANTIES, EXPRESS,	
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			STATUTORY, OR IMPLIED. THE FOREGOING WARRANTY DOES NOT APPLY TO FAILURES OR NONPERFORMANCE DUE TO INCOMPATIBILITY OF SELLER'S GOODS WITH PROCESS OR ENVIRONMENTAL CONDITIONS UNLESS BUYER PROVIDES A WRITTEN STATEMENT OF THESE CONDITIONS TO SELLER PRIOR TO ISSUANCE OF BUYER'S ORDER.	
Question 5	Article 6 – Subsequent delivery	Appendix C- Draft Contract	Can the period of 10 years be replaced by 5 years?	Yes, the period can be replaced by five (5) years.
Question 6	Article 13.1 - Liability	Appendix C- Draft Contract	We would like to suggest the following text: The Contractor, who imputably fails to fulfil its obligation(s), is liable to the Principal, as well as its personnel and third parties engaged by the Principal for compensation for all damage suffered and/or to be suffered. This liability is, except for claims resulting from damages resulting from death or injury and/or intent or gross negligence on the part of the Contractor and/or its personnel and/or in the event of violation of intellectual property rights, limited to an amount of \$1,000,000 USD general aggregate of claims.	No, your suggested text changes will not be taken over by NIOZ.
Question 7	Article 18 - Disputes	Appendix C- Draft Contract	We would like to suggest the following text: 18.1 Any dispute regarding the formation, interpretation and/or performance of this agreement, as well as any other dispute regarding or in connection with this agreement, whether legal or factual, without exception, shall be settled in accordance with the	18.1 No, your proposed text changes will not be taken over by NIOZ

			Rules of Arbitration of the International Chamber of Commerce, and shall take place in London, England. 18.2 This agreement is governed by English law.	18.2 your proposed text changes will not be taken over by NIOZ
Question 8	New article - Indemnification	Appendix C- Draft Contract	We would like to add the following article: INDEMNIFICATION. Each Party (the "Indemnifying Party") agrees to indemnify, defend, and hold harmless the other Party, its officers, directors, and employees (the "Indemnified Party") from and against any and all liabilities, losses, expenses, liens, claims, demands, and causes of action ("Claims") for death, personal injury, or property damage arising out of any negligent act or omission of the Indemnifying Party in the performance of Buyer's Order, except to the extent such Claims are contributed to by (i) the negligence or willful misconduct of the Indemnified Party or (ii) the negligence or willful misconduct of any third parties. Buyer agrees to indemnify, defend, and hold harmless Seller, its officers, directors, and employees for any and all Claims, including Claims asserted by third parties, related to any Goods manufactured or Services performed in whole or in part to Buyer's designs or attributed to equipment, information, or materials furnished by Buyer to Seller. The Indemnified Party agrees to (i) notify the Indemnifying Party in writing of any Claims as soon as reasonably practicable; (ii) allow the Indemnifying Party to control the defense of any such Claim and related settlement negotiations; and (iii) reasonably cooperate with the Indemnifying Party in such defense.	No, your proposed addition of this article will not be taken over by NIOZ.

Question 9	New article – Liability	Appendix C- Draft Contract	We would like to add following new article: LIMITATION OF LIABILITY. Notwithstanding any other provision herein, under no circumstances shall Seller be liable to Buyer or any third party for any consequential, special, incidental, indirect, multiple, administrative, or punitive damages, or any damage of an indirect or consequential nature arising out of or related to Seller's performance under Buyer's Order, including, without limitation, loss of use, loss of revenues, loss of anticipated profits, and cost of capital, whether based upon breach of Buyer's Order, warranty, negligence, or any other type of claim, and whether grounded in tort, contract, civil law, or other theories of liability, including strict liability, even if advised in advance of the possibility of such damages. Seller's total liability to Buyer arising from or related to Buyer's Order, including, but not limited to, its liability for indemnity, defense, and hold harmless obligations, is limited to no more than the amount paid by Buyer to Seller under Buyer's Order. To the extent that this limitation of liability conflicts with any other Section or provision herein, such provision shall be regarded as amended to whatever extent required to make such provision consistent with this clause.	No, your proposed addition to this article will not be adopted by the NIOZ. However, the Contractor is not liable for consequential/indirect damage such as: missed savings and/or lost profit and/or lost turnover.
Question 10	Section 1.2 - Documentation	Appendix F: General Government Purchasing Conditions	Can we agree that all documentation would be provided in English?	Yes, documentation can be provided in English.

Question 11	Article 14 - Liability	Appendix F: General Government Purchasing Conditions	We would like to suggest the following wording as a replacement to the article: LIMITATION OF LIABILITY. Notwithstanding any other provision herein, under no circumstances shall Seller be liable to Buyer or any third party for any consequential, special, incidental, indirect, multiple, administrative, or punitive damages, or any damage of an indirect or consequential nature arising out of or related to Seller's performance under Buyer's Order, including, without limitation, loss of use, loss of revenues, loss of anticipated profits, and cost of capital, whether based upon breach of Buyer's Order, warranty, negligence, or any other type of claim, and whether grounded in tort, contract, civil law, or other theories of liability, including strict liability, even if advised in advance of the possibility of such damages. Seller's total liability to Buyer arising from or related to Buyer's Order, including, but not limited to, its liability for indemnity, defense, and hold harmless obligations, is limited to no more than the amount paid by Buyer to Seller under Buyer's Order. To the extent that this limitation of liability conflicts with any other Section or provision herein, such provision shall be regarded as amended to whatever extent required to make such provision consistent with this clause.	No, your proposed wording as a replacement of this article will not be taken over by NIOZ.
Question 12	Article 26 - Disputes	Appendix F: General Government Purchasing Conditions	We would like to suggest the following replacement text: 26.1 Any dispute between the Parties in relation to the Contract will only be submitted in accordance with the	26.1 No, your proposed replacement will not be taken over by NIOZ

			Rules of Arbitration of the International Chamber of Commerce, and shall take place in London, England. 26.2 The Contract is governed by English law. The applicability of the provisions of the United Nations Convention on Contracts for the Sale of Goods (the 'Vienna Sale Convention') is precluded.	26.1 No, your proposed replacement will not be taken over by NIOZ
Question 13		Appendix A - Specification	#8 SAT. Is the intention to determine these details{where, when, specific test criteria} post-award?	The details will be determined in mutual consultation between NIOZ and the Contractor.
Question 14	Article 6.5.1	Descriptive Document	We have to submit a reference project regarding a delivery of several autonomous underwater gliders. Will a delivery of 2 gliders to 1 client be sufficient?	That is correct; 'several' means 2 or more gliders.
Question 15	Article 6.5.1	Descriptive Document	Should the reference project concern a simultaneous delivery of all autonomous underwater gliders at one delivery moment, or may it also concern a reference in which several gliders were not delivered simultaneously to the client?	A simultaneous delivery of all gliders is not required.
Question 16	Article 6.5.1.a	Descriptive Document	If the autonomous underwater gliders do not necessarily have to be delivered simultaneously, is it sufficient that the last glider was delivered within the period of 3 years?	It is sufficient that the last glider has been delivered within the 3 years period.
Question 17		Appendix A - Specification	For the field test of the acoustic data recovery system: at what location do you plan to do these tests?	This will be agreed between the Contractor and NIOZ.
Question 18		Appendix A - Specification	How would you specify sensors that are easy to remove?	An easy to remove sensor can easily be removed, by using the manual, by the user or an electronics technician with

				minimal effort, without soldering, glue or factory re-calibration needed afterwards.
ENCLOSURES				
Altered documents: - Draft Contract v1.1 - Price Form v1.1				