

Memorandum of Information N° 2

Enquiry nr.	In regard to Chapter / Paragraph / Page	Document	Question	Answer
Question 1	5 - Warranty	Appendix C-Draft Contract	We previously asked to replace the existing warranty language contained in section 5 which was not accepted by NIOZ. As we would like to include further details on the warranty we propose that in addition to the text contained in section 5 that the following text is also incorporated: 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, 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	NIOZ will incorporate the next text in section 5: <i>The Contractor</i> Seller warrants that all <i>Equipment Goods</i> delivered under <i>this agreement</i> Buyer's Order shall be free from defects in material and workmanship, and conform to <i>Contractor's Seller's</i> specifications for a period of twelve (12) months for gliders, ninety (90) days for spare parts, and six (6) months for all other <i>Equipment Goods</i> from the date of original shipment. All <i>Equipment-Goods</i> shall must be returned to <i>Contractor's Seller's</i> factory after consultation for inspection prior to <i>Contractor's Seller's</i> confirmation of warranty coverage. This warranty does not apply to any <i>Equipment-Goods</i> that, upon examination by <i>Contractor Seller</i>, or <i>Contractor's Seller's</i> authorized service provider, are found to have been (i) mishandled, misused, abused, or damaged by <i>the Principal Buyer</i> or any third party; (ii) altered from their original state; (iii) repaired by a party other than <i>Contractor Seller</i> without <i>Contractor's Seller's</i> prior written approval; or (iv) improperly stored, installed, operated, or maintained in a manner inconsistent with <i>Contractor's Seller's</i> instructions. This warranty does not apply to defects attributed to (i) normal wear and tear or (ii) failure to comply with <i>Contractor's Seller's</i> safety warnings. <i>Contractor Seller</i>, at its sole option, shall either repair or replace defective <i>Equipment-Goods</i>, or issue <i>Principal Buyer</i> a credit for the original price of the defective <i>Equipment-Goods</i>. Such repair, replacement, or credit shall be <i>Principal's Buyer's</i> sole remedy for defective <i>Equipment-Goods</i> and sServices. 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

		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 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-	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. Contractor Seller will replace or repair environmental sensors per the original sensor manufacturer's warranty provided the sensor and Contractor's Seller's Equipment-Goods are returned to Contractor Seller within the sensor's original warranty period. Under no circumstances is Contractor Seller liable for recall, retrieval, removal, dismantling, re-installation, redeployment, or re-commissioning of any defective Equipment-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 Equipment-Goods or re-performed sServices 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 Equipment-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 Equipment-Goods that was repaired. Contractor Seller warrants that sServices will be competently performed by persons fully reasonably skilled in their performance. Any claim for breach of this warranty must be made within ninety (90) days after completion of the specific sServices for which breach is claimed. Seller shall re-perform defective sServices if timely claimed, and such re-performance by Contractor Seller shall be Principal's 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, 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.
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			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, 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 2	4.6 Payment	Appendix C-Draft Contract	Section 4.6 Payment states that a Bank Guarantee is required for the proposed initial payment milestone of 40% of contract value. Is NIOZ open to: 1) Forgoing the Bank Guarantee as we are a large publicly traded company with annual revenues in excess of 5 billion USD 2) Other form of guarantee	NIOZ is willing to offer an alternative payment schedule without the presentation of a bank guarantee: <table><tr><th>Instalment</th><th>Percentage</th><th>Condition</th></tr><tr><td>1</td><td>0%</td><td>After signing this agreement</td></tr><tr><td>2</td><td>90% (of the Purchase price as mentioned under Article Fout! Verwijzingsbron niet gevonden.)</td><td>After delivery CIP as per Article 3.2</td></tr><tr><td>3</td><td>10% (of the Purchase price as mentioned under Article Fout! Verwijzingsbron niet gevonden.)</td><td>After unconditionally acceptance as referred to in Article Fout! Verwijzingsbron niet gevonden..</td></tr></table>	Instalment	Percentage	Condition	1	0%	After signing this agreement	2	90% (of the Purchase price as mentioned under Article Fout! Verwijzingsbron niet gevonden.)	After delivery CIP as per Article 3.2	3	10% (of the Purchase price as mentioned under Article Fout! Verwijzingsbron niet gevonden.)	After unconditionally acceptance as referred to in Article Fout! Verwijzingsbron niet gevonden..
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Question 3	3.9 Delivery and Acceptance	Appendix C-Draft Contract	It is requested to modify the text in 3.9 to have some time period of completion. As this section is currently written this process could potentially be delayed by an unconstrained period of time. It is proposed to modify section 3.9 as follows: 3.9 Immediately after the SAT tests have been successfully completed, the three (3) gliders will be unconditionally accepted and handed over to the Principal, which is achieved by the signing of a written declaration of acceptance (see Enclosure V) to this effect by both the Contractor and the Principal. SAT and Enclosure V shall be completed and accepted not to exceed sixty (60) days of receipt of the three (3) gliders. Any prior approvals given by the Principal on (part) deliveries and/or other activities in the context of the delivery of the three (3) gliders in no way restrict the rights that the Principal has in the context of whether or not to accept (ownership) of the three (3) gliders and the provision of the written declaration of acceptance by the Principal as aforesaid.	NIOZ will allow a time period of completion.
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ENCLOSURES

Altered documents:

- Draft Contract v1.2