

OFFSHORE CONSTRUCTION CONTRACTS IN THE OIL INDUSTRY

Jean Raphaël TOUZE

**RESEARCH
FOR THE DESS OF MARITIME LAW**

Director : Mr. Christian SCAPEL

1999-2000

UNIVERSITY OF AIX MARSEILLE III

FACULTY OF LAW

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Introduction

The search and exploration for oil resources at sea began in the 1920s on Lake Maracaibo in Venezuela and on the shores of the Caspian Sea. Since then, there has been a continuous development of research and drilling techniques. The first offshore oil well was drilled in Louisiana in 1947 at a depth of 20 meters. Today the Total-Fina-Elf group is launching the construction of the largest and most ambitious offshore complex in the world off the Angolan coast. The project, named "Girassol", aims to extract oil at a depth of 1600 meters below sea level.

The research and exploitation of oil deposits at sea constitutes what oil professionals call the upstream sector of the oil industry¹.

This is a high-risk sector. Research operations are unpredictable and the risk level is high, since on average only one in ten exploratory wells lead to a "viable" discovery, i.e. one which is likely to lead to extraction operations. In addition, the financial risks are considerable, the cost of offshore operations is very high and the unfavorable physical conditions of certain sites such as the North Sea further increase the financial costs involved in setting up a project². Finally, the political impact of such projects is significant, since oil activities involve State sovereignty and raise questions of international law such as the delimitation of maritime areas or environmental protection³.

The upstream sector of the oil industry is therefore a vast domain in which oil companies must sign all kinds of different agreements. These agreements include "technical" contracts, which are contracts signed between major oil companies and service providers involving all aspects of exploration and production. It is rarely the oil companies themselves that carry out the extensive work arising from their investments or involved in operating their facilities. In most cases they act as a contracting company, creating a huge

¹ As opposed to the downstream sector which consists of oil refining and distribution.

² Lamaigant, « La recherche pétrolière en Mer du Nord » p.2, Bulletin de l'industrie pétrolière, May 12, 1970

³ Guy Fage, « Les contrats pétroliers dans l'industrie de l'exploration et de la production pétrolière », DMF 98 p.227

market for equipment, services and engineering, which are provided by a whole range of other companies that are affiliated to the oil industry⁴.

After carrying out prospecting operations to evaluate the size and value of an oil field, the client companies then engage other companies affiliated to the oil industry to develop the field. This stage involves the signing of a construction contract.

What exactly does this construction work involve?

Offshore construction operations mainly involve laying pipelines or positioning oil platforms.

- Pipelines are laid in order to link facilities between each other or to the coast, to loading terminals or to loading buoys. These are very costly operations. The cost of laying a pipeline to the coast varies from \$280 000 to \$560 000 per nautical mile depending on the diameter of the pipe. For example, the 30-inch diameter pipeline linking the Lemn Bank field to the English coastline (i.e. a distance of 50 km) cost more than \$20 million, or more than \$600 000 per nautical mile. Such operations are also technically very complex since the contractor must take account of the relief of the seabed that may be as much as 1000 meters below sea level, as well as any other pipeline networks which may already exist.

- Offshore construction contracts may also involve the positioning of oil platforms, which includes the transportation of the different parts of the drilling platform as well as their assembly at the production site.

Just like pipe-laying operations, oil platform construction is costly and high risk. For example, on August 9, 1976, the phase 1 Torche de Frigg platform was damaged during towing from the construction site to the installation site. The insured value was 60 million Francs, whilst the cost of damage was 30 million Francs. The cost of such platforms can be astronomical: a 6500 t self-elevating platform costs approximately \$7.5 million. Its depreciation cost over 5 years is approximately \$4200 per day, i.e. one third of the drilling costs.

⁴ « L'industrie parapétrolière française », results of the 1998 survey, annual COFREP-CEP&M seminar, Oct 6, 98

In this context, the offshore construction contracts are extremely important, they can be characterized as international undertaking contracts.

First of all these contracts are undertaking contracts, that means contracts by which one of the contracting parties (the Client) wants the other (the Contractor) to perform a work for an agreed price⁵. In fact, the big oil companies are used to act as a client while the smaller companies act as contractors.

Such contracts consist in performing a work or a service. As a result “the undertaking contract may be the best example of an obligation to do something”⁶.

There is another element allowing us to consider the offshore construction contracts as an undertaking contract: the performance of an independent work. In fact the performance of the works implies a real independence as well as a control of the operations, as a consequence, the Contractor is responsible for the work provided and for his efficiency.

Offshore construction contracts are also characterized by their international aspect. Such evidences are for instance the nationality of the parties or the difference between their nationality and the place of work⁷.

An international contract implies different things:

- First of all, the distance of the parties as well as their cultural and linguistic differences creates a more complex situation compared to a national contract, this implies the elaboration of some extra judicial mechanisms and rules⁸.
- What is more, the money at stake is so important that the obligations between the parties last longer.
- At least, the international aspect of the offshore construction contracts implies a greater freedom in the choice of the law applicable to the contract. The parties can decide to choose a law which has no link at all with their contractual relationship.

The achievement of these offshore construction contracts finds its expression in a constant formation and performance process, and this whatever the nationality of the parties.

This process comes from a practical experience in the offshore market. Despite a diversity in the expressions used, we can notice a similarity in the way of choosing the contractor(s).

⁵ Jérôme Huet : « Traité de droit civil : les principaux contrats internationaux » p.1115, LGDJ 1996

⁶ *ibid.*

⁷ Giuliano and Lagarde report, JOCE, n° C 282/10 Oct. 31, 1980

Thus, the study of the precontractual process will show the importance of the uses in the nomination of the parties as well as the drafting of the future contract (first part). This precontractual process will give birth to the final contract which the essential clauses are also often the same (second part).

⁸ Ugo Draetta et Ralph Lake, *Contrats internationaux, Pathologies et remèdes*, p.15, Bruylant, Bruxelles 1996

PART I : THE PRE-CONTRACTUAL

PHASE

The pre-contractual phase represents a very important stage insofar as it will settle the shape of the future contract.

All the offshore construction contracts are characterized by a pre-contractual stage in which the parties will try to come to an agreement satisfying at best their mutual demands. The study of this pre-contractual stage cannot be done without a preliminary presentation of the different parties involved in the contract realization. That's the reason why we will study in a first chapter the different parties involved before studying in a second part the mechanism for forming offshore contracts.

CHAPTER 1: THE PARTIES INVOLVED

§1) The contracting company: the oil company

At times the contracting company will act alone and on its own behalf in its dealings with the contractor. This is generally the case for relatively inexpensive work that does not represent a significant financial burden for the company. However, whenever major work is required, oil companies generally group together to form joint ventures, a practice which originated in the United States where oil and mining companies were the first to form this kind of group.

The leader of this group is known as the "operator" and in some ways constitutes the group's executive branch, in charge of "technical operations and administrative and

political relations with governments"⁹. It is therefore the operator who signs the construction contract with the contractor. It is important to note that the operator, when signing a construction contract as part of a joint venture, acts on its own behalf and therefore does not bind the other members of the joint venture. The operator acts as an independent contracting party and any third parties may only take action against the operator.

As regards designation, the operator is nominated by the other members of the group according to rules stipulated in the joint venture agreement. As a general rule, the largest member of the joint venture shall be designated as the operator, although some exceptions are possible¹⁰.

"Most companies seek to become the operator whenever possible; in this way, they gain valuable experience and, if the project is successful, all the prestige and credit arising from a successful joint venture will be theirs"¹¹.

The operator/contracting company is very often a subsidiary of a parent company whose headquarters are located in a different country, since major oil corporations often opt to set up subsidiaries in oil-producing countries. The constitution and operation of these subsidiaries is necessarily governed by the laws of the country in which the subsidiary is set up. By using subsidiaries, Western companies are able to avoid many of the fiscal measures which oil-producing countries impose upon foreign companies. For example, the French company Elf-Aquitaine, which has extensive activities in Africa, has subsidiaries governed by local law in various countries: Elf Gabon, Elf Congo, Serepca (Cameroon), Elf Exploration Angola...

As we will see below, the fact that the operator/contracting company is governed by local law can have a major impact on the contract and in particular on the governing law¹².

⁹ Lemaignan, « la recherche pétrolière en Mer du Nord », Bulletin de l'industrie pétrolière, May 12, 1970

¹⁰ For the exploitation of "Block 2" in Angola, Texaco is the operator although this company only holds 20% of shares whilst Sonangol holds 25.9% and Total and Petrobas 27.5%.

¹¹ Isabelle Barbarin, postgraduate thesis, "la joint venture en matière pétrolière" p.212, 1982 Academic Library of a Aix en Provence.

¹² Cf. below Chapter III in Part II : Disputes and Governing Law.

§2) The contractor

In general, one single company will be unable to carry out major offshore construction operations alone, since it lacks the necessary material, technological or financial resources. This is why very often (and in fact almost systematically), several contractors, all affiliated to the oil industry, will work together as part of the same project.

There are three different forms of joint participation:

- joint venture companies
- subcontracting agreements
- group or consortium agreements

A) Forming a joint venture company

The contractors form a company together in which each contractor holds a percentage of shares in relation to their degree of participation in the project as a whole. This may be an ad hoc company, i.e. one that is formed solely for a specific project, or it may be formed in view of working on several different projects. This new company will contact the client and sign a construction contract when necessary.

Thus, in 1995 the French group Bouygues Offshore and the Italian contractor Saipen announced the creation of a fifty-fifty joint venture. This company, called Saibos, constructs and installs oil platforms and underwater pipeline networks around the African coast (with the exception of North Africa) as well as the Atlantic coasts of South America. Likewise, the Italian companies Protan and Micopeari formed a joint venture in 1995. Another example is the partnership between the American company McDermott and the French company ETPM¹³. This agreement involved the creation of a joint subsidiary, ETPM International, in which McDermott held one third of the shares and which had access to new geographical zones such as the Far East, East Africa and the Mediterranean.

¹³ This partnership is no longer current since ETPM was taken over by STOLT in 1999 and the creation of STOLT Offshore.

B) Subcontracting agreements

The contractor may subcontract the work ordered by the client. A subcontractor will thus be entrusted with all or part of the project.

a) Advantages and disadvantages of subcontracting

The contractor, although an oil industry affiliate, may not have the necessary technical skills for all the operations involved in building the facility and will therefore make use of "specialist" subcontracting.

In addition, the contractor may at times be overwhelmed by all the operations involved and will call upon subcontractors with the same specialization and equipment as itself. This is known as "capability subcontracting".

Finally, the contractor may seek to reduce the risk of any possible error on its part. Indeed, it is very rare for a single contractor to carry out work such as offshore work alone. Even if the company is financially able to take on such a project on its own, it will refuse to take the risk, preferring to spread the risks and share them with subcontractors.

There are also disadvantages to the use of subcontracting, since the contractor is thus bound to two distinct entities, the Client on the one hand and Subcontractor on the other. The contractor must answer to its Client for any error or failing on the part of its subcontractor. This is why contractors generally sign "transparent" subcontracts, also known as "back to back" contracts in which the main contractor passes on "to the subcontractor, as far as possible, the obligations which it itself has towards the contracting company"¹⁴.

b) The freedom to subcontract

As a rule, the main contractor is free to subcontract, but there can be restrictions to this freedom.

The contractor may be prohibited from subcontracting all of its obligations. Thus, under article 4.1 of the general conditions the F.I.D.I.C.'s¹⁵ Conditions of Contract for Civil Engineering Works, "the contractor shall not subcontract the whole of the works".

¹⁴ G. Viney, *Sous-traitance et responsabilité civile, la sous-traitance de marchés de travaux et de services*. Economica, 1978

¹⁵ Cf. below: the FIDIC page 23

In addition, some Middle Eastern and African countries prohibit a contractor from subcontracting all or part of the work to a blacklisted company. This blacklist is not a nominative one, but rather it fixes the criteria which, if they are met, will lead to a company being blacklisted. For example, some Arab countries prohibit the subcontracting of all or part of the work to a company that has contracted with the State of Israel¹⁶. Such measures are state measures and will therefore apply even if the contract is governed by foreign law.

The contracting company may also restrict the contractor's right to subcontract in the main contract. Thus, the contract may stipulate that the main contractor shall submit the name of its subcontractor to the contracting company for approval. This is known as "authorized subcontracting". Likewise, the contracting company may decide that the main contractor should make use of a specific subcontractor chosen by the contracting company, known as the "nominated subcontractor".

C) Group agreements

Such group agreements between companies are often qualified as joint ventures. In reality, the term "joint venture" is a highly generic one that can cover a wide variety of forms and situations. Having already used this term to describe groups of oil companies (i.e. the client entities), as well to describe companies formed between the contractors, here we shall use the term "group agreement" or "consortium agreement" to define these groups of contractors.

a) The notion of consortium

"A consortium of companies is the temporary contractual association between two or more companies wishing to pool their resources in order to allow them to answer a call of tender and/or participate in a specific construction project under the best possible conditions¹⁷".

Such group agreements are characterized by the absence of a legal entity and the exclusion of any corporate form. Known as "unincorporated associations", these agreements are above all cooperation agreements i.e. all the companies which are parties to the group

¹⁶ Interview with Michel Bourhis, consultant in offshore works

¹⁷ Panayotis Glavinis « Le contrat international de construction » p.340 GLN JOLY publications, 1993

agreement have a shared objective which is to build the facility, and they distribute the tasks in accordance with the terms of the group agreement. The duration of such agreements is generally restricted to the construction period, due to the fact that in most cases the members of the group are construction companies in competition for other construction sites and therefore have no intention of forming a stable structure amongst themselves.

Each company which is a member of the group will individually sign the construction agreement with the contracting company and shall therefore be directly legally bound to this company.

In this type of group, each of the parties will either be jointly liable to the client, or else severally liable, which is the most frequent situation¹⁸. In the case of a group of jointly liable companies, the different members of the group are only liable for their own services and shall not be liable for any failure by one of their partners to meet its obligations.

In the case of a group of severally liable companies, the Client is entitled to hold each member of the group liable for all the members and for the construction work in its entirety. This is a considerable advantage for the Client, since each member is liable for the entire debt in the event of one of the members of the group failing to meet its obligations.

The companies will also participate severally in the group's profits and losses.

Group agreements are very often formed before the contract is signed, or even before the call for tender has been issued. Contractors often form these groups prior to the pre-qualification period and submit a joint offer at the very start of the pre-contractual phase. Sometimes, the group may be formed at the client's initiative when the client unites the bids received during the call for tender procedure, thereby provoking a group situation. The client then invites those contractors that have submitted competitive or complementary bids to form a group in exchange for their winning the contract.

The group will be represented as regards the contracting company by one of its members. This member is known as the leader company or the pilot company¹⁹. As well as representing the group to the contracting company, the leader company also coordinates

¹⁸ M. Dubisson « Les groupements d'entreprises pour les marchés internationaux » p.52 2nd edition Librairies Techniques, 1985

the various contractual obligations and is in charge of the group's external relations in general. The leader or pilot company may therefore sign one or several subcontracts on behalf of the group, and may become liable to the other members of the group as regards any failure to fulfil its mission of coordination. However, the consequences of such a failure as regards the Client shall be born by the group as a whole.

b) The consortium under French law

The French courts have a very strict interpretation of the notion of a group agreement and tend to qualify this as a de facto company. French judges have tried to establish by all possible means that these groups are in reality nothing more than companies disguised by a contract. In this respect, the courts try to identify the parties' common intention. To do so, they look at whether the parties intended to behave like members of a company. This is known as "*affectio societatis*". In order to avoid being qualified as a de facto company, the parties to a group agreement generally stipulate in their agreement that they have no intention of forming a company, thereby expressly excluding any *affectio societatis*. However, such measures are insufficient since, over and above any express intentions, the judges look at the reality of the parties' actions and behavior. In fact, French judges, as well as looking for the *affectio societatis*, will also look for the existence of joint contributions as well as participation in the group's profits and losses.

Thus on November 17, 1970²⁰ the Court of Cassation ruled that the courts are entitled to consider that a group of three companies constitutes a de facto company whenever it is established that these companies tendered jointly for a public works contract with a shared objective, that they each contributed the potential of their respective activities in order to achieve this result, and that the agreement between them manifests their intention to join forces, to share in the group's profits and participate in its losses.

The consequences of a group being deemed to be a de facto company are very serious indeed²¹. From a tax perspective, the company (or rather the group qualified as a company) will be subject to registration charges in accordance with Article 714 of the French

¹⁹ The expression "pilot company" is more especially used in the construction and public works sector, whereas the term "leader company" is mainly found in equipment supply contracts.

²⁰ D 1971.206

General Tax Code. It will also be liable for direct taxes and in particular taxes on industrial or commercial profits. From a legal perspective, under Article 1873 of the Civil Code, a group qualified as a de facto company is subject to those measures applicable to holding companies.

Another of the consequences of such a qualification concerns the group members' liability towards third parties. Article 1872-1 of the Civil Code, modified by the law of January 4, 1978, distinguishes two different situations:

- the holding company is secret, i.e. only the tax authorities are aware of it, and each partner is liable only for itself.
- on the other hand, if the company is known to third parties (voluntarily or by lack of precaution), French law holds that all partners shall be jointly and indefinitely liable towards third parties, which is exactly what the contractors were seeking to avoid by forming a group.

In practice, it is extremely difficult to hide such a group from third parties, simply due to the fact that the contract is signed with the Client. As a result, it can be said that under French law, those companies wishing to form a consortium and share the resulting profits will very often find themselves qualified as de facto companies.

§3) Commercial intermediaries

Any physical person or legal entity practicing in an independent manner and whose role is to promote the signing of contracts can be qualified as a commercial intermediary.

Commercial intermediaries are frequently used in the offshore oil industry and in particular by affiliated companies. Since these are often small companies, they rarely have a stable, lasting presence in the country in which the work is to be carried out, and commercial intermediaries can make up for this absence.

There are three categories of commercial intermediary:

- Commercial agents

²¹ Michel Dubisson, « Les groupements d'entreprises pour les marchés internationaux » p.70 2nd edition Librairies Techniques, 1985

- Sponsors
- Occasional intermediaries

A) Commercial agents

a) Definition

According to Article 1 of the law of June 25, 1991, a commercial agency contract is a contract by which one party (the agent) agrees on a long-standing basis and in exchange for payment to negotiate and as necessary conclude deals in the name of and on behalf of the other party (the principal), without any form of subordination²².

b) Characteristics of commercial agents

A commercial agent is an authorized agent and in this capacity is not deemed to be a trader under French law since the authorization is a civil one; this distinguishes the commercial agent from the broker, who is considered to be a trader.

In addition, the commercial agent's activities are permanent, which distinguishes him from the occasional agent.

Finally, the commercial agent is independent, having complete freedom in the organization of his activities.

c) The role of the agent

Given the above definition, the commercial agent clearly plays a very important negotiating role. He provides potential clients with information regarding the services offered by the Contractor and will seek to convince the clients to agree to the deal²³. Some agency contracts give greater power to the agent who, as well as the power to negotiate, is also given the power to sign the contract on behalf of the principal. However this type of contract is relatively rare.

²² This law of June 25, 1991 was passed in enforcement of the European Community directive 86/653 of December 18, 1986.

²³ Paul Crahay, "Les contrats internationaux d'agence et de concession de vente", LGDJ 1991

B) Sponsors

In third world countries and in particular in the Persian Gulf, any contractor affiliated to the oil industry wishing to conclude a construction contract must do so through a sponsor²⁴.

Sponsors are somewhat distinct from the other categories of intermediary since in some ways they are "compulsory" intermediaries. In reality, although the Contractor may have the choice between several different sponsors, he is obliged to designate one of them.

This obligation concerns both those contractors wishing to work in the country concerned and companies which simply wish to participate in a call for tender.

As opposed to the commercial agent, the sponsor's role is not to seek out sales but simply to allow sales, to make them possible.

The sponsor will be the foreign Contractor's guarantor, or rather its "patron" as regards the local authorities.

The sponsors are paid a percentage of the Contractor's turnover generated by the construction work concerned. In general this percentage is around 1 to 2% of turnover, but at times the sums paid are much higher.

It goes without saying that such sponsorship practices are not at all to foreign contractors' tastes, in particular since it is difficult to find a good sponsor. There tends to be many candidates full of promises, which in the end turn out to be empty.

C) Occasional intermediaries

Besides the agency contract and the sponsorship contract, oil industry contractors at times make use of occasional intermediaries. As opposed to the agent, who is contractually bound to negotiate or to conclude a contract, the occasional intermediary merely provides the Contractor with appropriate information and assistance in order to conclude the deal. The occasional intermediary transmits one or several bids on a case by case basis, playing the role of an informant, so to speak.

This is very similar to a broker's role in that the intermediary is acting independently and that his activity involves putting people in touch, bringing people together and facilitating the formation of an agreement.

In the offshore industry, these intermediaries are known as "frogs", no doubt because of their number and the noise they make, since each one claims to be in the best position to win the contract.

It should be noted that "frogs" may also be used downstream of the contract, after its formation. The intermediary will then contact the client on behalf of the Contractor in order to resolve problems involving the application of the contract.

Now that we are familiar with the main players on the pre-contractual stage, we shall now study the mechanisms for forming these contracts.

CHAPTER 2: THE MECHANISM FOR FORMING OFFSHORE CONTRACTS

Offshore construction contracts are nearly all formed in the same manner. There are four stages to this mechanism: a pre-qualification phase, a call for tender phase, a negotiation phase and finally the formation of the contract.

§ 1) The pre-qualification process

Offshore construction contracts are *intuitu personae* contracts. For this reason, before beginning negotiations in view of signing the contract, the contracting company generally pre-selects certain candidates. The objective of this procedure is to select those companies that are capable of executing a construction project. This is done before any tenders are submitted.

²⁴ Some countries such as Algeria prohibit the use of sponsors.

The contractors are either contacted directly by the contracting company, or else they approach the contracting company themselves, having been informed by their commercial intermediaries of a given oil company's plans.

The Client will then organize a design competition, in which the contracting company provides the future bidders with a set of documents outlining the technical characteristics of the project i.e. plans of the basic design of the facility to be built but also general specifications as regards the extent of the work to be carried out and construction methods to be followed. Using these documents, the contractors submit proposals to the Client for executing the project. They will also be asked to fill out questionnaires regarding their structure and organization, their financial capacity, projects currently in progress and projects already completed.

After studying all the information provided by the contractors, the contracting company will select a limited number of contractors and, using the call for tender mechanism, will invite them to submit full bids, also known as tenders. However, it should be noted that after having been pre-qualified, the contractors must write to the contracting company indicating whether or not they intend to participate in the call for tender which the contracting company is planning to launch. If they refuse to participate in the call for tender, they are obliged to give their reasons for this (for example, insufficient financial or human resources...).

If on the other hand the contractor agrees to participate in the call for tender, he is then obliged to sign a bid bond²⁵, which is generally equivalent to 5% of the total cost of the work. The bid bond indemnifies the Client against the Contractor's refusal to sign a contract that meets the conditions of its tender²⁶.

§ 2) The call for tender procedure

A) The concept of calls for tender

First and foremost, the call for tender mechanism should be distinguished from the offer in the technical sense of the word.

²⁵ Cf. below bank guarantees p 32

²⁶ Some companies do not use this, as was the case for Elf Aquitaine.

- "The offer can be defined as an expression of will, whose object is a proposal to conclude a contract under terms stipulated by the offeror"²⁷.

The offeror will only be bound once the offer has been accepted. For this reason, the offer must be precise and unequivocal²⁸:

Firstly, the offer, "in order to bind the offeror and allow a contract to be formed... must be unequivocal" i.e. the offeror must leave no doubt as to his intention to contract. If the offer is made without this intention then this is a mere proposal, an invitation to begin negotiations without creating any obligations. An unequivocal offer obliges the offeror to respect the terms of his offer should it be accepted.

The offer must also be precise, which means that it must indicate "the essential elements upon which the parties wills may converge"²⁹.

These characteristics are what distinguish an offer from a call for tender.

- The call for tender, as distinct from the offer, does not bind the offeror when accepted by the recipient. The call for tender is a simple offer to negotiate, an *invitation to treat*³⁰. Calls for tender are very detailed, precisely defining the conditions and methods for the services to be provided. However, this is not an offer as defined above since it does not fulfil the essential characteristics of an offer.

Thus a call for tender is not entirely precise in that one essential element is missing: the price, which will subsequently be fixed by the parties during negotiations³¹.

In addition, the call for tender is equivocal in as much as it is an invitation to treat.

Having defined the concept of the call for tender, we shall now look at its format.

B) The format of the call for tender

The call for tender is comprised of a series of documents transmitted by the contracting company to the contractors that it has selected³².

The most common format is as follows:

²⁷ Chritian Larroumet, Droit civil Volume 3, « les obligations, le contrat », Economica, n° 238, 1990

²⁸ Ibid.

²⁹ Ibid.

³⁰ In English law, a call for tender is not an offer but a proposal to negotiate. Cf. Quenn's Bench, Cargill v Carbolic Smoke Ball 1893.

³¹ Cf. below: the negotiation phase p 19

³² Cf. above: the pre-qualification phase p 15

a) The invitation letter

This is a letter in which the contracting company invites the contractors to submit their offers. In this letter, the contracting company will stipulate the date by which the contractor should reply to the call for tender, the estimated date on which work should begin and the maximum duration of the work.

b) Instruction to bidders

The object of this document is to stipulate the rules under which the call for tender shall be organized and carried out. For example, the contracting company shall stipulate:

« Contractor shall receive two (2) copies of the complete contract bid inquiry document. Contractor shall enter his tender prices and signature in ink on the schedules of contract with the name of each person who signs being typed or printed below that person's signature ».

These rules often stipulate that the contractor's bid must be saved on a diskette, that the contractor should separate its technical offers from its commercial offers, that five copies of the bid should be produced and transmitted to the contracting company in a double envelope etc.

These are the practical formalities surrounding the call for tender.

c) Presenting the bids - the tender form

The aim of the "tender form" is to set a standard presentation for bids. All the bidders must respect this presentation. They must introduce their company, indicate the technical resources to be mobilized, present their commercial offer etc.

The contracting company has a lot to benefit from standardizing the presentation of bids in this way. This allows the company to compare the different contractors' bids more easily and identify the most attractive bid.

d) General conditions of the contract

This contract is written by the contracting company and submitted to the contractors. The general conditions may be written by the contracting company itself, although "the general conditions included in call for tender documents are generally written by the parent company and imposed upon all companies in the group to be used when ordering construction work"³³.

Finally, as we will see below, these general conditions may emanate from international professional organizations.³⁴

e) Special conditions of the contract

These will be used to add more details and specifications to the general conditions.

C) Qualifications

a) The advantages of qualifications

Upon reading the conditions of the call for tender, the contractor may realize that some of the terms put forward by the client may be unfair or even dangerous. For example, the client, as we will see below³⁵, generally provides for the possibility of terminating the contract at its own convenience even if the contractor is not at fault. In such a situation, clauses frequently stipulate that the contractor shall receive only a symbolic amount of compensation, or even no compensation at all. This is why it is important that the contractor issue qualifications.

It is clear that clients do not like qualifications and that including them in a bid probably does not work in contractor's favor. However, issuing qualifications is also a sign of seriousness since it shows that the contractor is not inclined to accept everything without negotiating. This can also be an effective weapon in the negotiation process, since qualifications allow the offer to be adjusted at a later date and can allow the contractor to increase or to reduce the price during the negotiation phase³⁶. Practice confirms that a bid

³³ Panayotis Glavinis « Le contrat international de construction » n° 59 GLN JOLY éditions, 1993

³⁴ Cf. below: the negotiation phase p.20

³⁵ Cf. below: the cancellation or suspension of work p.35

³⁶ Interview with Me Gil Gaignaire, lawyer specialized in offshore contracts

has never been rejected outright due to its qualifications, or at least, not at its first reading³⁷.

b) Presenting qualifications

Depending on the extent of the problems that the qualifications raise, one should be more or less strict in the way in which they are written. As a rule, contractors will avoid completely overturning one of the contracting company's clauses. Rather they will try to amend it, add to it or else limit its application. This can be explained by commercial concerns: it is up to the lawyer to "humor" the Client, to avoid giving him the impression that he has made a bad offer, and rather to imply that a few modifications are required.

Having been informed of the contracting company's call for tender, and if necessary having issued qualifications, the contractors submit their tenders. The contracting company will then choose the contractor offering those services which best meet the general specifications and the budget involved.

Once the contractor has been chosen, the negotiation phase will then begin.

§3) The negotiation phase

A) Types of negotiation

There are two different types of negotiation: the procedure known as "negotiated contracts" and the procedure which forms part of the call for tender process.

In the first case, the contractor negotiates a contract from the start. It negotiates the terms of the future contract based on its own terms and conditions, or else will use them as counter proposals to those of the Client. The economy of the contract will thus depend on the contractor's negotiating skills. However, this type of procedure is relatively rare in the offshore industry.

On the other hand, the second procedure is much more common. As described above, the contracting company, using the call for tender mechanism, selects the contractor whose bid

³⁷ However, it is possible that too many qualifications, if they are badly explained, may be detrimental to the contractor which issues them.

best meets its requirements. However, it is unlikely that the contractor will accept all the clauses in the call for tender documents³⁸. Certain unacceptable clauses will be subject to qualifications issued by the contractor and to negotiations with the contracting company. Other elements such as the price of the work do not appear in the call for tender documents and here too these elements will be subject to negotiation.

B) The problem of inequality in negotiations

a) The issues involved

The fact that it is the contracting company that defines the general conditions of the contract has significant consequences for the contractor. In reality the scope for negotiation is much more restricted than in negotiated contracts. When competition is stiff or when the contractor is a new arrival in the offshore industry, such general conditions are not truly negotiable.

Thus a kind of imbalance exists between the parties. On the one side is a large, very powerful oil group seeking to impose its conditions, and on the other side are much smaller contractors, which are thus more vulnerable.

Whenever a contracting company puts forward a standard document that the contractor will find difficult to negotiate, certain authors see this as a restriction of the freedom to contract and a breach of contractual equality³⁹. Indeed, the fact that the contracting company imposes its general conditions could lead to the contract being interpreted as a membership agreement. However, such an interpretation would be unfounded for several reasons: Firstly, the contractors are able to issue certain qualifications in their bids without their tender being rejected by the contracting company. Also, many elements such as the price are still open to negotiation⁴⁰.

Nevertheless, such a situation may still be detrimental to the parties since it prevents the creation of an atmosphere of trust and cooperation, which are essential conditions for the

³⁸ Panayotis Glavinis « Le contrat international de construction » n°74 GLN JOLY éditions, 1993

³⁹ François Llorens, « Contrats d'entreprise et marché de travaux publics » p.163 LGDJ, Paris 1981

⁴⁰ La normalisation des contrats internationaux d'ingénierie (The standardisation of international engineering contracts)

<http://www.droit.umontreal.ca/pub/themis/97vol31n1/lefebvre.html>

proper formation of any contract. This is why many organizations have sought to draft standard contracts and general conditions.

b) A solution: the standardization of construction contracts

1° The drafting of standard form contracts

Standard form contracts are drafted by means of consultation within professional organizations. In the offshore industry, this practice is not specific to offshore construction, and standard charters are frequently used for chartering activities affiliated to the oil industry⁴¹.

Amongst the standard form contracts most commonly used in the offshore construction industry are those drafted by the C.R.I.N.E., I.P.L.O.C.A. and F.I.D.I.C. organizations.

i) The C.R.I.N.E. (Cost Reduction Initiative for a New Era)⁴² standard form contract.

This organization's activities are restricted to the British sector of the North Sea. The organization's main objective is to achieve a reduction of 30% or more in what it deems to be pointless costs arising from the call for tender process. Indeed, contractors are obliged to pay large sums of money in order to stand a chance of reaching an agreement with the contracting company (intermediary costs...). If the tender is not accepted, all these costs will have been in vain. For this reason, the C.R.I.N.E. has drafted a standard form contract aimed at rendering the contractual relationships less confrontational.

ii) The I.P.L.O.C.A. (International Pipe Line Construction Association)⁴³ standard form contract

Founded in 1966 in Paris, the I.P.L.O.C.A. represents a large share of contractors affiliated to the oil construction industry (more than 250 members).

iii) The International Federation of Consulting Engineers (F.I.D.I.C.).

The F.I.D.I.C. conditions were originally drafted in 1957 by the International Federation of Consulting Engineers and by the International Federation of Building and Civil

⁴¹ Eugénie Domorego: "Les contrats d'affrètement à temps dans le secteur parapétrolier sous-marin" postgraduate paper, DESS of maritime law, Aix en Provence 1997

⁴² <http://www.energyweb.net/OSO/oso0545.htm>

⁴³ <http://www.iploca.com>

Engineering Works (F.I.T.B). The most recent version of the F.I.D.I.C. conditions was drafted in 1987 and modified in 1992.

The F.I.D.I.C. has developed three main standard form contracts: one for electrical and mechanical work (yellow book) which is rarely used, one for civil engineering construction (red book) which is regularly used, and one other model for global contracts (orange book).

The F.I.D.I.C. conditions are not specifically designed for offshore work and therefore cannot be applied to this context without some modification. However, the parties may accept them as a working basis and use them to resolve difficult negotiations should the Client refuse to accept some of the contractor's demands.

2) Advantages and disadvantages of standardization

There are several undeniable advantages to the standardization process:

Firstly, this can improve the relationship between the parties, overcoming the suspicion which surrounds the conclusion of a contract whenever one of the two parties demands the use of its own contractual model.

In addition, there are undeniable advantages in terms of legal security. Drafting clear contracts using phraseology that is specific to the sector involved leads to a reduction in litigation relating to the interpretation of certain clauses.

Finally, there is an evident practical advantage to standardization. It is in fact simpler for the parties to use a standard formula that they may modify rather than drafting a contract for each construction project.

However, the practice of standardization may also carry certain disadvantages.

There is a notable increase in litigation due to poor drafting of the contracts, since the drafting of certain standard form contracts can be subject to fierce bargaining amongst those involved, which can have negative consequences on the substance of the contract.

Also, standardization may lead to the improper use of "style" clauses that do not correspond to the requirements of the contract and do not reflect the wishes of the parties.

§4) Formation of the contract

A) Acceptance of the tender

The contracting company's acceptance of the tender marks the start of the contract.

In French law, according to the 'declaration of intent' principle, the parties' reciprocal intent is sufficient and the parties need not necessarily be aware of it.

In other countries such as Great Britain or the United States, the dispatch principal is applied. According to this theory, the contract is formed when the beneficiary of the tender sends notice of its acceptance to the offeror (letter, fax, electronic mail...). Finally, some countries apply the receipt principal as in Germany or Switzerland. The offer is accepted and thus the contract formed only when acceptance has been received by the offeror.

In the offshore sector, the influence of English law is such that contracts are generally formed on the basis of the dispatch principal. Thus, the contracting company's agreement is generally expressed in an acceptance letter sent to the contractor whose tender has been selected⁴⁴.

The question which arises then is when does the contracting company accept the contractor's tender? Must the parties fully agree on all the elements of the contract, or can the contract be concluded whilst certain points remain to be resolved?

The generally accepted practice is that of "puktation"⁴⁵. According to this German principle, the contract may be concluded once the parties agree on the essential points of the operation, whilst secondary points may be resolved at a later date.

It should be noted that the parties may occasionally agree that the full legal existence of the contract shall depend upon a future, uncertain event, such as obtaining authorization from local authorities for example. The contract is thus concluded subject to a condition precedent. If the event occurs, the contract becomes applicable. Otherwise, it will be deemed never to have existed.

⁴⁴ Panayôtis Glavinis « Le contrat international de construction » n°76 GLN JOLY éditions, 1993

⁴⁵ Ibid. n°82

B) The *subject to contract* clause

In many cases, the formation of major contracts is preceded by long negotiations between the parties involving the exchange of telexes, mail, offers and counteroffers and at times it can become difficult to identify whether or not the parties are bound by a contract. Some of the letters exchanged may be deemed to be letters of acceptance forming a contract. To avoid this, English law allows for acceptance to be given "subject to contract", which deprives the disputed text of any legal value. No contractual obligations can arise from a document bearing the clause "subject to contract". This is not the one and only term allowed, and any other phrase expressly indicating the intention not to be legally bound is valid.

C) Letters of intent

This title covers the many different types of pre-contractual documents used in international negotiations. These are generally documents drafted as part of long and complex negotiations during which it can at times be important to take stock of results achieved so far, or to define certain points.

It should be noted that the status of letters of intent is quite uncertain and is indeed new territory for legal exploration.

The basic definition is that a letter of intent does not constitute a contractual agreement from the author, but is merely a declaration of intent and not an agreement. In reality, its qualification as a contractual agreement will depend not on the title but on the content of the document.

PART TWO: THE ESSENTIAL CLAUSES **OF THE CONTRACT**

In part two we will discuss those clauses relating to the parties' rights and obligations, the issues of responsibility and insurance and at least the disputes and governing law. The two first clauses could in fact be dealt with together, since issues relating to insurance and responsibility can form part of the parties' rights and obligations. However, due to their importance, their particularities and the amount of litigation arising from these issues, we will deal with them separately.

CHAPTER I: The parties' rights and obligations

All offshore construction contracts stipulate the tasks to be carried out by the contractor and by the client. These clauses are most often grouped together under the title « scope of work ».

Section 1: Clauses relating to performance of the work

A) The Contractor's obligation to achieve a result

Offshore construction contracts carry risks for the contractor since they impose a total result, or to be more specific, the work requested by the client must be performed. This is why the scope of work should be precise in order to define what the contractor's tasks

really are, since everything that is stated in the contract will be its responsibility and shall entail an obligation to achieve a result.

The contractor must make use of the best available techniques and of all its know-how in order to perform the work as agreed (this is the notion of "due care" and "due diligence").

The contractor must respect the client's instructions and in particular make use of any plans and specifications that the client provides.

« CONTRACTOR shall perform the Work with due diligence and in accordance with generally accepted, safe, current, good practice of the industry and trades involved. Furthermore, CONTRACTOR shall ensure that the Facility complies with the requirements of this Contract and is completed in accordance with the Specification in every respect. »

Under American law, the fact that the contractor performs the work in accordance with the plans and specifications provided by the client releases the contractor from the obligations arising from the contract⁴⁶.

Under French law, if the contractor performs the work in accordance with the client's plans and instructions, it shall not be liable for any defect that may result from them. However, the contractor nevertheless has a duty to inform the client of any error found in what the client has provided. If the contractor does not notice this error, it shall not be attributed to the contractor unless clearly stated in the contract.

B) The obligation to meet deadlines : the « Time is of the Essence » clause

This obligation mainly concerns the Contractor that may be asked to perform work within a certain period of time.

Contracts often contain the clause "time is of the essence". This is a concept taken from English law which, after modifying this concept several times⁴⁷, has established the following rules:

⁴⁶ Panayotis Glavinis « Le contrat international de construction » n°93 GLN JOLY éditions, 1993

⁴⁷ Cheshire and Fifoot, Law of contracts p.596 4th Australian edition Butterworths

Time and deadline obligations in contracts are not essential obligations unless a specific deadline is explicitly stipulated as being important and essential for the parties.

In fact, the rule is that the time obligation is not essential, but there are three major exceptions to the general rule:

- When the parties state that "Time is of the Essence" or precisely stipulate the importance of meeting contractual deadlines.
- When the circumstances of the contract indicate that a deadline must be respected due to the very nature of the contract.
- When the deadline was not originally deemed to be essential, but one party notes that the other party has not fulfilled its obligation within a reasonable period of time, the former party may send notice to the latter stating that the obligation has become "of the essence".

In the three cases above, the deadline becomes an essential element of the contract.

When a contract contains the clause "Time is of the Essence" or any other equivalent phrase, the deadline is a veritable condition of the contract and the party that notes that the other party is late may terminate the contract and demand compensation for breach of an essential obligation.

If on the other hand the contract is not "of the essence", the fact that a deadline is not met does not give rise to the right to terminate. However, if a party does not fulfil its obligation within a reasonable period of time, this party is at fault, giving rise to the right to compensation for the other party.

C) The provision of technical information and equipment

Often, one of the contracting company's obligations is to provide the contractor with a certain amount of information and documents required for the work to be performed properly. These are generally known as *drawings and detailed specifications*. If for example the work to be carried out involves laying pipelines, the contracting company must provide the contractor with very precise indications as to the laying of these pipelines. The contractor must follow a specific route to ensure that the pipelines do not run into any obstacles on the seabed such as sandbanks or existing pipeline networks belonging to other oil companies.

Such an obligation is in fact an obligation to cooperate, the breach of which may place the contractor in breach of contract⁴⁸.

This obligation to cooperate may also involve the client providing the contractor with some of the equipment needed for construction. These are known as *Company provided items*.

It should be noted that this clause regarding the provision of information or equipment is often a source of conflict. The contractor that fails to carry out the work will seek to blame this failure on the contracting company, claiming that the company did not provide sufficiently reliable documents or equipment.

D) Variations in the work to be performed

a) The concept of "variation"

Offshore construction contracts often contain a clause allowing the operator or its agent, at any moment, to order a change in the work to be performed⁴⁹. There are two cases in which such "variations" may occur:

- When the information on the basis of which the work is performed is false or incomplete. The variation clause serves to protect the contracting company against such risks. "The aim is to adapt the construction work to include any modifications or corrections made to the plans and specifications that are being used for work in progress"⁵⁰. Once work is underway, the contractor may realize that the data provided by the client (for example soil or subsoil data) is inexact and that, as a result, modifications should be made to the work to be performed.
- Variation clauses may also arise from changes in the contracting company's financial capacity or in its requirements⁵¹.

b) The presentation of variations

It is the party that orders the work, in this case the Client, which is entitled to request modifications. The contractor does not have the right to demand payment for work that the

⁴⁸ See below p.42

⁴⁹ Helge J. Kolrud, North Sea offshore construction contract : a guide for contractor n°3.17, 1979

⁵⁰ Panayotis Glavinis « Le contrat international de construction » n°176 GLN JOLY éditions, 1993

⁵¹ Ibid.

Client has not ordered and may only claim payment for additional work if it has previously informed the Client of the need for this work and obtained the Client's authorization⁵².

In order to avoid any misunderstanding, contracts often stipulate that variations shall be made in writing. As a result, even if a variation is necessary and is accepted by the contracting company, the company will not be bound by this agreement unless it is made in writing⁵³.

The following is an example of a variation clause:

« Without prejudice to the Contract or where applicable any ancillary document, Company may at any time and from time to time make a Change in the Work or any provision hereof relating to CONTRACTOR's performance of the Work, by issue of a Change request. Upon receipt of such Change request CONTRACTOR shall by the date specified therein, quote to COMPANY in appropriate terms its proposed adjustment, if any in remuneration and schedule... »

Section 2: Financial clauses

The most frequent financial clauses in offshore contracts are those clauses relating to payment and to bank guarantees.

§1) Payment

This is the contracting company's principal obligation.

We shall now look at the methods for setting the price and for payment.

⁵² Llorens « Contrats d'entreprise et marché de travaux publics » p 244. LGDJ, Paris 1981

⁵³ Helge J. Kolrud, North Sea offshore construction contract : a guide for contractor n° 3.17, 1979

A) Methods for setting the price

Most offshore construction contracts are fixed price contracts i.e. the overall price is set by the parties in the contract prior to work being performed. The contracting company may not modify the mass of work nor the initial balance between services and price.

It is therefore crucial that the parties correctly estimate the costs involved in performing the work.

If one of the parties wishes to modify the work and therefore to revise the initially agreed price, the parties must sign a written agreement providing for additional payment and, if necessary, an extension of the deadline⁵⁴. Article 1793 of the Civil Code stipulates that the contractor may not demand any increase in price due to additional work performed unless this has been specifically authorized in writing for an agreed price⁵⁵.

B) Payment for work

Payment is made progressively on the basis of monthly statements with precise payment dates (often 30 days from receipt of invoice). In the event of late payment, the contract generally provides for default interest (1.5% per month) and if payment is unacceptably late, the Contractor shall be entitled to terminate the contract. In practice, the Client rarely pays the default interest and the Contractor avoid to terminate the contract for commercial reasons, the both parties usually try to find out a friendly way of settling this problem.

This method of payment, based on monthly statements, is a means of guaranteeing sufficient and regular payment for services rendered by the Contractor. The advantage of this system is that it reduces the risks born by the Contractor since, "the higher the sums remaining due by the client, the greater the risk of non-payment⁵⁶".

In general, the contractor sends a monthly invoice for work carried out during that period, which the client must pay within the aforementioned period of time. In offshore contracts, an advance payment (10 to 20% of the total price) is made before work starts, often at the time of signing the contract. In consideration for this advance payment, the client will retain a guarantee to ensure that the contractor fulfils its obligations to the very end. In

⁵⁴ Cf Sections dealing with variations p.29

⁵⁵ Cf Les contrats spéciaux, n° 768, Pierre Yves Gautiers, Cujas, 12th edition

⁵⁶ M. Dubisson: la négociation des marchés internationaux, éditions le moniteur p.191 1982

general, clients accept the replacement of this retention payment by a bank guarantee for an equivalent amount (advance payment bond).

Finally, it is important to ensure that the contract stipulates the currency for payment (usually in US dollars).

The monthly statement payment is the most used, however it can appear that the parties decide to set some “limits” to in the way of paying the Work. In fact, the payment will be made progressively, but as the works will go forward.

The parties usually manage to keep a positive cash flow during all the life of the contract. It's possible that a monthly payment is not adapted to this requirement and that a “by limits” one is more appropriate.

§2) Bank guarantees

These are guarantees issued by banks at the client's request to underwrite the Contractor's obligations up to a certain amount. There are different types of bank guarantees:

A) Bid bonds

This bank guarantee protects the client against a Contractor that refuses to sign a contract that conforms to its bid⁵⁷. This guarantee concerns those obligations incurred by the Contractor when submitting a bid.

I often happens that the market could not be signed during this period, in this case the bidder usually promises to extend the duration of his bid.

We must precise that the tender obligation to contract a market is not fulfilled just by his signature. In fact, the beginning of the market depends on some suspensive conditions that the bidder must achieve. As a consequence, the life of the guarantee will be extended to the achievement of these suspensive conditions.

B) Performance bonds

The bank guarantees that the Contractor shall perform the work and fulfil its contractual obligations in accordance with the terms of the contract.

⁵⁷ Cf. above: the pre-qualification process p.15

With the Performance Bond, the guarantor bank will promise to the client or to his banker to pay them an amount equal to a percentage of the contract, usually 5 to 15%, to the condition that the client brings the evidence the Contractor did not fulfilled his obligations or did it improperly. Usually, the Contractor will try to deny such allegations. In such a case, the Client will have to show the Contractor failure. This evidence can only result from a judicial decision convicting the contractor. If the client is unable to bring this evidence, the contractor's banker can refuse to pay the performance bond.

C) Advance Payment bonds

As discussed above, when the client agrees to make an advance payment when the contract is signed, the client will generally demand a bank guarantee for an equivalent amount since, at the time of making the advance payment, the client has nothing tangible besides the signed contract. The client must therefore seek protection against the risk that the Contractor may cash in the advance payment and leave the country.

Section 3: Clauses relating to completion of the work

§1) The obligation to deliver

A) The concept of delivery

The delivery of work constitutes an 'obligation to give' for the contractor.

Under French law, this type of obligation is covered by Article 1136 of the Civil Code:

"The obligation to give involves the obligation to deliver something and to conserve it until delivery, failing which compensation shall be due to the creditor"

In Latin, the word "dare" (to give) means to transfer ownership of something, regardless of whatever fact gives rise to this transfer of ownership. Thus the obligation to give as

described in the Civil Code is an obligation involving the transfer of ownership of something from the debtor to the creditor.⁵⁸

French contract law applies the rule of common consent whereby ownership is transferred once the parties have agreed upon the price and the object of the contract, in this case at the time of concluding the contract⁵⁹.

In offshore construction contracts however, a different rule is applied. Ownership is transferred when provisional delivery is made, i.e. at the end of the construction work. This delivery comes in the form of a completion certificate by which the contractor informs the contracting company that the work has been completed.

Unless the client has a valid reason to refuse, it must sign this certificate even if the work is only substantially completed and not fully completed. In practice, the parties usually decide to set a 24 hours test. This test will decide the signature of the completion certificate. If after this test the Work seems sound, then the client will sign the certificate. It will allow the contractor to proceed to a demobilization of his implements which are very weights and expensive.

The client will therefore sign the completion certificate when the main part of the work has been properly completed and only minor operations remain to be carried out.

Work is definitively delivered at the end of the guarantee period⁶⁰.

B) The effects of delivery

The effects of delivery are important:

- Delivery marks the start of the guarantee period for concealed defects.
- As a rule, this also marks the transfer of ownership. From that point on, the item becomes the responsibility of the client. However there may be exceptions to this rule, in particular in the case of a reservation of title clause. This will delay transfer of ownership until full payment is made and is a particularly useful clause whenever the client does not have major financial standing.
- Lastly, delivery releases the contractor from the guarantee for conspicuous defects.

⁵⁸ Christian Larroumet Droit Civil Volume 3, « les obligations, le contrat » n° 56 Economica, 1990

⁵⁹ Article 1583 of the Civil Code

⁶⁰ Cf. below Guarantees page 46

§2) The cancellation or suspension of work

When the parties sign a construction contract, they mutually agree to respect the terms of the contract. The legal systems of most industrialized countries allow the parties to be released from their obligations in certain cases. This is the case when one of the parties breaches an essential obligation of the contract (substantial breach) or when an event which is beyond the parties' control makes it impossible for them to fulfil their obligations (force majeure).

As well as these "common" cases, there are also contractual clauses that entitle the parties to interrupt work or to terminate the contract.

Such clauses may be for the benefit of the contracting company wishing to be able to interrupt the work and terminate the contract at its own convenience even if the Contractor is not in breach of contract, or else for the benefit of the Contractor in the event of the contracting company breaching its obligations, notably in the event of non payment.

Since such clauses allowing the contractor to cancel the work due to a breach of the contracting company's obligations are relatively rare, here we shall only discuss the case of termination or suspension of the contract by the contracting company.

Clauses relating to the contracting company's right to terminate the contract without any breach on the part of the Contractor are easily identified, since contracts are usually very clear in this respect.

« Without prejudice to Company's other rights under this contract, Company shall have the right to terminate this contract for any reason, at any time, on giving notice in writing to contractor... »

As for the right to suspend the contract, these clauses are found either in the same article as the termination clauses, or else separately.

Such termination or suspension clauses are frequent in the offshore construction industry and are often a source of conflict between contractors and contracting companies⁶¹.

The real debate does not concern the existence of such clauses but rather their consequences, and more specifically the contractor's right to receive compensation⁶². This is why it is important to understand the system for compensating the contractor in the event of termination or suspension of the contract.

- In the event of termination

A contractor which receives a notice of termination is placed in a very difficult situation, running the risk of incurring substantial losses due to the termination of the contract (loss of profit) but also due to the costs arising from the termination itself. This is why the contractor must be cautious as regards the content of any termination clause and must insure that compensation will cover a certain number of costs, such as the cost of demobilization and repatriation of equipment used, the purchasing cost of materials which cannot be reused on other projects, costs arising from subcontracts signed by the contractor and, in general, all the costs incurred directly by the contractor as a result of termination.

The contractor must also be compensated for advance termination i.e. compensation for loss of profit, known as a cancellation fee.

- In the event of suspension

Unlike termination, suspension stops the work for a given period of time. The contractor remains bound by the contract and must remain ready to restart the work at the end of the suspension period. There are certain requirements to be respected here. Firstly, the contract must stipulate a maximum suspension period since, in the absence of such a clause, the contracting company may suspend the work indefinitely, which can be extremely detrimental to the contractor⁶³.

If the Client decides to suspend the works, the Contractor can demobilize his implements and go to another site. Usually, the suspension clause includes a mention providing that the

⁶¹ Cf. above: qualifications p.19

⁶² Helge J. Kolrud, North Sea offshore construction contract : a guide for contractor n°3.12, 1979

⁶³ Helge J. Kolrud, North Sea offshore construction contract : a guide for contractor n°3.12, 1979

contractor shall be entitled to postpone the recovery of the works depending on his own availability.

In addition, the contract must provide for compensation to be paid to the contractor for the costs and losses incurred due to the suspension of work, as well as costs incurred in order to remain ready to restart work.

« COMPANY shall have the right to suspend the whole or any part of the Work, for any time and temporarily from time to time for any reason on giving notice to the CONTRACTOR specifying that part of the Work to be suspended and the effective date of suspension. CONTRACTOR shall forthwith secure and protect such of the Work as has been executed at the date of the suspension and shall cease »

Chapter II: Liability and insurance

Due to the inherent risks of offshore construction operations and to the colossal sums of money involved, issues of liability and insurance play a major role in the contract. Most offshore contracts, be they construction contracts or otherwise, contain these two clauses, which are often dealt with together.

Section 1: Liability clauses

There are two different types of liability: liability for material or physical damage, and liability for one of the parties' breach of its obligations.

§1: Liability for material and physical damage

The fact that equipment is built in one place and transported to another site for assembly is not specific to offshore contracts, however, in the field of offshore construction, the equipment in question is very expensive and is often transported and assembled under difficult conditions. The slightest error can cause major damage, so much so that the issue of liability is particularly important.

Liability in offshore contracts can arise due to a variety of risks. Here, we shall firstly discuss the risk of loss or damage to property, and secondly the risk of physical injury or death of individuals. Such situations will be approached differently depending on whether the damage is suffered by the parties to the contract as part of their contractual relationship, or by a third party. In the former situation, rather unusual liability rules are applied, known as the "knock for knock" system, whereas in the latter case, normal liability rules apply.

A) The knock for knock system

This is a complete reversal of the theory of civil liability as we know it. Under French law, Article 1382 of the Civil Code stipulates that "any action that causes damage to another person obliges the person whose fault caused the damage to occur to repair it".

With the knock for knock system on the other hand, each of the parties to the contract remains liable for its own staff and equipment. Thus, each party remains liable for any personal injury or death of its own staff, as well as for any loss or damage to its equipment, whatever the cause may be. Each party must agree not to sue the other parties in this respect.

« CONTRACTOR shall defend, indemnify and hold COMPANY harmless from and against all losses, expenses and claims, including legal expenses, for death of or personal injury to CONTRACTOR's employees or agents, and for damages to or loss of the property of CONTRACTOR or CONTRACTOR's employees or agents, arising out of or in any way connected with the performance or non performance of the Work, whether or not resulting from or contributed to by the negligence in any form of COMPANY, it's employees or agents, or any defect in or condition of the site at which the Work is being performed or any equipment thereon. »

It is important to ensure that this is a reciprocal situation, which is not always the case. In some contracts, the client reserves the right to claim compensation for damage caused to its property under the rules of civil liability, whilst the contractor is subjected to the knock for knock rules. Such a clause is unacceptable and must be ruled out during the negotiation phase since this would greatly increase the contractor's liability⁶⁴.

There are several advantages to this knock for knock system:

Firstly, this allows the parties to take on greater risks since they are only liable for risks involving their own staff and property.

Also, this avoids the need for dual insurance cover since the parties need only insure themselves against damage caused to their own property and personnel.

B) The different types of knock for knock systems

In practice, there are several types of knock for knock mechanisms, the most frequent being *limited knock for knock* and *group knock for knock*.

a) The limited knock for knock

The knock for knock mechanism is said to be limited when it applies exclusively to the relationship between the contracting company and its contractor. If the contracting company has contracted with several different contractors, the knock for knock rules shall apply separately and individually to each of its contractors. As a result, as regards the relationship between the different contractors, the contracting company shall consider the different contractors present on the work site as being third parties and the traditional liability rules shall apply between the contractors. Thus if Contractor A damages property belonging to Contractor B, the latter may sue Contractor A and demand compensation for damage suffered.

The advantage of this system lies in the fact that the risks incurred by the contracting company remain limited to its own staff and property and will therefore be easier to evaluate and control.

⁶⁴ Interview with Me. Gaignaire lawyer specialized in offshore contracts

However this type of knock for knock system also has its disadvantages. This systems leads to the need for multiple insurance policies. The contractors, as the owners of their equipment, will insure themselves against the risk of loss or damage to their equipment, but they must also take out liability insurance against damage that they may cause to other contractors. Any increase in insurance policies automatically leads to an increase in cost, which will inevitably be reflected in the cost of services provided.

In addition, this kind of system opens the door to litigation between the contractors, which may be harmful for the proper construction of the facility.

b) The grouped knock for knock

The group knock for knock mechanism makes use of a fictitious situation by creating two groups: the Company group and the Contractor group. The first group, which is the contracting company's group, includes not only the contracting company and its partners but also any other contractors involved in constructing the facility. The Contractor's group includes the Contractor and any of its subcontractors.

Under the group knock for knock system, each member of the Client's group remains liable for any personal injury or death of its own staff and for any loss of its property. The contracting company agrees not to sue the Contractor's group in this respect. In the same way, the Contractor agrees not to sue the Client's group for any damage caused to a member of the Contractor's group.

By including the other contractors in the Company group, a relationship is established with the Contractor for reasons of reciprocal compensation.

Under this system, the contracting company acts as a guarantor for the obligations of the members of its group, thereby providing the Contractor with the guarantee that it will not be sued by the other contractors.

The advantage of this mechanism is that it reduces the risks taken by the contracting company towards the contractors. It is an essential condition of this mechanism that the contracting company applies this knock for knock system to all of its co-contractors.

C) The exclusion of the knock for knock system in the case of gross negligence

Negligence is not an act but an omission, the omission to fulfil a duty of care towards someone⁶⁵. In *Donoghue v. Stevenson*⁶⁶, the Chamber of Lords established general criteria for evaluating the duty of care. A duty of care exists towards any person who is placed in a situation which is such that one ought reasonably to foresee that they may suffer damage if reasonable care is not taken.

But what is the meaning of gross negligence? The term gross negligence is unknown in English law, which does not admit different degrees of negligence. There is no case law defining the meaning of this term as used in contracts. It would appear that for the parties, the term gross negligence designates behavior that is more condemnable than simple negligence.

In French contracts, the knock for knock mechanism is excluded in the case of *faute lourde* or gross misconduct. The concept of *faute lourde* appears to be a confused and ill-defined concept in French law⁶⁷. It is evaluated *in concreto* by the judges and a variety of criteria are used in case law. French judges often consider *faute lourde* to be a fault arising from abnormally deficient conduct on the part of the person committing that fault, and can be defined as "extremely severe negligence bordering on deliberate fraud and indicating the debtor's inaptitude to carry out the mission which he has accepted"⁶⁸. Judges will generally look at whether the task whose execution led to the fault was easy to perform or not. If the action in question was easy to perform, the fault will easily be qualified as a *faute lourde*. The court may also look at the consequences of the fault in order to estimate its seriousness. Thus, a fault that has disastrous results for the victim shall be deemed to be a *faute lourde*⁶⁹.

⁶⁵ Robert E. Kirkpatrick, « Initiation au droit anglais », p259, Maison Ferd. Lancier, 1964

⁶⁶ [1932] A.C.562.

⁶⁷ Geneviève Viney & Patrice Jourdain « Traité de droit civil » 2nd edition p.565, LGDJ 1998

⁶⁸ Com., 17 Dec.1951, Bull. civ., III, n°396 — Com.,26 Feb.1985, Gaz.Pal., 1985, 2, panor., p.240

⁶⁹ Com., 4 Jan.1979, D., 1979, IR, p.357

§2: Liability for breach of contractual obligations

A) Breach of contract by the contracting company

We have seen above that the contracting company is bound to the contractor by certain obligations, both commercial obligations such as the obligation to pay, and technical obligations such as the provision of information or equipment⁷⁰.

In general, contracts contain few clauses regarding the Client's obligations and as a result, any breach of the client's obligations is either not dealt with or only vaguely referred to.

How should such a breach of contract be dealt with and what are the consequences?

a) Non-payment or late payment for work

In the case of late payment, the client is bound to pay the original sum plus default interest. In the case of non payment by the contracting company, i.e. in the case of insolvency or when payment is too late, the contractor then has the right to terminate the contract, with all the financial consequences that this termination may entail for the contracting company⁷¹.

b) Failure to cooperate

Very often the nature of the construction work is such that in order for the contractor to fulfil its obligations properly, the contracting company's cooperation is required. The contractor often needs a certain amount of information and documents (provision of drawings and detailed specifications), as well as certain equipment.

If the contracting company fails to do this, this is a breach of its obligation to cooperate and may prevent the contractor from fulfilling its obligations⁷².

If the client fulfils its obligations badly, this can affect the contractor's obligations and may in particular entail additional costs for the contractor, who shall then be entitled to claim compensation for these costs from the contracting company⁷³.

⁷⁰ See above: the provision of technical information and equipment p.29

⁷¹ Cf. above regarding termination and suspension of the contract p.35

⁷² Cf. J.C. Werz « Delay in construction contracts » n°646, a comparative study of legal issues under Swiss and Anglo-American law, Universitätsverlag Freiburg Schweiz 1994

⁷³ Cf. "Offshore construction and supply contracts" Lecture of December 8th and 9th, 1983 London

The contracting company's failure to fulfil this obligation may delay the contractor's completion of the work to be performed. In this case, the contractor's delay is excused and in some cases an extension of the original deadline is allowed.

B) Breach of contract by the contractor

The contractor is in breach of contract whenever it fails to respect its contractual obligations. Having discussed these obligations above, we will now look at the main consequences of the breach of these obligations. In the event of the contractor's breach of contract, the contracting company shall be entitled to apply a certain number of sanctions.

a) Financial sanctions

There are essentially two types of financial sanctions available to the contracting company, which may claim compensation or call in the bank guarantees.

1° Compensation

Compensation is generally set on a flat rate basis, known as penalties. The contract may set these sums directly or else set a certain percentage of the price.

There are penalties for late fulfillment of an obligation which are applied to the Contractor which does not fulfill its obligations within the agreed time period, and technical penalties which are claimed whenever the services provided do not meet the contractual specifications.

Under French law, penalties play two distinct roles: they may serve as a stated penalty for non-compliance, sanctioning the simple fact of not fulfilling a given obligation. The amount of the penalty will be independent of the extent of the damage. The penalty may also have a compensatory value, which involves "the advance, flat-rate evaluation by the parties of the damage caused to the beneficiary of the obligation due to non-fulfillment on the part of the holder of the obligation"⁷⁴.

Under English law, a distinction is made between "liquidated damages" and "penalties". When the amount fixed by the parties is aimed at compensating the Client for any delay on the part of the contractor, this is known as liquidated damages. On the other hand, if the

⁷⁴ Michel Dubisson « La négociation des marchés internationaux » p203, 1982

sum, rather than compensating the contracting company, tends more to punish the contractor, this is called a "penalty clause"⁷⁵. This is an *in terrorem* clause inserted into the contract and aimed at forcing the contractor to fulfil its obligations within the given period of time.

This is an important distinction since English law, like American law, prohibits penalties, which are deemed to be null and void.

Such hostility can be explained by the fact that, by inserting such clauses, the parties seek to supplant the judges' authority⁷⁶. In addition, according to Anglo-Saxon legal concepts, the law's role is to provide compensation for breach of the contract rather than to force the parties to respect its terms⁷⁷.

More so than the words used, what counts is whether the compensation is in fact of a compensatory nature or a stated penalty for non-compliance. The fact that the parties use the expression "penalties" or "liquidated damages" is not decisive since the judge may decide to re-qualify the sums in question⁷⁸.

In practice, since these contracts are mainly written in English, it is important to avoid all ambiguity and to use the term "liquidated damages" rather than "penalty".

The parties do not always set flat-rate compensation. When this is not done, it is the judge or arbitrator who sets compensation. As distinct from penalties, the amount of compensation must be strictly equal to the damage suffered by the contracting company. However, this is a relatively rare situation in offshore contracts since most parties set the amount of compensation on a flat-rate basis.

2° Calling in bank guarantees

As seen above, performance bonds are one of the different types of bank guarantees used in offshore contracts⁷⁹. If the contractor does not fulfil its contractual obligations, the contracting company may call in this bank guarantee.

⁷⁵ Cheshire and Fifoot, Law of contract, n° 2733, 4th Australian edition ; Butterworths

⁷⁶ Ibid.

⁷⁷ J.C Wërz « Delay in construction contracts, a comparative study of legal issues under Swiss and Anglo American law p.199; Universitätsverlag Freiburg Schweiz 1994

⁷⁸ Queen's Bench, Dunlop Tyre Co. v. New Garage and Motor Co, 1915

⁷⁹ Cf. above: bank guaranties p.32

The essential issue is to identify under what conditions the client may make use of the guarantee. In reality, this will depend on the form of bank guarantee, which may be either a security or in the form of automatic cover.

- The bank guarantee as security

This type of bank guarantee involves an undertaking on the part of the bank attached to the contractor's obligation. If the client wishes to call in the guarantee, it must prove to the bank that the Contractor has not respected the obligation covered by the security. If the bank deems the proof to be insufficient it may decide to await a court ruling or arbitration decision confirming that the contractor has defaulted before the bank will pay.

This system protects the Contractor, but the client may have to wait a long time in order to be paid. However the system is fair since the security may not be called without a valid reason.

- The bank guarantee as automatic cover

This guarantee is payable on demand. The bank's undertaking is independent of the Contractor's contractual obligations. All the client has to do is to demand payment of the guarantee and the bank must comply without discussion.

As distinct from the security guarantee, the effects of the client's demand for payment will be carried over to the Contractor, which must pay the guaranteed amount to the bank even if the Contractor is not at fault. The Contractor must await a court ruling or arbitration decision in its favor against the client before being reimbursed.

b) warranties after the facility has been delivered

Amongst the contractor's obligations is the obligation to provide work that meets the contractual specifications. If it becomes apparent during construction operations that the work has been badly performed, the contracting company is entitled to demand the demolition and reconstruction of the facility⁸⁰, and the Contractor may incur technical penalties.

If on the other hand the non-conformity of the work becomes apparent after receipt, it will be up to the contracting company to modify the work in order to ensure that it complies with the contractual stipulations.

⁸⁰ Panayotis Glavinis « Le contrat international de construction » n°295 GLN JOLY éditions, 1993

This raises the issue of warranties. The contractor's obligation to provide warranties is governed both by the contract and by the national law that governs it.

1° The contractual warranty:

The term 'warranty' can have two meanings in offshore contracts⁸¹. Strictly speaking, the contractor agrees to supply equipment that is new and in perfect working order and provides a warranty to the client in this respect. The contractor thereby agrees to compensate the client in the event of loss or damage caused by the breach of this obligation.

A wider interpretation would be to say that the contractor agrees to carry out the work in accordance with the terms of the contract. Such an obligation is more dangerous since it provides the client with a warranty against any failure on the part of the contractor.

For this reason, the contractor must be particularly cautious as to the content of warranty clauses and should not hesitate to issue qualifications during the pre-contractual phase. Indeed, if the text is too wide-ranging, there is a danger of the warranty being extended beyond that which was originally planned⁸².

Traditionally, the warranty period runs for 1 year from receipt of the work, although some contracts do carry warranty periods of 18 months or even 2 years or more.

When the warranty period expires, all of the contractor's obligations come to an end, the bank guarantee taken out by the contractor is cancelled⁸³ and the work is deemed to be definitively delivered.

As well as these contractual warranties, statutory warranties also exist.

2° Statutory warranties

French law imposes three types of warranties upon constructors, which run from receipt of the facility:

A ten-year warranty for damage compromising the solidity of the facility itself or the solidity of an essential element rendering the facility unfit for its purpose (Article 1792 of the Civil Code).

⁸¹ Helge J. Kolrud, North Sea offshore construction contract : a guide for contractor n°3.9, 1979

⁸² Often the warranty is extended to cover design, even if the contractor has simply assembled what the contract stipulates, a thing that the contractor did not design.

A two-year warranty for damage compromising the proper functioning of equipment which can be dissociated from the facility (Article 1793-3).

A one-year warranty known as the " perfect completion warranty " providing for the repair of any non-conformity notified by the contracting company at the time of receipt (Article 1792-6).

C) Sanctions applied in the event of substantial breach of contract

Often the parties stipulate in the contract which obligations they deem to be essential and the breach of which constitutes a material breach or a substantial breach of the contract. In such a situation, the client can apply severe sanctions such as replacing the defaulting contractor by another or quite simply terminating the contract.

a) Replacing the contractor: the take over right

In the case of a serious error on the part of the contractor, the client is entitled to replace the contractor by another contractor, which shall complete the work at the expense of the defaulting contractor. In such an event, the contract is not terminated. The first contractor remains liable for the proper performance of the work, and the client merely imposes another company to perform it.

b) Termination for breach of contract

In practice, this clause has the same effects as the take over right. The client may terminate the contract in the event of a serious error on the part of the contractor. The work can then be completed by another company chosen by the client. The defaulting contractor must reimburse the client for the additional costs arising from this breach. In the absence of the use of another contractor, termination may nevertheless be accompanied by the payment of compensation for damage suffered by the contracting company. The termination of the contract is an extremely serious sanction and can considerably harm the image and reputation of the defaulting Contractor.

⁸³ See above, the bank guarantees p.32

D) Modifications to liability

As discussed above, the parties and in particular the contractor are entitled to limit the amount of compensation. This is understandable given the colossal sums at stake. Thus, the contractor that does not fulfil its obligations shall be obliged to pay an amount set by mutual agreement with the contracting company. This amount is a certain percentage of the total price.⁸⁴

As well as limiting the amount of compensation, the parties are also entitled to use clauses exempting them from liability, such as force majeure, breakdown and hardship clauses.

a) The case of force majeure

1° The concept of force majeure

Every legal system provides a legal definition of force majeure that is applied in the event that the parties should fail to define it in the contract.

Under French law, force majeure can be defined as an event that exonerates a party from liability whenever it prevents this party from fulfilling its obligations. Case law has defined three essential characteristics for such an event: it must be unforeseeable, unavoidable and the parties must be exterior to the event in question. In reality, an event rarely presents these three characteristics since the event is often foreseeable or else the party prevented from fulfilling its obligations is not totally exterior to the event.

Thus the French definition is relatively strict. In an offshore contract governed by French law, it is not sufficient for the contracting parties to state that they shall be exonerated from their obligations in the event of force majeure since, in this case, the judges will apply the legal definition.

English law is much more flexible in its approach to force majeure. In a contract governed by English law, the term force majeure will be followed by a list of events that the courts have deemed to be of equal severity.

« Neither Party hereto shall be liable for damage to the other for any act, omission or circumstance occasioned by or in connection with, or as a

⁸⁴ Ibid.

consequence of, and the obligations of the parties shall be suspended during continuance of, any Force majeure condition, including but not limited to any acts of god, including weather conditions which prohibit the effective progress of the Work; strikes, lockouts, or other industrial disturbances; acts of public enemy, sabotage, wars, blockades, insurrections, riots, or epidemics; lightning, landslides, earthquakes, floods, or fires...”

2° The consequences of force majeure

If force majeure is proved, the contractor is exempt from liability and work is suspended. For this, certain formalities must be respected. The contractor must notify the client in writing of the fact that work cannot be continued. The absence of such notification prohibits the contractor from claiming the benefit of force majeure.

« In the Event of a force majeure occurrence, the party delayed or unable to perform shall notify the other Party in writing or by telegram, within five (5) days of the occurrence, giving full particulars, including the estimated duration of the existence”

The contract must also provide that, after a certain period of time, if the force majeure occurrence has not ceased, the client, the contractor or the two together shall be entitled to terminate the contract. The client shall be obliged to pay the contractor for the part of the work performed up until the force majeure event occurred.

b) Breakdown clauses

Breakdown exists when a part of the equipment belonging to the contractor breaks down. As a rule, the costs and risks of equipment breakdown are the contractor's responsibility since it is supposed to have taken such risks into account when calculating its prices and deadlines. However, in the offshore sector, the Client often carries a share of the breakdown risk. Thus, the contract will occasionally stipulate that normal payment shall continue during any breakdown of less than two or three hours.

The breakdown clause does not apply when the equipment breakdown is due to events at sea or to a case of force majeure. In general, contracts state that equipment shall only be deemed to have broken down if it prevents work going ahead as normal. At times the client will agree to do its best to adjust the work schedule in order to avoid using the equipment which has broken down, thereby avoiding the application of the breakdown clause.

Finally, contracts generally provide for "authorized breakdown time" i.e. a right to breakdown. Thus an average of 24 to 48 hours authorized breakdown per month can be obtained and can be carried over to the following month if not used.

c) Hardship clauses

The hardship clause is applied whenever the economic circumstances surrounding the contract at the time of signing have changed in such a way that they make execution impossible. The Contractor is then exonerated from his obligation to execute the contract.

In order to make use of the hardship clause, there are three essential criteria which these economic changes must meet: firstly, they must be unforeseeable at the time of signing the contract; secondly, they must be unavoidable. These first two conditions are identical to those of force majeure under French law, but here there is a third criterion: the events must have extremely serious consequences upon the economy of the contract.

However, the hardship clause is relatively rare in offshore contracts, since construction operations are generally short-term operations (around 4 or 5 years), so much so that the conditions required for the application of this clause are not met.

Section 2: Insurance clauses

Offshore construction operations inevitably lead the contracting company to sign a certain number of contracts with various contractors, since one single contractor cannot construct an oil platform. All these construction operations are high-risk. Contractors are exposed to the risk of loss or damage to the facility, and it is therefore vital to insure that all these risks are covered.

Insurance policies must cover not only damage to the facility, the construction materials and the equipment used by the Contractor, but also the Contractor's liability.

Below we will discuss these two distinct categories of damage insurance and liability insurance.

§1) Damage insurances

In the construction industry, the contracting company often takes out a general insurance policy on behalf of all those involved. This is an all-risks contract works insurance policy aimed at covering all the risks involved in construction. As regards the Contractor's equipment, the construction contract generally stipulates that the contractor must take out separate insurance for this.

A) All-risks contract works insurance

a) Definition

All-risks contract works insurance is a single policy taken out on behalf of all those involved, aimed at providing financial cover in the event of accidental damage to the facility.

This policy applies as soon as work begins and includes a one-year maintenance period.

This kind of insurance is placed by brokers in the marine insurance market. It has been carried out onshore, but as with the construction of ships, which are, by virtue of the Marine Insurance Act (1906), subject to the rules of marine insurance, the construction of offshore facilities are traditionally insured in the marine market.

Due to the hardening market of recent times and the shrinking capacity of marine insurers, We can notice a move to insure fabrication of offshore facilities with non marine underwriters⁸⁵.

b) Subscribers and beneficiaries

Any real or artificial person involved in any way in the construction of the facility may take out this policy, such as the contracting company or one of the contractors responsible

⁸⁵ David Dezhi Peng, « Insurance and legal issue in the oil industry » p.88, edition Graham Trotman 1993

for the work. In practice, contract works insurance is often taken out by the contracting company, due to the fact that the facility is being built for the contracting company, and it is thus in the company's interest to ensure that the work is performed in the best possible conditions and that any risk of damage is covered. In general, all parties participating in the project are beneficiaries of the insurance contract.

Thus, beneficiaries can be a lot and this can have two major consequences:

- All the parties covered are in a position to claim against the insurance in respect of loss or damage to the project.
- The policy will incorporate a waiver of recourse against any party whose interests are covered by the insurance. For instance, if a small contractor employed to perform a welding work causes an explosion and damaged the platform, they can claim the protection of the insurance.

c) The scope of all-risks contract works insurance

1° The risks covered by contract works insurance

This type of insurance covers all material damage, loss or destruction of the property insured that occurs at the place of insurance.

However, certain risks are not covered by this type of insurance:

Certain exclusions are common to all insurance contracts, such as damage due to war, be it international or civil, atomic risks, or an intentional fault on the part of the insured party.

Other exclusions are specific to contract works insurance. This is the case of damage due to normal wear and tear of the structure, such as oxidization and rust of those parts of the facility exposed to the elements⁸⁶, damage caused to or suffered by structures which were the object of qualifications issued by the contracting company, and damage to aircraft and seagoing equipment used in the construction operation.

2° Damage covered by contract works insurance

Contract works insurance covers all material damage, loss or destruction of property. Compensation is provided for damage to the facility itself as well as damage to the materials located on the construction site and which are to be integrated into the final

⁸⁶ C.Rosello « Assurances des risques pétroliers » paper, Insurances Institute of Aix-Marseille (IAAM), 1991

structure. Assembly equipment and construction site vehicles are also covered. Finally, contract works insurance covers damage to "existing property" i.e. property which is not part of the object of the contract but which belongs to the contracting company⁸⁷.

B) Additional insurance covering the contractor's equipment

As mentioned above, contract works insurance does not cover all damage. For this reason, oil industry contractors must take out additional damage insurance. In most cases, the insurance section of construction contracts explicitly states which policies must be taken out.

a) « Hull and machinery » insurance

This policy protects the oil industry contractor against the risk of damage to its ships or to ships that it has chartered in order to participate in construction.

Note that here we have classified "hull and machinery" insurance as damage insurance, although this can also be deemed to be liability insurance to the extent that it insures the Contractor against any legal action taken by third parties in the specific case of damage caused to their ships following a clash or collision. In such circumstances, "hull and machinery" policies generally cover three quarters of the insured party's liability, the remaining quarter being paid by the shipowner and generally covered by P&I clubs⁸⁸.

b) Mobile assets insurance

The role of this policy is to cover damage to the Contractor's equipment such as diving equipment, onboard cranes (but not cranes that are incorporated into the ship which would come under the "hull and machinery" policy), remotely operated submarines (ROV)...

The range of equipment covered by such an insurance policy will depend upon the nature of the work involved. The more complex the work, the more equipment there will be to insure.

⁸⁷ In general, "existing property" is distinct from "neighboring property", which is property belonging to third parties and located in the immediate proximity of the facility. This property is not covered by contract works insurance.

⁸⁸ For more information regarding "hull and engine" policies, see Pasma Louewap « L'assurance maritime sur corps de navires de mer » Postgraduate dissertation (memoir) DESS in shipping law at Aix en Provence 1992

§2) Civil liability insurances

This insurance must cover all civil liability obligations that the law places upon the Contractor. It must cover not only liability in tort, delict or quasidelict towards third parties but also cases of contractual liability arising from damage suffered by the client.

A) General third party liability insurance

This covers the Contractor for any damage caused to third parties. This policy is used whenever the insured party incurs liability under Articles 1382 to 1386 of the Civil Code and covers damage attributable to a fault committed by the insured party or by one of its employees. It should be noted that the contract works insurance policy discussed above may at times cover liability towards third parties, however this cover is generally insufficient and thus third party liability insurance is necessary.

If the damage to third parties is caused by the Contractor's ships, this risk is not covered by general third party liability insurance but by P&I insurance.

B) P&I insurance

This type of insurance, used exclusively in shipping, covers the Contractor for a certain number of risks and in particular any damage to third parties due to the operation of ships used in construction operations. Amongst the risks covered by this insurance are the risks of collision and damage to third parties. In the case of collision, P&I insurance covers one quarter of damage caused to ships, the remaining three-quarters being covered by "hull and machinery" insurance. As regards damage to third parties, P&I insurance covers the risk of the death, injury or illness of any persons other than the crew or passengers of the insured ship resulting from an act of negligence or an omission in relation to the insured ship or its cargo.

C) Insurance for civil liability after delivery

The Contractor must be insured against the risk of damage to the facility as a result of the poor execution of work and which occurs after receipt of the facility.

Under French law, this kind of insurance has been compulsory since the Spinetta Act of January 4th 1978. This obligation appears in Article L241-1 of the Insurance Code. Article 241-1 stipulates that "any real or artificial person who incurs liability on the basis of the presumption established by Articles 1792 onwards of the Civil Code as regards construction work, must be insured". This article is aimed at so called "ten-year" damage, i.e. damage occurring within the ten-year warranty period set by Articles 1792 onwards of the Civil Code. According to the article 1792-2 of the Civil Code, such a warranty applies to building works as to their components. Are considered as building works those which aim is to achieve or modify works erected on the ground. It's sure that such a clause applies to fixed platform such as jackets which are rooted on the seabed. On the other hand, regarding the mobile semi submersible platforms, it's doubtful that such a rule should apply.

The damages covered by this insurance are those which:

- Endanger the work strength
- Make the work inappropriate to its functions
- Make one of the work's unit inappropriate to it's functions.

Chapter III: Disputes and governing law

Clauses relative to governing law and those dealing with resolving disputes are often found together at the end of the contract, under the title "Disputes and governing law" or "Governing Law and Jurisdiction".

Section 1: Clauses dealing with governing law

There is a distinction between those clauses relating to the law governing the content of the contract (governing law) and those relating to the application of local regulations (compliance with laws).

§1) The law governing the content of the contract

The determination of governing law will depend upon whether the contract expressly stipulates this or not.

A) The contract expressly determines governing law

As a rule, the contracting parties are free to choose the governing law of the contract, based on the principle of contractual autonomy. This principle was enshrined by the Rome Convention of June 19th 1980 and became applicable on April 1st 1991. Article 3 of the Convention states that "a contract shall be governed by the law chosen by the parties". Most national legal systems apply this principle, including France where the Court of Cassation confirmed the principle in the "American Trading Co." case⁸⁹ of December 5th 1910.

In practice, there are some restrictions to this freedom of choice. Often the contracting company has subsidiaries formed under local law. For its activities in Gabon for example, Elf has formed a subsidiary under Gabonese law, called Elf Gabon. In most cases, the country on whose territory the work is to be carried out (territorial waters or exclusive economic zone) demands that any contracts signed between foreign companies and local law companies be governed by local law.

It is therefore increasingly difficult for oil industry contractors to avoid having to submit to local law.

Likewise, when the client is a public body, for example a national oil company, local regulations generally stipulate that the law of the contracting company must apply⁹⁰.

When the contract is governed by local law, this can at times be detrimental to the Contractor, especially when there are "gaps" in the legal system of the country concerned, as in certain Muslim countries or in black Africa. Western lawyers are often unfamiliar with these laws, and these legal systems tend to be less evolved on some points and therefore unsuitable for dealing with the great complexity of offshore contracts⁹¹.

⁸⁹ Cour de Cassation Civ. December 5th 1910, S.1911.1.129

⁹⁰ Philippe Fouchard, « La responsabilité des constructeurs en droit international privé », French report to the Capitant Association's Egyptian meeting, n°20, Edition Litec 1991

⁹¹ M. Dubisson « La négociation des marchés internationaux » p.39 Editions du moniteur, 1982

When the parties do agree to a governing law other than local law, it is always preferable to choose a country whose laws are relatively well-known and reliable, such as English or Swiss law. French law is rarely used.

In some cases, the parties may designate two different governing laws. One governing law will be designated to govern the content of the contract whereas a second law governs the procedure to be used in the event of a dispute (for example the use of internal arbitration).

B) The contract does not refer to governing law

The absence of a clause stipulating which law governs the contract may be the result either of an omission or of an agreement between the parties. In reality, governing law may be determined differently depending upon whether the question is brought before a judge or an arbitrator.

If the question of governing law is brought before a judge, the judge will seek to identify a national law as being the governing law, since a contract without governing law is unacceptable. According to this rule, a contract must be governed by the laws of a country, even if the parties have not specifically designated it in the contract. In France, the Court of Cassation reiterated this rule in a case in 1950⁹²: "Every international contract must necessarily be associated with the law of a State".

The European Community countries adopted this rule in the 1980 Rome Convention, which came into application on April 1st 1991. Article 4.1 of the Convention states that the judge must seek to identify the law of the country with which the contract is most closely connected. The law of the country "where the party who is to effect the performance which is characteristic of the contract has, at the time of conclusion of the contract, his habitual residence" shall be deemed to be the governing law.

The judge may also apply the customs and practices of international law, but only to supplement the governing national law.

Thus, the governing law of the contract will be determined according to the conflict rules of *lex fori*.

⁹² The "messageries maritimes" case. Civ. June 21, 1950, Rev. Crit. 1950.609 note Batiffol and JCP. 1950. II. 5812

If the issue of governing law is brought before an arbitrator, the solution may be entirely different. The arbitrator's role is to "resolve the dispute in accordance with the rules of law chosen by the parties, and in the absence of such a choice, in accordance with those laws which the arbitrator deems to be appropriate"⁹³. If the parties have not expressly determined governing law, the arbitrator must nevertheless respect the wishes of the parties.

The arbitrator must respect the parties will, if they have not specified which law is applicable, the arbitrator unlike the judge, is not obliged to confine in the search of a national law. Besides, the practice shows that the arbitrator often applies the ways and customs of the international trade to settle the disputes. Thus, it can be sometimes interesting for the parties not to mention any law and to resort to arbitration in case of disputes. It will allow them to avoid a too strict law and to apply the *Lex Mercatoria*.

§2) Enforcement of the local rules

In the international contracts, and especially for offshore contracts, the parties must respect the enforcement of the local rules, even if they have chosen another law to rule their contract.

First of all, it's advisable to remember that the offshore operations mainly occur on the territorial sea of the coastal State. In this area of 12 nautical miles established by the convention of Montego Bay, the State has full sovereignty on what could occur on this territory. As a consequence it is allowed to command respect of its construction rules.

In the same way, if these works had occurred in the Exclusive Economic Zone (EEZ) of the country, that is to say in zone of 200 nautical miles from the coast, the same rules would apply.

The respect of these rules finds its justification in the concept of police rules. These rules are necessary for the respect of the political, social and economic organization of the country⁹⁴.

⁹³ J.Mestre, « Droit commercial » p105 LGDJ 24th edition, 1999

⁹⁴ Philippe Francescakis, Rep. Dalloz, Droit International

In what consist these rules?

In fact its scope can be very variable, the rules can aim the Work (materials approval, Work characteristics...), the construction process (permission planning, hygiene and safety rules...) and people involved in the construction process (professional skill...) ⁹⁵. Some questions as paid holidays or lay-off indemnities are ruled by the local law, independently of the parties nationality or whatever the applicable law. ⁹⁶

Some countries like Norway are very strict about the social welfare of workers, thus for offshore works in the Norwegian waters, the State will require from the parties to respect the male-female parity or that the parties set two weeks of holidays for one week of work. Broadly speaking, the construction contract stipulates who of the parties will accomplish all the necessary steps from the local authorities:

« CONTRACTOR shall give all notices and comply with all laws, ordinances, rules and regulations normally bearing on the conduct of the Construction Work. If CONTRACTOR performs all or any portion of the Construction Work contrary to such laws, ordinances, rules and regulations, CONTRACTOR shall bear all costs, fines and penalties arising therefrom »

Section 2: Clauses relating to the settlement of disputes

We can distinguish two different sort of settlement: the out of court way and the litigation way.

A) The out of court settlement of disputes.

This way of settling disputes is very common in offshore, in fact oil companies and contractors are used to working together and have good relationships. If a dispute would occur, the parties will try above all to avoid a lawsuit because it will cost a lot of money

⁹⁵ Panayotis Glavinis « Le contrat international de construction » n°658 GLN JOLY publications, 1993

⁹⁶ Ibid.

and an important waste of time, what is more, it will probably deteriorate their future commercial relationship⁹⁷.

In fact, the out of court settlement of disputes doesn't need any special remarks, the parties will meet, alone or with a conciliator, and will try to find out a solution to their problems. Unfortunately, it may happen that the parties don't manage to come to an agreement, in this case they will resort to the litigation way.

B) The litigation way of settling disputes.

The parties can usually choose between a judicial settlement and recourse to an arbitrator. The arbitration proceeding is characterized by its rapidity to deal with the disputes, its discretion and above all by the fact that the arbitrator is usually more accustomed to international contract than the national judge does⁹⁸.

The judicial settlement for its part is cheaper and very secure.

Sometimes, the parties don't have any choice regarding the way of settling their disputes. Thus, in some countries of the Middle East or in South America, the Coastal State will impose the national judge on the parties.

In the offshore practice, when the parties can choose their way of settling disputes, it is quite unusual that they resort to the judge, they usually choose the arbitration.

Most of the time, the arbitration is an international one, whether "ad hoc", that means freely organized by the parties, or institutional, like for instance, the arbitration organized by the International Chamber of Commerce (I.C.C.) or by the American Arbitration Association (A.A.A.).

⁹⁷ M. Dubisson, *La négociation des marchés internationaux*, p.229, éditions du Moniteur 1982

⁹⁸ M. Dubisson, *La négociation des marchés internationaux*, p.229, éditions du Moniteur 1982

Conclusion

The offshore construction contracts are the subject of a very well tested and used mechanism.

One question can be put after having studied this subject:

Is the formation and execution process of such contracts specific to offshore?

Regarding their way of elaboration, these offshore contracts have nothing original, most of the techniques used in offshore are also used in the international construction contracts and even in the national ones. For instance, the recourse to a pre qualification of the candidates before a call for tender is used in most of the construction contracts.

Regarding the contents of these contracts, the answer may be a bit different.

The offshore construction contract differs from the other construction contracts by some of its clauses. In fact we saw above that the offshore contracts are characterized by a specific system of responsibility: the knock for knock. The high complexity of the operations performed as well as a great variety of people involved in the construction process can explain this specification.

However the offshore clauses still mainly the same as for the other construction contracts. This similarity between offshore construction contracts and others construction contracts lead us to recognize the existence of a transitional order in construction.

In fact the parties often resort to the same clauses, some of them are the subject of a standard model. The most convincing element may be the arbitrators' behavior in case of conflict. We saw that they usually apply non-national rules, for instance ways and customs of the international trade.

Does it mean that these transnational rules are the only one to govern the international construction contract?

As we said it before, the parties usually designate what national law will govern the contract, what is more, some national rules apply automatically even if the parties chose another law.

For all these reasons we should talk about a coexistence between transnational and national rules regarding the running of offshore construction contracts and broadly speaking international construction contracts.

APPENDIX 1

CONTRACT

FOR

**ENGINEERING, PROCUREMENT, MANUFACTURING AND INSTALLATION
OF OKWORI UMBILICALS AND FLOWLINES**

BETWEEN

[REDACTED]

AND

[REDACTED]

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**ENGINEERING, PROCUREMENT, MANUFACTURING AND INSTALLATION OF
OKWORI UMBILICALS AND FLOWLINES**

This CONTRACT, made on this _____th day of _____, 1997, by and between [REDACTED]
[REDACTED] hereinafter referred to as "COMPANY", and [REDACTED]
[REDACTED] hereinafter referred to as "CONTRACTOR".

WITNESSETH

WHEREAS, COMPANY, is engaged in the production of oil and gas in the Federal Republic of Nigeria and in that regard requires engineering, procurement and construction services, as specified herein; and

WHEREAS, CONTRACTOR has represented that it is qualified and able to provide such services.

NOW THEREFORE, in consideration of the mutual promises and subject to the conditions contained in this Contract, COMPANY and CONTRACTOR hereby agree as follows:

1. DOCUMENTS

The following documents in the form of Exhibits are attached to this Contract and made an integral part hereof;

Exhibit A	MISCELLANEOUS INFORMATION
Exhibit B	SCOPE OF WORK
Exhibit C	CONTRACTOR'S PROPOSAL AND COMMERCIAL TERMS
Exhibit D	SPECIFICATIONS AND DRAWINGS
Exhibit E	CHANGE ORDER NOTICE AND FORMS
Exhibit F	PROVISIONAL AND FINAL ACCEPTANCE CERTIFICATES
Exhibit G	CONTRACTOR'S CERTIFICATION, RELEASE AND WAIVER OF LIENS

In the case of any inconsistency or conflict between the main body of this Contract and its Exhibits, including, without limitation, anything contained in CONTRACTOR's price list, the Contract shall prevail.

2. DEFINITIONS

The words set forth below shall have the following meanings when used in this Contract:

"Affiliate" means a company, partnership or other legal entity which controls, or is controlled by, or which is controlled by an entity which controls a Party. "Control" in this context means the ownership directly or indirectly of fifty per cent (50%) or more of the shares or voting rights in a company, partnership or legal entity.

"Amendment" means a document, executed with the same formality as this Contract, signed by the authorized representatives of the respective Parties agreeing to amend this Contract.

"Area of Operations" means the area in which COMPANY conducts oil and gas operations, as specifically identified in Exhibit A, "Miscellaneous Information".

"Audit Documents" means all of books, records and associated documents of CONTRACTOR which are required by COMPANY in order to perform the audit(s) described in Article 26, "Audit".

"Change Order" means a document signed by the Parties agreeing to a change in the Scope of Work, the Lump Sum Price and/or the Completion Date.

"Commencement of Operations" means the date and time the Construction Work has been operating in a steady and uninterrupted state and in accordance with technical requirements of this Contract for forty-eight (48) consecutive hours.

"COMPANY's Personnel" means individuals who are on the payroll of COMPANY or of one of its Affiliates.

"COMPANY's Property" means physical assets which are in the legal custody of COMPANY (whether by ownership, lease or otherwise), but specifically excluding physical assets in the legal custody of COMPANY's Subcontractors (whether by ownership, lease or otherwise).

"COMPANY's Representative" means the individual or individuals of Mustang Engineering Inc. appointed by COMPANY to act as its representative under this Contract.

"COMPANY's Subcontractors" means the individuals or companies, other than CONTRACTOR, CONTRACTOR's Personnel, CONTRACTOR's Subcontractors and COMPANY's personnel, which provide services to COMPANY in conjunction with the Development Project.

“Completion Date” means the date the Construction Work is provisionally accepted by COMPANY.

“Confidential Information” means any and all information and data or any product of the Work which is directly or indirectly received, acquired or ascertained by CONTRACTOR, its employees, representatives or subcontractors, in connection with performance of this Work.

“Construction Work” means all the umbilicals, flowlines, and any and all associated ancillary items to be designed, procured, fabricated, transported and installed pursuant to this Contract.

“Contract” means this agreement, including all sections, exhibits, documents, specifications, plans, drawings and schedules listed, referred to or contained herein, any item specifically incorporated by reference, and any Change Order and/or Amendment.

“Contract Change” means an addition to, revision to, or deletion from the Scope of Work, Lump Sum Price or Completion Date of the Work.

“Contract Term” means the period of time during which this Contract shall be valid and in effect.

“CONTRACTOR’S Personnel” means the employees of CONTRACTOR and any other individuals supplied by CONTRACTOR or its subcontractors, suppliers or vendors in connection with performance of the Work.

“CONTRACTOR’S Property” means the facilities, vessels, machinery, tools, supplies and other materials supplied by CONTRACTOR or any of its subcontractors, suppliers or vendors for performance of the Work.

“CONTRACTOR’S Representative” means the individual appointed by CONTRACTOR to act as its representative under this Contract.

“Development Project” means the oil and gas development project to be conducted by COMPANY, with the assistance of CONTRACTOR and others, in connection with the Work.

“Effective Date” means the date on which this Contract first becomes effective; namely, the date first written above

“Facilities” means the Floating Production, Storage and Offloading (FPSO) Facility, wellheads and other structures located within the Area of Operations and under the control of COMPANY, but excluding, in any event, the Construction Work as well as the property of COMPANY’s Subcontractors and Third Parties.

“Final Acceptance” means COMPANY’s unqualified acceptance of the Construction Work in accordance with the provisions of Article 11, “Acceptance”.

“Force Majeure” means an event or occurrence which is beyond the reasonable control of either Party and not caused by negligent acts or omission of the Party afflicted and which was not reasonably foreseeable thereby as of the Effective Date.

“Government” means the government of the Federal Republic of Nigeria, and any other government having jurisdiction over a Worksite, including any of its administrative or political divisions, but excluding state owned enterprises. “Governmental”, when capitalized shall be the adjectival form of “Government”.

“Gross Negligence” means the failure to perform a manifest duty in reckless disregard of the probable consequences in terms of the safety or property of another, as well as any act or failure to act which was intended to cause harmful consequences to persons or property.

“Installation Site” means the location within the Area of Operations where the Construction Work is to be installed.

“Lump Sum Price” means the total dollar amount as set forth in Exhibit C, “CONTRACTOR’s Proposal and Commercial Terms”, as it may be adjusted from time to time by a Change Order.

“Nigerian Territory” means all land and waters over which the Federal Government of Nigeria or any subdivision or agency thereof has jurisdiction for any purpose including, but not limited to, the granting of subsea mineral or hydrocarbon rights.

“Party” means, as the case may be, COMPANY or CONTRACTOR.

“Project Schedule” refers to the schedule for execution of the Work which will be prepared by CONTRACTOR in accordance with the requirements of this Contract.

“Provisional Completion” means COMPANY’s qualified acceptance of the Construction Work in accordance with the provisions of Article 11, “Acceptance”.

"Punch List" means the list of the minor defects or deficiencies in the Construction Work needing to be rectified prior to Final Acceptance, which Punch List shall be attached to CONTRACTOR's notice of Provisional Completion pursuant to "Article 11.2, "Provisional Acceptance".

"Scope of Work" means the detailed description of the Work to be performed under this Contract as set forth in Exhibit B, "Scope of Work".

"Third Party" means any party other than the COMPANY and CONTRACTOR.

"Warranty" means CONTRACTOR's warranty of the Work as set forth in Article 20.1, "Warranty".

"Warranty Period" means the period of time during which the Warranty shall be in effect in accordance with Article 20.2, "Validity Period".

"Work" means all the work and services to be performed by CONTRACTOR under this Contract.

"Worksite" means the location(s) at which the Work is to be performed, and shall include, without limitation, the engineering office, procurement offices, warehouses, storage yards, fabrication yards, shops, transport onshore and offshore, the Installation Site and all other locations where any portion of the Work takes place.

3. **TERM**

3.1 Subject to the early termination provisions contained herein, this Contract shall remain in effect during the Contract Term as defined by the planned sequences specified in the Project Schedule prepared by CONTRACTOR and updated from time to time during the performance of the Work. COMPANY shall have the right to extend the Contract Term in accordance with applicable provisions set forth herein. Subject to Article 23, "Termination", the Contract Term shall be extended for so long as is necessary to allow CONTRACTOR to complete the Work.

3.2 During the Contract Term, CONTRACTOR shall ensure that the performance of the Work is in strict accordance with Exhibit B, "Scope of Work", and shall perform all activities and produce all deliverables to ensure completion of the Work in accordance with the terms and conditions of this Contract.

4. EXECUTION OF WORK

4.1 SCOPE OF WORK

- 4.1.1 CONTRACTOR shall furnish all labor, supervision, machinery, equipment, vessels, barges, materials, and supplies (except those material and supplies to be furnished by COMPANY) required to satisfactorily complete the Work. All the Work shall be performed in accordance with the Contract documents. COMPANY reserves the right to make minor changes as the Work progresses. Time shall be of the essence for all matters covered by this CONTRACT.
- 4.1.2 CONTRACTOR shall diligently perform all services and work in a good and workmanlike manner, pursuant to the terms of the Contract documents and in accordance with the highest industry standards. It is specifically understood that the Work shall be performed subject to all the terms and conditions of the Contract documents; and the Contract documents shall become effective and operative when CONTRACTOR first commences the performance of any job or the rendering of any particular services in furtherance of the Work.
- 4.1.3 CONTRACTOR warrants that it is fully acquainted with the information and requirements contained in the Contract documents and that it knows of no reason why any physical or material aspects would interrupt the diligent performance or timely completion of the Work as specified herein.
- 4.1.4 CONTRACTOR shall continuously maintain adequate protection of all the Work from damage and shall protect COMPANY's property from any injury or loss.
- 4.1.5 CONTRACTOR shall take all necessary precautions for the safety of employees on the Work and shall comply with all applicable provisions of local safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed. CONTRACTOR shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for the protection of workers and others; shall post danger signs warning against hazards and shall designate a responsible member of its organization on the job site whose duty shall be the prevention of accidents. The name and position of the person so designated shall be reported to COMPANY or COMPANY's Representative.

- 4.1.6 In an emergency affecting the safety of life or the Work, CONTRACTOR, without special instruction or authorization from COMPANY or COMPANY's Representative, shall be permitted to act at its discretion to prevent such threatened loss or injury and CONTRACTOR shall so act, without the need for approval by COMPANY or any other party. Any compensation claimed by CONTRACTOR on account of emergency work shall be in accordance with CONTRACTOR's published rental rates or spread rates as applicable.
- 4.1.7 CONTRACTOR agrees that partial payments made during the course of the Work do not constitute acceptance of the Work and that responsibility for the Work remains solely with CONTRACTOR regardless of damage or loss to the Work.
- 4.1.8 CONTRACTOR shall preform the Work diligently, carefully, and in a good a and workmanlike manner, all in accordance with the highest industry standards for the type of work to be performed hereunder; shall furnish all labor, supervision, vessels, machinery, equipment, materials and supplies necessary therefore and, shall be fully responsible for all Work performed by its subcontractors.
- 4.1.9 CONTRACTOR shall give its personal attention to the Work and shall see that all subcontractors and sections of the Work are executed in a proper and workmanlike manner, in accordance with the highest industry standards.

4.2 PERFORMANCE GUARANTEE

- 4.2.1 CONTRACTOR shall provide a "Performance Guarantee", a copy of which is attached hereto in Exhibit C, "CONTRACTOR's Proposal and Commercial Terms", equivalent to one hundred percent (100%) of the Contract Lump Sum Price as full compensation for performance of CONTRACTOR's duties hereunder, as security for its performance and completion of the Work. The cost of this Performance Guarantee shall be solely borne by CONTRACTOR and included in the Contract Lump Sum Price.
- 4.2.2 The proceeds of the Performance Guarantee shall be payable to COMPANY as compensation for any loss resulting from CONTRACTOR's failure to perform or complete its obligation under and in accordance with the terms of the Contract documents.

- 4.2.3 The Performance Guarantee will be discharged by COMPANY and returned to CONTRACTOR not later than thirty (30) days following the expiration of the warranty and guarantee period as specified in Article 20.2, "Validity Period".

4.3 PROJECT SCHEDULE

Immediately after acceptance of the Bid by COMPANY, CONTRACTOR shall prepare and submit for COMPANY's approval an estimated "Project Schedule," which shall indicate the starting and completion dates of the various stages of the Work.

CONTRACTOR shall perform the Work in accordance with the Project Schedule. If, in the opinion of COMPANY, the Work falls behind the Project Schedule, CONTRACTOR shall, at its sole cost, take immediate steps to expedite the Work, including, without limitation: overtime work; the addition of personnel, plant, equipment, or marine vessels; and shipping material by the most expeditious means possible.

4.4 PROJECT CONTROL REQUIREMENTS

CONTRACTOR shall keep COMPANY's Representative fully informed of the progress of the Work.

4.5 TECHNICAL DIRECTION

COMPANY's Representative has the right, but not the obligation, to provide technical direction, as necessary to CONTRACTOR during the performance of the Work. CONTRACTOR has the right to request that any such technical direction be immediately documented to CONTRACTOR.

5. CONTRACT CHANGES

5.1 CHANGES AND EXTRA WORK

CONTRACTOR shall make no change in the Work or perform any additional work without COMPANY'S Representative's specific oral or written approval. Any oral changes shall be confirmed as soon as practical by a written Change Order.

5.2 CHANGE ORDERS

COMPANY shall have the authority to make Contract Changes. COMPANY shall advise CONTRACTOR of any such changes using the "Change Order Notice," and "Change Order/Extra Work Order" forms contained in Exhibit E. CONTRACTOR shall promptly perform and strictly comply with each such Contract Change when authorized in writing by COMPANY to perform the same.

5.3 FORESEEABILITY

Only Contract Changes as defined herein shall entitle CONTRACTOR to an adjustment of the compensation due under this Contract for the applicable portion of the Work. Furthermore, no request for a Contract Change shall be based upon any circumstance or event which a reasonably experienced contractor could have foreseen as of the Effective Date.

5.4 INSTALLATION

During the installation phase, Extra Work shall be performed on a mutually agreed lump sum price basis if time allows for the negotiation of a price on such a basis. If time does not allow for such negotiation, the Extra Work shall be performed in accordance with the rates set forth in Exhibit C.

5.5 CLAIMS

CONTRACTOR shall give COMPANY written notice within seven (7) days after the occurrence of any event which, in CONTRACTOR's opinion, constitutes a Contract Change and which may give rise to a claim by CONTRACTOR for additional compensation or for an extension of the Completion Date. Such notice shall be on the "Change Order Notice" form contained in Exhibit E and shall include a description of all relevant circumstances which have given rise to such claim, as well as the consequences emanating therefrom. COMPANY shall not be liable for, and CONTRACTOR hereby unconditionally waives any claims whatsoever that are not documented in accordance with this Article 5.5. CONTRACTOR agrees to continue performing the Work while such claim is pending and Company shall not be bound to any additional cost, change in the Scope of Work or schedule impact relating to CONTRACTOR's claim unless expressly agreed to by COMPANY in the form of an executed "Change Order/Extra Work Order" contained in Exhibit E.

6. **CONTRACTOR'S PERSONNEL**

6.1 **GENERAL OBLIGATION**

CONTRACTOR shall assign to the Work professional, technical and supervisory personnel in sufficient numbers or as are otherwise necessary to properly perform the Work.

6.2 **QUALIFICATIONS OF CONTRACTOR'S PERSONNEL**

CONTRACTOR shall only use personnel who are qualified by education, training and experience to perform the tasks assigned to them. CONTRACTOR shall employ an adequate number of technicians who are licensed, as required in the locale where the Work is to be performed, so as to allow for timely and efficient performance of the Work.

6.3 **REMOVAL/REPLACEMENT OF PERSONNEL**

Key personnel assigned to the Work shall not be removed therefrom without written approval from COMPANY. CONTRACTOR shall, at its sole cost, replace any of its employees whose work, in COMPANY's opinion, is unsatisfactory or contrary to the requirements of this Contract. CONTRACTOR shall make such replacement in a timely manner so as not to negatively impact the Work or COMPANY's operation. The expense of familiarizing such replacements with the Development Project shall be borne solely by CONTRACTOR.

6.4 **PERSONNEL COSTS**

Except as may be otherwise specifically provided in this Contract, CONTRACTOR shall be solely responsible for and pay any expense incurred with regard to visas, work permits, transportation, accommodation, wages, salaries, benefits and all other related costs of CONTRACTOR's Personnel.

6.5 **LABOR AND SUPERVISION**

CONTRACTOR shall provide for all labor and supervision required for the timely and satisfactory completion of the Work, and shall be solely responsible for and save COMPANY harmless from the payment of all and any costs incurred in connection with the employment of such labor and supervision including, but not limited to, compensation, transportation, work permits, visas and all income taxes.

6.6 COOPERATION

CONTRACTOR shall cooperate with COMPANY's Personnel and Subcontractors and allow them access to the Worksites, when so requested by COMPANY. CONTRACTOR shall likewise cooperate with representatives of duly constituted Governmental authorities.

6.7 MEDICAL EMERGENCIES

If any of CONTRACTOR's Personnel become incapacitated at the Work Site or on COMPANY's facilities through injury or illness, CONTRACTOR shall be responsible for providing first aid or transport to a medical facility and providing medical treatment and welfare. In no case, shall COMPANY be liable to the CONTRACTOR or CONTRACTOR's Personnel for failure or delay in assisting transportation in a timely fashion, or rendering first aid or medical care. CONTRACTOR shall be responsible for the immediate replacement of CONTRACTOR's Personnel who become incapacitated. The provisions of Article 14.5, "CONTRACTOR's Personnel", shall fully apply to such situations.

7. CONTRACTOR MATERIAL AND EQUIPMENT

7.1 GENERAL OBLIGATION

CONTRACTOR shall furnish and inspect all vessels, material, equipment, supplies, tools, transportation and fuel, lubricants, spare parts and operators for equipment operation, of the type, quantity and quality necessary and suitable for the timely performance of the Work in accordance with this Contract.

7.2 SUBSTITUTION

Any request to substitute other material or equipment in place of pre-selected material and equipment shall require COMPANY's advance approval in writing. In the event CONTRACTOR proposes a less costly substitute for pre-selected materials and equipment, CONTRACTOR shall notify COMPANY of the amount of the related cost savings and the proposal shall be handled as a proposed Contract Change pursuant to Article 5, "Contract Changes". COMPANY shall be the sole judge of the acceptability of alternate materials or equipment proposed by CONTRACTOR. COMPANY shall have the right to reject any Work performed using substituted materials and equipment without the prior written approval of COMPANY.

7.3 REMOVAL

During the process of the Work, and until Final Acceptance by COMPANY pursuant to Article 11, "Acceptance", COMPANY shall have the right to order, in writing, the removal from any Worksite or COMPANY's Facilities within such time or times as may be specified in COMPANY's order, any materials, equipment, supplies or tools supplied by CONTRACTOR which are not in accordance with this Contract and to order the substitution of proper and suitable items and the replacement and proper re-execution of any Work which, in respect to such material or workmanship, is not in accordance with the provisions of this Contract. The costs relating to any such removal and/or replacement shall be CONTRACTOR'S sole responsibility.

7.4 PROCUREMENT, IMPORTATION AND EXPORTATION

The procurement, importation and exportation of CONTRACTOR's Property shall be in strict accordance with the requirements of Nigerian laws and regulations.

8. COMPANY MATERIAL AND EQUIPMENT

Any COMPANY furnished materials and equipment, as stipulated in this Contract, shall be immediately inspected by CONTRACTOR upon delivery thereof to its care and custody, and verified that they are acceptable for CONTRACTOR's use. If defects are noted in the course of such inspection, COMPANY shall determine whether the Work shall go forward notwithstanding such defects(s) or to have the material or equipment in question replaced or repaired at COMPANY's expense.

9. WORKSITE

9.1 KNOWLEDGE OF SITE

CONTRACTOR represents that it possesses adequate knowledge of all Worksites, including the nature and location of the Worksites; the means of access thereto and therefrom; climatic, meteorological and other physical conditions; the character of the equipment and facilities needed before and during the performance of the Work; handling and storage of materials; availability of labor, water and power; uncertainty of weather and similar physical conditions and all other matters affecting the execution of the Work.

9.2 HAZARDS

CONTRACTOR is familiar with all potential hazards present at the Worksites and has ascertained what safeguards must be provided by CONTRACTOR for the protection of persons and property.

9.3 SITE INFORMATION

COMPANY shall provide CONTRACTOR with the latest available site information and survey data concerning the seafloor conditions, location of facilities, wellheads and pipelines adjacent to the installation site. COMPANY does not, however, guarantee the correctness or completeness of this data or ancillary information.

9.4 ADDITIONAL COMPENSATION

CONTRACTOR shall not be entitled to claim compensation in excess of what is set forth in this Contract on account of conditions relating to the Worksite, except as otherwise specifically provided for in this Contract.

9.5 COMPANY ACCESS TO WORKSITES

COMPANY, or any person authorized in writing by COMPANY, shall at all times have access to the Work and to any Worksite.

9.6 COOPERATION WITH OTHER CONTRACTORS

With regard to work being performed by COMPANY's Subcontractors at or in the vicinity of a Worksite, CONTRACTOR shall afford all reasonable cooperation and access to the Work and to any Worksite.

9.7 WORKSITE CONDITION

CONTRACTOR shall at all times keep the Worksites free from accumulation of waste material, rubbish, unnecessary and unreasonable accumulations of temporary structures, scaffolding, surplus materials, equipment, supplies, tools and spares. Upon completion of the Work, CONTRACTOR shall leave all Worksites in a neat and orderly condition to COMPANY's satisfaction. Should CONTRACTOR fail to do so, COMPANY may remove any offending items from any Worksite at CONTRACTOR's cost.

10. INSPECTION

10.1 MATERIALS AND INSPECTION

COMPANY shall have the right, but not the obligation, to inspect the Construction Work. If such inspection discloses that the Construction Work, including any material, equipment or workmanship integrated therein, is not in accordance with this Contract, CONTRACTOR, at its sole cost, shall promptly make any repairs or replacements necessary in order to bring the Construction Work into compliance with this Contract. If CONTRACTOR should fail to do so promptly after written request by COMPANY's Representative, COMPANY may arrange to have such repair or replacement made by a Third Party and may deduct the cost thereof from any amounts payable to CONTRACTOR hereunder.

10.2 OPPORTUNITY FOR INSPECTION

CONTRACTOR shall allow COMPANY or COMPANY's Representatives full opportunity, including proper and safe access, to examine, test and measure any part of the Construction Work, its components or subassemblies. CONTRACTOR shall give timely prior notice to COMPANY when any portion of the Construction Work is ready for examination or testing so as to enable COMPANY to inspect, measure, test, witness and examine same.

10.3 INCLUSIVE TESTING

All inspection and testing at any stage or phase of the Work, Provisional Acceptance, Final Acceptance and throughout the Warranty Period, shall include not only such inspection and testing as is expressly set forth in Contract specifications and documents but also that which any prudent fabrication, construction and/or engineering contractor would require.

11. ACCEPTANCE

11.1 COMPLETION OF NON-INSTALLATION SITE WORK

11.1.a CONTRACTOR shall issue to COMPANY, prior to transportation to the designated Installation Site, a written notice of Construction Work completed anywhere other than at an Installation Site.

11.1.b Within five (5) working days of COMPANY's receipt of CONTRACTOR's notice of completion of any non-Installation Site portion of the Construction Work and prior to shipment thereof to the Installation Site, COMPANY shall deliver to CONTRACTOR either a written statement to proceed or a written statement specifying the respects in which COMPANY believes the non-Installation Site portion of the Construction Work has been completed. CONTRACTOR shall not proceed with load-out of the Construction Work without resolution of any and all issues in regards to its completeness.

11.1.c CONTRACTOR is responsible and shall ensure that the load-out and tie-down arrangement for the transportation of the Construction Work comply with the requirements of CONTRACTOR'S designated marine warranty surveyors.

11.1.d Proceeding with the load-out of any non-Installation Site portion of the Construction Work does not in any fashion constitute acceptance of the Construction Work by COMPANY and does not limit CONTRACTOR's obligation to complete the same in accordance with the requirements of this Contract.

11.2 PROVISIONAL ACCEPTANCE

11.2.a CONTRACTOR shall issue to COMPANY a written notice of Provisional Completion relating to the Construction Work when CONTRACTOR believes that all Construction Work or, if applicable, a COMPANY designated and separable portion thereof, has been completed and meets the following criteria:

- (i) It conforms to the Contract requirements and all specifications and drawings referred to in this Contract or thereafter furnished and/or approved by COMPANY in accordance with this Contract;
- (ii) It is free of any defect in fabrication, installation, construction or workmanship, (other than a minimum number of minor defects subject to prompt but later correction) which said minor defects are fully described and attached to said written notice as a Punch List;
- (iii) It is free of any defect, deficiency or omission in any design or engineering furnished or performed by CONTRACTOR;
- (iv) It meets all certifying authority requirements and;

- (v) **Equipment, materials and supplies furnished by CONTRACTOR for the Construction Work are in accordance with the Contract specifications and are fit for the purposes intended.**
- 11.2.b **Within five (5) working days of COMPANY's receipt of CONTRACTOR's written notice of Provisional Completion, COMPANY shall deliver to CONTRACTOR either a of Provisional Acceptance Certificate, in the form included in Exhibit F, "Provisional and Final Acceptance Certificate," or a written statement specifying the respects in which COMPANY, believes the Construction Work has not reached the point of Provisional Completion. CONTRACTOR and COMPANY shall proceed in this fashion until all deficiencies have been corrected to the satisfaction of COMPANY and a Provisional Acceptance Certificate has been issued to CONTRACTOR. The Provisional Acceptance Certificate is subject to the defects, deficiencies, and/or omissions noted by COMPANY and/or others noted on the testing and inspection and as listed on the Punch List. CONTRACTOR shall diligently continue to repair, correct, complete, replace or rectify all such noted defects, deficiencies, or omissions at all times after the of Provisional Acceptance Certificate has been issued. CONTRACTOR shall notify COMPANY and obtain COMPANY's agreement for any item of Construction Work that will not be completed within two (2) weeks of the issuance of the Provisional Acceptance Certificate..**
- 11.2.c **COMPANY's approval of the Construction Work as indicated by the Letter of Provisional Acceptance shall not release CONTRACTOR from CONTRACTOR's warranty obligations in respect of the Construction Work, pursuant to Article 20, "Warranty", or from any indemnity obligation or any liability which has been incurred by CONTRACTOR prior to or after the issue of such Provisional Acceptance Certificate.**
- 11.2.d **The Construction Work covered by the Provisional Acceptance Certificate shall be subject to Final Acceptance, all in accordance with the provisions set forth in Article 11.3, "Final Acceptance". If the Construction Work shall fail to pass any of the inspections or tests required by this Contract, COMPANY may, at its sole option, issue a letter revoking the Provisional Acceptance Certificate previously issued to CONTRACTOR. In such event, the rights and obligations of the Parties shall be as if COMPANY had never provisionally accepted the portion of the Construction Work covered by such Provisional Acceptance Certificate.**

11.2.e Unless otherwise agreed by the Parties in writing, CONTRACTOR shall have a maximum period of thirty (30) days from the issuance of a Provisional Acceptance Certificate in order to complete all Work relating to the Punch List items to COMPANY's satisfaction. In the event CONTRACTOR does not complete such Work within said thirty (30) day period, COMPANY may, at its option, directly perform or retain a Third Party to perform such Work, the cost of which shall be for CONTRACTOR's account.

11.3 FINAL ACCEPTANCE

11.3.a CONTRACTOR shall issue a written notice of final completion of the Work when CONTRACTOR believes that the Work is complete in all respects, that it fully satisfies the requirements of this Contract, and that the Work specifically meets the following criteria;

- (i) It conforms to all requirements, specifications and drawings set forth in this Contract or thereafter furnished by and/or approved by COMPANY in accordance with the terms and conditions of this Contract;
- (ii) It is free of any defect, deficiency or omission in fabrication, installation, construction or workmanship;
- (iii) It is free of any defect, deficiency or omission in any design or engineering;
- (iv) It meets all certifying authority requirements;
- (vi) All equipment, materials, and supplies furnished by CONTRACTOR for the Construction Work are in accordance with Contract specifications and are fit for their intended purposes;
- (vii) All documentation required by this Contract to be delivered to COMPANY has been received and approved by COMPANY; and
- (viii) Commencement of Operations has occurred.

11.3.b Once CONTRACTOR has issued the notice of final completion in accordance with Article 11.3.a, COMPANY shall, within five (5) working days of receipt of such notice, either issue a Final Acceptance Certificate in the form included in Exhibit C, "Provisional and Final Acceptance Certificates," or otherwise inform CONTRACTOR in writing of COMPANY's reasons for not accepting the Work. CONTRACTOR and COMPANY shall continue in this fashion until all deficiencies shall have been corrected to COMPANY's satisfaction and a Letter of Final Acceptance shall have been issued to CONTRACTOR.

11.4 POST ACCEPTANCE WORK

Neither Provisional Acceptance nor Final Acceptance constitutes waiver of CONTRACTOR's obligation to complete the Work nor does it constitute acceptance of deficiencies therein. Corrective Work for said deficiencies shall be performed only when conditions safely permit. With respect to the warranties provided in Article 20, "Warranty", the Warranty Period on corrective Work performed under this Article 11, "Acceptance", shall begin upon completion of such corrective Work.

12. COMPENSATION AND TERMS OF PAYMENT

12.1 COMPENSATION

As exclusive and complete compensation for Work satisfactorily performed, COMPANY shall pay CONTRACTOR in accordance with the provisions of Exhibit C and other relevant provisions of this Contract.

12.2 INVOICING

CONTRACTOR shall submit invoices to COMPANY at the address set forth in Exhibit A, "Miscellaneous Information". Invoices shall be submitted per the payment schedule contained in Exhibit C upon completion of the required Work on or before the tenth (10th) day of the following calendar month. Separate invoices shall be submitted for each Change Order and amounts other than for payment schedule payments against the Lump Sum Price. Invoices must include adequate supporting documentation, as solely determined by COMPANY. Invoices for Change Orders shall be paid only after all Work covered by the Change Order has been completed, unless otherwise specifically stated in the Change Order.

12.3 INVOICE PAYMENTS

12.3.a Unless COMPANY delivers to CONTRACTOR a written objection to any invoice within thirty (30) days from receipt of such invoice, specifying why COMPANY believes such invoice to be inaccurate, COMPANY shall pay CONTRACTOR the invoice amount, less ten percent (10%) retention, within thirty (30) days of invoice receipt. All retained amounts will be paid as part of the final payment unless released earlier at COMPANY's sole discretion. If COMPANY delivers a written objection to such invoice, the COMPANY may delete the disputed amount until any question is resolved; provided, however, that the remaining balance of any such invoice shall be paid within the thirty (30) days.

12.3.b Should COMPANY not pay the undisputed portion of CONTRACTOR's invoice when due, CONTRACTOR shall invoice COMPANY the principal amount due, plus interest at the rate of three quarter of one percent (3/4%) per month. Should any amounts in dispute be settled in three quarters of CONTRACTOR's favor, simple interest shall accrue at the rate of nine percent (9%) per annum from the date the invoice in dispute was initially received by COMPANY.

12.3.c All payments due CONTRACTOR shall be forwarded in accordance with the instructions contained in Exhibit A "Miscellaneous Information". If payments are made by wire transfer, all costs associated therewith are for CONTRACTOR's account.

12.4 SET OFF

COMPANY shall have the right to withhold money payable by COMPANY to CONTRACTOR and apply the same to payment of any money payable by CONTRACTOR to COMPANY.

12.5 FINAL PAYMENT

Final payment to CONTRACTOR shall be made upon COMPANY's issue of the Final Acceptance Certificate and receipt from CONTRACTOR of an executed "CONTRACTOR's Certification, Release and Waiver of Liens" contained in Exhibit G. CONTRACTOR shall submit to COMPANY its final progress payment invoice, a separate invoice for cumulative retention withheld by COMPANY and separate invoices for any other amounts payable or reimbursable hereunder which have not been paid to CONTRACTOR.

13. **INSURANCE**

13.1 **CONTRACTOR'S INSURANCE**

Without limiting the obligations of CONTRACTOR or its insurers, CONTRACTOR shall at its sole cost secure and maintain the insurance coverages in the types and amounts set forth under this Article 13, with underwriters and on terms and policy forms satisfactory to COMPANY. The minimum requirements stated in this Contract are not to be considered indicative of the amounts and types of insurance which CONTRACTOR needs or may ultimately need. All insurance taken out by CONTRACTOR shall be with an insurance company admitted to do business in the country or countries where the Work is performed.

13.2 **INSURANCE COVERAGE**

CONTRACTOR, from the time of commencement of Work until completion and Final Acceptance of the Work by COMPANY in accordance with the terms of this Contract, shall provide, pay for and maintain in effect the types and amounts of insurance listed below, in a form and with insurance companies acceptable to COMPANY. Prior to commencing the Work, CONTRACTOR shall furnish insurance certificates evidencing the insurance required herein. Upon request, COMPANY may examine true copies of the actual policies.

13.2.a Worker's Compensation Insurance: Including Occupational Disease at a minimum in accordance with the laws of the country or countries where the Work is to be performed (and additionally at least equal to those required by the law of the place of hire for any United States and other expatriate personnel) and Employers' Liability Insurance with limits of not less than U.S. \$1,000,000 per each accident.

If the performance of the Work requires the use of vessels or is performed, in whole or in part, over water, CONTRACTOR shall provide coverage for liability under the U.S. Longshore and Harbor Workers Compensation Act, Outer Continental Shelf Lands Act and liability for admiralty benefits and damages under the Jones Act, Death on the High Seas Act and general maritime law on all eligible employees, except members of crews of vessels if full crew liabilities are covered under Protection and Indemnity Insurance, and shall further provide that a claim "in rem" shall be treated as a claim against the employer.

- 13.2.b **Commercial General Liability Insurance:** Including contractual liability, insuring the indemnity agreement set forth in this Contract, and products-completed operations coverage with limits of U.S. \$2,000,000 per occurrence and U.S. \$4,000,000 aggregate, applicable to bodily injury, sickness, death, loss of or damage to property. This insurance shall include coverage for the ownership, maintenance and use of any water craft used in the performance of this Contract where such water craft are not covered by Marine Protection and Indemnity Insurance.
- 13.2.c **Water Craft Insurance:** If the performance of the Work requires the use of water craft, CONTRACTOR shall carry, or require the owner of such water craft to carry:
- (i) **Hull and Machinery (including Collision Liability) Insurance:** Subject to the American Institute Hull Clauses or equivalent, in an amount equal to net book or mortgage value. (Any language in this policy which limits the coverage of an insured who is not an owner or who is not entitled to limitation of liability shall be deleted).
 - (ii) **Protection and Indemnity Insurance:** Subject to Sp-23 conditions, or equivalent, in an amount of U.S. \$5,000,000. (Any language in the policy which limits the coverage of an insured who is not an owner or who is not entitled to limitation of liability shall be deleted).
 - (iii) **Chartered Water Craft:** In respect to all water craft, Charterer's Legal Liability Insurance shall be not less the U.S. \$5,000,000.
- 13.2.d **Aircraft Insurance:** If the performance of the Work requires the use of aircraft (including helicopters), CONTRACTOR shall carry, or require the owners of such aircraft to carry, All Risks Hull and Bodily Injury Liability Insurance, including Passenger Liability and loss or damage to property with a combined single limit of U.S. \$5,000,000 in any one (1) occurrence.
- 13.2.e **Automobile Liability Insurance:** Covering owned, non-owned, hired and all vehicles used by CONTRACTOR with limits of U.S. \$ 1,000,000 for all liability arising out of injury or death of one (1) or more persons in any one (1) occurrence; \$ 500,000 for loss or damage to property in any one (1) occurrence or a combined single limit of U.S. \$ 750,000 applicable to bodily injury, sickness, death, loss of or damage to property in any one (1) occurrence.

13.2.f Builders Risk and Ocean Cargo Insurance: Covering such period and in such amounts as to cover loss or damage to the Work during transportation and until acceptance of installation, which shall be the date on which the Letter of Final Acceptance called for in Article 11.3 is endorsed by COMPANY. This insurance shall be in the amount of the value of the Work. CONTRACTOR agrees to cover the deductible.

13.2.g Subrogation: The policy or policies providing for such insurance shall be endorsed to specifically include the liability assumed by CONTRACTOR under the Contract documents and to provide that all rights of subrogation against COMPANY are waived. This insurance shall be primary to all other policies carried by CONTRACTOR and COMPANY. This waiver of recovery or subrogation also applies to COMPANY's invitees and Subcontractors, but only to the extent that each of the aforementioned have likewise waived their rights of recovery or subrogation against CONTRACTOR, its Affiliates, representatives, employees, invitees, servants, subcontractors, insurers and underwriters.

13.2.h Premium: All policies shall be endorsed to provide that there will be no recourse against COMPANY for CONTRACTOR's failure to make payment of premium.

13.3 SUBCONTRACTOR'S INSURANCE

CONTRACTOR shall require all subcontractors to obtain, maintain and keep in force during the time in which they are engaged in performing Work hereunder, adequate insurance coverage in accordance with CONTRACTOR's normal practice and furnish COMPANY acceptable evidence of such insurance upon request. All policies of subcontractors shall be endorsed to provide a waiver of subrogation as set forth in Article 13.2.g above.

13.4 COST OF PREMIUM

Except as set out in Article 13.5 below, it is expressly agreed and understood that the cost of premiums for CONTRACTOR's insurance and any deductibles shall not be reimbursed. The Lump Sum Price includes the cost of insurance and is the only form of compensation that CONTRACTOR shall receive therefor or related thereto.

13.5 ADDITIONAL INSURANCE

COMPANY may require CONTRACTOR to provide additional insurance. Any request by COMPANY for CONTRACTOR to provide coverage limits in excess of the stipulated minimum amounts or additional insurance covers to those set forth in this Article 13, shall be authorized by a Change Order and be reimbursed by COMPANY at cost.

14. LIABILITY AND INDEMNIFICATIONS

14.1 GENERAL INDEMNITY

Except as otherwise specifically provided in this Contract, CONTRACTOR shall indemnify and hold COMPANY harmless from and against any loss or liability (including legal expenses) arising out of any claim or cause of action for loss of or damage to property and injuries to or death of persons caused by, resulting from, growing out of, or incidental to the Work and shall, at the option of COMPANY, defend the same, regardless of the cause or reason therefore and regardless of the sole or concurrent negligence of COMPANY and regardless of whether such Work is performed by CONTRACTOR, its employees, its subcontractors, their employees, or all or any of them, except where such loss, damage or injury is caused by the sole and Gross Negligence of COMPANY.

14.2 CONTRACTOR'S PROPERTY

CONTRACTOR shall assume liability at all times, including while in transit, for loss of, damage to or destruction of CONTRACTOR's Property, including all costs for removal of wreck and/or debris regardless of how, when or where such loss, damage or destruction occurs, and CONTRACTOR shall protect, indemnify, defend and hold COMPANY harmless from and against all claims, liabilities, demands, causes of action and judgments (including costs and reasonable attorney's fees) of every kind for damage to or loss or destruction of CONTRACTOR's Property regardless of how, when or where such loss, damage or destruction occurs except to the extent it is caused by COMPANY's Gross Negligence.

14.3 COMPANY'S PROPERTY

COMPANY shall protect, indemnify, defend and hold CONTRACTOR harmless from and against all claims, liabilities, demands, causes of action and judgments (including costs and reasonable attorney's fees) of every kind for damage to or loss or destruction of COMPANY's Property regardless of how, when or where such loss, damage or destruction occurs, except to the extent it is caused by CONTRACTOR's Gross Negligence.

14.4 CONSTRUCTION WORK

CONTRACTOR shall assume liability at all times, including while in transit, for loss of, damage to or destruction of the Construction Work up to the time of Final Acceptance thereof, regardless of how, when or where such loss, damage or destruction occurs. This Article 14.4, "Construction Work", shall in no way be construed so as to limit CONTRACTOR's warranty obligations under Article 20, "Warranty".

14.5 CONTRACTOR'S PERSONNEL

CONTRACTOR shall protect, indemnify and hold COMPANY harmless from and against all claims, liabilities, demands, causes of action and judgments (including costs and reasonable attorneys' fees) of every kind and character for injury to or death of CONTRACTOR's Personnel and for all damage to or loss or destruction of property of CONTRACTOR's Personnel, regardless of how, when, or where such injury, death, loss, damage, or destruction occurs except to the extent it is caused by COMPANY's Gross Negligence.

14.6 COMPANY'S PERSONNEL

COMPANY shall protect, indemnify and hold CONTRACTOR harmless from and against all claims, liabilities, demands, causes of action and judgments (including costs and reasonable attorneys' fees) of every kind and character for injury to or death of COMPANY's Personnel, and for all damage to or loss or destruction of property of COMPANY's Personnel, regardless of how, when, or where such injury, death, loss damage, or destruction occurs except to the extent it is caused by CONTRACTOR's Gross Negligence.

14.7 INSURANCE FOR CONTRACTOR'S PROPERTY

CONTRACTOR agrees to provide insurance to cover loss or damage to property of CONTRACTOR which shall provide that all rights of subrogation to COMPANY are waived.

14.8 MUTUAL INDEMNITY OBLIGATIONS

COMPANY and CONTRACTOR agree to defend each other respectively against all suits brought upon any claim, demand, or cause of action covered by their indemnity obligations; but each party shall have the right, at its option, to participate at its own expense with attorneys of its own selection in the defense of any such suits without releasing the other party of any indemnity obligations hereunder.

14.9 THIRD PARTIES

CONTRACTOR shall defend, indemnify and hold COMPANY harmless from and against all suits, actions, claims and demands based on personal injury or death or property damage or loss suffered or incurred by Third Parties arising from or related in any way to performance of the Construction Work by CONTRACTOR.

14.10 CONSEQUENTIAL DAMAGES

Under no circumstances shall either of the Parties be liable to the other for consequential or indirect damages including, but not limited to, loss of profits, loss of use of assets, loss of product or facilities downtime.

15. POLLUTION CONTROL

CONTRACTOR shall use its best efforts to prevent and take all reasonable precautions to avoid pollution or contamination of the land, water or air arising out of or incidental to or in connection with CONTRACTOR's performance of the Work. Should there be a discharge or escape of any appreciable quality of pollutants or contaminants during CONTRACTOR's performance hereof, CONTRACTOR shall immediately notify COMPANY so that COMPANY may take action if necessary to contain, recover, or disperse the pollutant or contaminant.

CONTRACTOR warrants that CONTRACTOR shall be subject to all financial capability, liability, security or like laws, regulations and/or other requirements of any kind with respect to oil or other pollution damage applicable to marine vessels entering, leaving, remaining at or passing through any ports or waters in the performance of the Construction Work. CONTRACTOR at its sole risk and expense shall make all arrangements by bond, insurance, or otherwise and obtain all such certificates and other documentary evidence and take all such other actions, as may be necessary, to satisfy such laws, regulations and/or other requirements.

15.1 CONTRACTOR'S RESPONSIBILITY

CONTRACTOR shall assume all responsibility for, including control and removal of, and indemnify and hold COMPANY harmless against and from loss, cost or damage arising from any pollution or contamination:

- 15.1.a Which originates above the surface of the land or water from spills or leaks of fuels, lubricants, motor oils, pipe dope, paints, solvents, ballasts, bilge, garbage, sewage, and other material exclusive of those covered by Article 15.1.b below, in CONTRACTOR's possession and control, whether or not caused by CONTRACTOR's negligence;
- 15.1.b Resulting from fire, blowout, cratering, seepage, or any other uncontrolled flow, from surface, or subsurface of oil, gas, or water from wells during the conduct of operations hereunder when caused by CONTRACTOR'S negligence or wilful or wanton conduct; or
- 15.1.c Resulting from leaking or uncontrolled flow of oil, gas or water from pipelines, including lines on or in submerged lands, ruptured or damaged by CONTRACTOR's rig, barge, anchors of other equipment, or by CONTRACTOR's operations when such rupture or damage is caused by CONTRACTOR's negligence or wilful or wanton conduct.

15.2 COMPANY RESPONSIBILITY

COMPANY shall assume all responsibility for, including control and removal of, and indemnify and hold CONTRACTOR (as defined in Article 14) harmless against and from loss, cost or damage arising from pollution or contamination:

- 15.2.a Resulting from fire, blowout, cratering, seepage, any other uncontrolled flow of oil, gas or water from wells during the conduct of operations hereunder when not resulting from CONTRACTOR'S negligence or wilful or wanton conduct;

15.2.b Resulting from leaking or other uncontrolled flow of oil, gas or water from pipelines, including lines on or in submerged lands, ruptured or damage by CONTRACTOR's rig, barge, anchors, or other equipment, or by CONTRACTOR's operations, when such rupture or damage is not caused by CONTRACTOR's negligence or wilful or wanton conduct.

15.3 COMPANY'S OPTION

Without relieving CONTRACTOR of any of its obligations, COMPANY may participate to any degree it deems necessary in the control and removal of any pollution or contamination which is the responsibility of CONTRACTOR under the foregoing provisions. CONTRACTOR shall reimburse COMPANY for the cost of any such action performed by COMPANY upon the receipt of billing therefore from COMPANY.

16. SAFETY

16.1 SAFE WORK

CONTRACTOR shall at all times perform the Construction Work in a safe and secure manner and shall comply with Government regulations relating to safety at the work place and standard industry safety practices, as well as any other safety-related obligations imposed on CONTRACTOR under this Contract.

16.2 PERIODIC INSPECTIONS

CONTRACTOR shall cooperate fully with periodic inspections which may be performed from time to time by Governmental or COMPANY safety inspectors to assess safety practices.

16.3 COMPANY ACTION

In the event COMPANY determines that CONTRACTOR or any of CONTRACTOR's subcontractors are not performing the Work safely, COMPANY may, at its sole option, direct CONTRACTOR to stop the Work immediately, remove non-complying personnel or material from the Worksite and take whatever other actions COMPANY deems necessary in order to ensure CONTRACTOR performs the Work safely. Any and all costs or schedule delays resulting from failure to conduct the Work in a safe manner in accordance with the Contract shall be for CONTRACTOR's account.

17. PERMITS, LAWS, TAXES AND REGULATIONS

17.1 GENERAL PROVISIONS

CONTRACTOR shall give all notices and comply with all laws, ordinances, rules and regulations normally bearing on the conduct of the Construction Work. If CONTRACTOR performs all or any portion of the Construction Work contrary to such laws, ordinances, rules and regulations, CONTRACTOR shall bear all costs, fines and penalties arising therefrom.

17.2 LABOR LAWS

CONTRACTOR shall comply with all local ordinances and national laws regarding labor in effect at the time of signing of this Contract or passed during the execution period of the Construction Work. CONTRACTOR shall pay for all local and national taxes or assessments on labor.

17.3 REPORTING REQUIREMENTS

CONTRACTOR shall comply with any and all Government requirements regarding reporting, filling of returns, maintenance of books and records, and payment of taxes. CONTRACTOR shall indemnify and hold COMPANY harmless from and against the results of CONTRACTOR's failure to do so. CONTRACTOR shall bear and pay all costs of such compliance.

18.0 CUSTOMS DUTIES, CHARGES, FEES AND PERMITS

18.1 GENERAL OBLIGATIONS OF THE PARTIES

18.1.a CONTRACTOR shall be solely responsible for and pay all customs duties, fees, taxes, licences, import tariffs, or similar charges and costs imposed on any materials, equipment, vessels, supplies and tools furnished by CONTRACTOR to conduct the Construction Work and shall be subject to all applicable Governmental rules and regulations.

18.1.b COMPANY shall be solely responsible for and pay all Nigerian duties, fees, taxes, import and export tariffs, or similar charges and cost imposed on any permanently-installed equipment or material furnished by CONTRACTOR under this Contract.

18.2 INDEMNIFICATION

CONTRACTOR shall indemnify COMPANY for any penalties or other assessments levied against COMPANY as a result of CONTRACTOR'S failure to abide by any Governmental rules and regulations applicable to importation and exportation of material and equipment used in conjunction with this Contract.

19. ROYALTIES AND PATENTS

19.1 COMPANY PATENT INDEMNIFICATION

CONTRACTOR will protect and indemnify COMPANY from all consequences of patent infringement resulting from any use of materials, equipment, and methods furnished by CONTRACTOR.

19.2 CONTRACTOR PATENT INDEMNIFICATION

COMPANY will protect and indemnify CONTRACTOR from all consequences of patent infringement resulting from any use of material, equipment, and methods furnished or specified by COMPANY.

20. WARRANTY

20.1 GENERAL WARRANTY

CONTRACTOR hereby warrants as follows:

- 20.1.a CONTRACTOR has sufficient expertise and equipment to perform the type of tasks involved in executing the Work; and
- 20.1.b CONTRACTOR shall exercise due care, skill and diligence in performing the Work and in ensuring that it conforms to the requirements of this Contract; and
- 20.1.c The Work shall be free of defect, deficiency or omission in any design and engineering furnished by CONTRACTOR; and
- 20.1.d The Work shall be free of defect, deficiency or omission in fabrication, construction, installation and workmanship; and

20.1.e The equipment, material and supplies furnished by CONTRACTOR for performance of the Work shall be in accordance with Contract requirements and specifications and are without defect, deficiencies, or omissions; and

20.1.f All major systems and subsystems shall be within their performance requirements both individually and together as an operating system; and

20.1.g The Work shall meet all certifying authority requirements in effect as of the Effective Date; and

20.1.h The Work shall be fit for its intended purpose.

20.2 VALIDITY PERIOD

The Warranty set forth in Article 20.1, "General Warranty", will be valid for a period of one (1) year following the date of issue of the Letter of Final Acceptance; provided, however, that with regard to any portion of the Work on which repair or rectification work has been performed for Warranty purposes, the Warranty Period will expire one (1) year following COMPANY's acceptance of such repair or rectification work. In no event, however, shall CONTRACTOR's warranty obligations extend beyond a period of two (2) years following issuance of the Final Acceptance Certificate.

20.3 WARRANTY AND OBLIGATIONS AT LAW

This Article 20, "Warranty", shall not be deemed or construed to diminish or limit any legal remedies or rights which COMPANY may have through operation of law or under this Contract.

20.4 OBLIGATION TO REMEDY

CONTRACTOR shall be obliged to promptly rectify any failure of CONTRACTOR or the Work to conform with the requirements of the Warranty set forth in Article 20, "Warranty".

20.5 DEFECTS DISCOVERIES

COMPANY shall notify CONTRACTOR in writing within a reasonable time after discovery of any failure, defect, deficiency, omission or damage covered by this Warranty and CONTRACTOR shall repair or replace such failed, non-conforming, defective, deficient, omitted or damaged Work or other affected Work or property within a reasonable time after receipt of such written notice.

20.6 DYNAMIC FLEXIBLE RISERS

CONTRACTOR shall assume all responsibility for the performance of the dynamic flexible risers for the Warranty period and conditions set forth in this Article 20, "Warranty," including cost of correction. The cost of any re-performance, repair, replacement, remedy or correction to the dynamic flexible risers shall be borne by CONTRACTOR for its sole account up to twenty-five percent (25%) of the Contract Lump Sum Price established as of the Effective Date of this Contract. Notwithstanding other provisions of this Contract, CONTRACTOR shall not be compensated, reimbursed or indemnified by COMPANY for any CONTRACTOR cost or expense for the performance of any obligation under this Article 20.6 within the financial limit set forth above. Costs incurred by CONTRACTOR specifically exclude any costs recovered under any insurance policy. Costs incurred by CONTRACTOR to satisfy obligations under this Article 20.6 above this financial limit will be reimbursed by COMPANY.

20.7 FAILURE TO REMEDY

Notwithstanding the foregoing, should CONTRACTOR fail to remedy any failure, omissions, defect or damage described above within a reasonable time after receipt of written notice thereof from COMPANY, COMPANY shall have the right to replace, repair or otherwise remedy such failure, omission, defect or damage in whole or in part, at CONTRACTOR's cost.

20.8 OPERATIONAL CONSTRUCTION WORK

In carrying out Warranty related Work, CONTRACTOR shall give priority to COMPANY's operational requirements and avoid interruptions of COMPANY's operations to the maximum extent possible.

21. FORCE MAJEURE

21.1 GENERAL

Neither Party hereto shall be liable for damage to the other for any act, omission or circumstance occasioned by or in connection with, or as a consequence of, and the obligations of the Parties (other than the obligation to pay any sums due hereunder) shall be suspended during continuance of, any "Force Majeure" condition, including but not limited to any acts of God, including weather conditions which prohibit the effective progress of the Work; strikes, lockouts, or other industrial disturbances; acts of public enemy, sabotage, wars, blockades, insurrections, riots, or epidemics; lightning, landslides, earthquakes, floods, or fires; arrests, restraints of rulers and people, or civil disturbances; the binding order of any court or Governmental authority; or any other cause, whether of the kind herein enumerated or otherwise, not within control of the Party claiming suspension, and which, by the exercise of due diligence, such Party is unable to prevent or overcome. Such causes or contingencies affecting the performance of this Contract by the Parties hereto, however, shall not relieve either Party of liability in the event of its failure to use due diligence to remedy the situation and remove the cause in an adequate manner and with all reasonable dispatch, nor shall such causes or contingencies affecting the performance of this Contract relieve any Party of liability.

21.2 OCCURRENCE

In the event of a Force Majeure occurrence, the party delayed or unable to perform shall notify the other Party in writing or by telegram, within five (5) days of the occurrence, giving full particulars, including the estimated duration of its existence. The cause of the interruption shall be remedied, if reasonably possible, with all dispatch; and performance shall be resumed at the earliest practicable time after cessation of such interruption. Notice shall also be given on termination of the Force Majeure condition.

21.3 SUSPENSION OF WORK

If the Work is suspended by reason of Force Majeure for more than thirty (30) consecutive days, either Party may elect to cancel this Contract by giving written notice of such cancellation to the other Party at any time after the expiration of such thirty (30) day period. In the event of such cancellation by either Party, COMPANY shall pay CONTRACTOR an amount computed pursuant to the following:

- 21.3.a That percentage of the price for the Work agreed upon in this Contract which is equal to that percentage of the Work completed up to the time of cancellation, plus other amounts then due and payable or reimbursable hereunder, if any, less any amounts previously paid by COMPANY to CONTRACTOR as progress payments, and less any amounts due or owing by CONTRACTOR to COMPANY or to third party vendors or claimants;
- 21.3.b All cancellation charges assessed against CONTRACTOR by manufacturers, vendors and subcontractors for material and services purchased at COMPANY's direction for COMPANY's account and intended for use in performing the Work; and
- 21.3.c All costs incurred by CONTRACTOR in preserving and protecting Work in progress and materials, equipment and supplies in transit or at the Worksite and all direct costs reasonably necessary for the closing out of the Work, including demobilization costs.

22. RIGHTS OF TERMINATION

COMPANY, in its sole discretion and at its option, shall have the right to terminate this Contract any time (including during periods of Force Majeure) by giving written notice thereof to CONTRACTOR. In the event of termination of this Contract by COMPANY for any reason, COMPANY agrees to pay CONTRACTOR the aggregate sums calculated in accordance with the provisions of Article 21.3. In no event shall the above sum exceed the price for the Work agreed upon in this Contract plus the cost of any COMPANY approved extra Work performed by CONTRACTOR. Upon COMPANY's payment of the sums provided for hereunder, CONTRACTOR shall transfer and assign to COMPANY such equipment, Work in progress, material and supplies which CONTRACTOR has become obligated for and for which COMPANY has paid CONTRACTOR pursuant to this Article 22. CONTRACTOR shall fully vest in COMPANY the rights and benefits of CONTRACTOR under existing agreements with suppliers and others and shall deliver to COMPANY all drawings, data and other materials prepared by CONTRACTOR or delivered to CONTRACTOR by COMPANY or others in performance of the Work to the date of termination. Without CONTRACTOR'S permission, COMPANY shall not take over CONTRACTOR'S equipment for the performance of the Work, but shall be entitled to immediate possession of the Work in progress, materials and supplies referred to above. In the event CONTRACTOR and COMPANY cannot agree on the amount due CONTRACTOR pursuant to this Article 22, COMPANY may, at its option, post a bond in the amount of the difference between what CONTRACTOR claims is due hereunder and COMPANY'S offer in settlement, whereupon COMPANY shall become entitled to possession of the Work in progress, as herein provided.

23. **TERMINATION**

23.1 **TERMINATION BY FINANCIAL INSOLVENCY**

If CONTRACTOR becomes insolvent, enters voluntary or involuntary bankruptcy or receivership proceedings or makes an assignment for benefit of creditors, COMPANY shall have the right to terminate this Contract by giving CONTRACTOR written notice. COMPANY shall be relieved of all further obligations hereunder, except to pay CONTRACTOR the full price of all Work completed in accordance with the Contract document specifications.

23.2 **TERMINATION BY BREACH**

If CONTRACTOR or any subcontractor materially breaches any material provision of the Contract documents so as to fail to be in substantial conformance with the terms thereof, COMPANY shall give written notice to CONTRACTOR of the breach; and CONTRACTOR shall, within forty-eight (48) hours of receipt of such notice, commence to correct the breach. If CONTRACTOR fails to correct the breach, COMPANY shall have the right to terminate this Contract by giving CONTRACTOR written notice, whereupon COMPANY shall be relieved of all further obligations hereunder, except to pay CONTRACTOR the full price of all Work completed in accordance with the provisions of the Contract documents less any damages incurred by COMPANY as a result of the breach. In the event COMPANY elects to terminate this Contract under this Article 23.2, COMPANY may elect to take control of the Work for the purpose of completing the same in CONTRACTOR's yard, furnishing all additional labor, materials and equipment required, or to contract with others; and COMPANY may recover the excess cost to complete the Work if such excess cost exceeds the price for the Work agreed upon in the Contract plus the cost of any COMPANY approved extra Work.

23.3 **RIGHTS AND REMEDIES**

COMPANY's rights and remedies hereunder shall be in addition to any other rights or remedies available to COMPANY.

23.4 **TERMINATION AND INDEMNIFICATION**

Notwithstanding anything to the contrary herein, the provisions of this Contract providing for indemnification or limitation of liabilities shall survive any termination or completion of the Contract.

24. **NO WAIVER**

Except as may be specifically provided otherwise in this Contract, no failure or failures on the part of either COMPANY or CONTRACTOR to enforce its respective rights hereunder shall be construed as a waiver of such rights nor shall it preclude a subsequent enforcement of a later breach.

25. **SEVERABILITY OF PROVISIONS**

If any provision of the Contract documents, or the application thereof to any person or circumstance, is held invalid, the application of such provision or portion thereof to other persons or circumstances or in other jurisdictions and the remainder of such provisions and the Contract documents shall not be affected thereby, but shall remain in full force and effect.

26. **AUDIT**

COMPANY or its designated representative, shall have the right to inspect and audit the Audit Documents to ensure compliance with this Contract, including, without limitation, compliance with Article 30, "Conflict of Interests". CONTRACTOR agrees to maintain and cause its subcontractors, vendors and suppliers to maintain a set of Audit Documents for a period of two (2) years from the end of the calendar year in which such costs were invoiced or incurred by CONTRACTOR or its subcontractors, vendors and suppliers and to make such Audit Documents available to COMPANY upon request at all reasonable times within such period and for so long thereafter as any dispute remains unresolved. The Audit Documents should be adequate as to allow COMPANY's auditors to conduct an audit in conformance with generally accepted accounting principles. COMPANY may photocopy or reproduce the Audit Documents. COMPANY shall also have the right to obtain assistance from CONTRACTOR's Personnel to the extent necessary to efficiently conduct such audits, and CONTRACTOR shall make such personnel available at their assigned locations. Such audits will be made during CONTRACTOR's normal working hours. COMPANY shall notify CONTRACTOR of any matters arising in an audit which necessitate adjustments, by reimbursement to COMPANY or otherwise, and such adjustments shall be promptly made.

27. **LIENS**

CONTRACTOR shall avoid the placement of liens on or attachments of the Work. In the event of any lien or attachment, CONTRACTOR shall immediately notify COMPANY and shall discharge, bond, or otherwise secure against such lien or attachment. COMPANY shall be entitled to withhold, without interest or penalty, the total amount of any lien or attachment from any proceeds due CONTRACTOR until it is provided satisfactory evidence that such lien or attachment has been discharged. CONTRACTOR shall also indemnify and save COMPANY harmless from and against any and all loss, damage, injury, liability and costs resulting directly or indirectly from such lien or attachment.

28. **RELATIONSHIP OF THE PARTIES**

28.1 **INDEPENDENT CONTRACTOR**

CONTRACTOR is an independent contractor and neither an employee nor agent of COMPANY. Nothing in this Contract shall render CONTRACTOR or any of CONTRACTOR's Personnel, an agent, representative or employee of COMPANY. CONTRACTOR shall have responsibility for and control over the details and means of performing the Work. COMPANY, its authorized employees and representatives shall have the right at all times to provide general direction, inspect all Work performed hereunder, receive Confidential Information, and to witness and check all measurements and tests. CONTRACTOR hereby waives any and all rights by virtue of any statute, law, regulation or ordinance which would give CONTRACTOR any of the rights of employees in relationship to COMPANY for any and all purposes whatsoever.

28.2 **COMPANY's REPRESENTATIVE**

COMPANY's Representative shall have authority to act for and on behalf of COMPANY in all matters relating to this Contract and the Work. COMPANY's Representative shall have the right at any time to inspect the Work as it is performed and shall endeavor to inform CONTRACTOR immediately if any particulars of the Work inspected do not comply with this Contract, detailed specifications or plans, or with applicable safety and health regulations. COMPANY's Representative shall be responsible for reviewing and approving all drawings, specifications and other documents provided by CONTRACTOR in accordance with the provisions of this Contract. Failure of COMPANY's Representative to inspect or to call to the attention of CONTRACTOR any particulars in which the Work does not comply with the detailed specifications, plans, etc., shall in no way, however, relieve CONTRACTOR of its obligations and warrants under this Contract.

28.3 CONTRACTOR'S REPRESENTATIVE

CONTRACTOR's Representative shall have authority to act for and on behalf of CONTRACTOR in all matters relating to this Contract and shall be responsible for supervision of the Work. Subject to the other provisions of this Contract, all instructions given CONTRACTOR's Representative by COMPANY shall be binding. Instructions will be confirmed in writing upon request. CONTRACTOR'S Representative shall be a sufficiently fluent English speaker as to be able to interpret COMPANY'S requirements in the English language to the satisfaction of COMPANY. CONTRACTOR's Representative shall also be sufficiently fluent in the language of the country in which any portion of the Work is performed so as to communicate effectively with and directly to the individuals performing Work.

28.4 SUBCONTRACTORS AND OVERALL SUPERVISION

CONTRACTOR agrees that it is fully responsible to COMPANY for the acts, omissions and delivery dates of its subcontractors and of its employees, either directly or indirectly. CONTRACTOR shall be responsible for the coordination of the subcontractors, materials and workers engaged upon the Work. CONTRACTOR shall require all subcontractors for any part of the Work to obtain, maintain, and keep in force worker's compensation and comprehensive general liability insurance coverage having the same limits as required of CONTRACTOR pursuant to this Contract.

28.5 RELATION TO OTHER CONTRACTS

This Contract in no way invalidates, amends or affects the validity or status of any other contract executed by and between CONTRACTOR and COMPANY and this Contract shall only govern Work performed under this Contract.

29. ASSIGNMENT AND SUBCONTRACTS

29.1 ASSIGNMENTS

CONTRACTOR shall have no right to assign this Contract in whole or in part without the written consent of COMPANY and any attempt to do so shall be void. COMPANY shall have the right to assign this Contract without the prior consent of CONTRACTOR.

29.2 SUBCONTRACTS

CONTRACTOR shall not subcontract any part of this Contract without COMPANY'S prior written consent. If Work is subcontracted, CONTRACTOR shall notify COMPANY in writing of all proposed subcontracts prior to execution of the related subcontracts and shall furnish, at COMPANY'S request, copies of executed subcontracts. CONTRACTOR shall have a written contract in place for each approved subcontractor prior to such subcontractor performing any Work, containing terms and conditions substantially similar to those contained in this Contract. CONTRACTOR shall assure that any such subcontractors carry out the Work assigned thereto in accordance with the requirements of this Contract and CONTRACTOR shall remain liable to COMPANY for all Work performed by subcontractors.

30. CONFLICT OF INTERESTS

CONTRACTOR shall not pay any fee, commission, rebate or anything of value to or for the benefit of any employee of COMPANY, nor shall CONTRACTOR do business with any company knowing the results might directly benefit an employee of COMPANY. CONTRACTOR shall use its best efforts not to permit any of CONTRACTOR'S Personnel to engage in any activities contrary or detrimental to the best interests of COMPANY. Breach of this Article 30, "Conflict of Interests", by CONTRACTOR shall constitute sufficient grounds for COMPANY forthwith to terminate this Contract under Article 23.2, "Termination by Breach", by so notifying CONTRACTOR in writing.

31. GOVERNING LAW

31.1 GOVERNING LAW

This Contract shall be governed by and construed in all respects in accordance with the laws of the United States and the State of Texas.

31.2 APPLICABLE LAWS AND REGULATIONS

In performance of this Contract, CONTRACTOR shall comply with all applicable laws and regulations of the Government and shall be subject to the laws of any other government having jurisdiction over CONTRACTOR or the Work. CONTRACTOR shall protect, indemnify, defend and hold COMPANY harmless for any losses, fines, penalties or damages sustained thereby as a result of CONTRACTOR'S failure to so comply with such laws and regulations.

31.3 ARBITRATION

Any and all disputes arising under the Contract shall be finally settled pursuant to the Rules for Conciliation and Arbitration of Disputes of the International Chamber of Commerce by one (1) or more arbitrators appointed in accordance with such rules. Such proceedings shall be held in Houston, Texas. The arbitrator shall be entitled to such information, including the right to inspect the Work during reasonable hours, as may be deemed necessary to determine the dispute. The arbitrator's decision shall be final and binding upon CONTRACTOR and COMPANY; and judgement upon the award may be entered in any court having jurisdiction. The arbitrator shall determine which Party shall bear the cost of the proceedings or the proportion of such cost which each shall bear.

32. TITLE

Except as may be otherwise provided in this Contract or elsewhere in the Contract documents, the title to all Work in progress shall be and remain with COMPANY; and title to all materials to be incorporated in the Work shall vest in COMPANY upon receipt of such material by CONTRACTOR from vendors and subcontractors; provided, however, such title being with COMPANY shall not impose any obligation on COMPANY or relieve CONTRACTOR of any of its obligations under the Contract or the Contract documents.

33. NOTICES

Unless otherwise provided herein, any notice required or desired to be given by CONTRACTOR to COMPANY or by COMPANY to CONTRACTOR shall be in writing and be deemed received when delivered to the authorized representative named below or when deposited in the mail, postage prepaid, telefaxed, telegraphed, telexed or cabled, charges prepaid, addressed as indicated below to the attention of the individual designated.

COMPANY: Ashland Nigeria Exploration Unlimited
P.O. Box 218330
Houston, Texas 77218-8330
Telephone: (713) 531-2973
Facsimile: (713) 531-2902
Attention: Barry L. Kneeland

CONTRACTOR: Stolt Comex Seaway S.A.
B.P. 69
467, Chemin du Littoral
13321 Marseille Cedex 16 France
Telephone: 011 33 4 91 09 68 10
Facsimile: 011 33 4 91 09 68 00
Attention:

Each Party shall have the right to change its designated person and address for notice purposes by giving written notice to the other party.

34. MISCELLANEOUS PROVISIONS

34.1 MEANING OF COMPANY AND CONTRACTOR

For purposes only of indemnifications given or received hereunder, "COMPANY" means the Company so identified in Exhibit A, "Miscellaneous Information", as well as its Affiliates, assignees, and co-venturers in the Development Project (including these listed in Exhibit A, "Miscellaneous Information", including the officers, directors and employees of any of them. "CONTRACTOR" means the company so identified in Exhibit A, "Miscellaneous Information", as well as its Affiliates including the officers, directors and employees of any of them.

34.2 LANGUAGE

Unless stated specifically to the contrary elsewhere within this Contract, the English language shall be used throughout for CONTRACTOR's communications, reports, correspondence, drawings, specifications, notices, calculations and invoices and the like submitted to COMPANY.

34.3 TITLE HEADINGS

Title headings contained in this Contract are for identification and reference only and shall not be used in interpreting any part of this Contract.

34.4 ENTIRE CONTRACT

This Contract constitutes the entire agreement of the Parties regarding its subject matter. No other writings, discussions, or conversations shall be considered a part of this Contract and it may only be amended or modified by written instrument properly executed by duly authorized representatives.

34.5 SINGLE CONTRACT

Notwithstanding provisions, if any, for payment by COMPANY to CONTRACTOR on a designated basis according to the progress of the Work, division of Work, or acceptance by COMPANY from time to time of some portion of the Work, this is a single contract and it is the intent of the Parties that this Contract will be treated as a single indivisible unit.

34.6 CONTINUITY OF OBLIGATIONS

The expiration or termination of this Contract for any reason shall not extinguish or reduce (i) either Party's rights that accrued before the expiration or termination, nor (ii) the obligations set forth in Article 14, "Liability and Indemnifications"; Article 17, "Permits, Laws, Taxes and Regulations"; Article 18, "Customs, Duties, Charges, Fees and Permits"; Article 19, "Royalties and Patents"; Article 20, "Warranty"; Article 26, "Audit"; Article 27, "Liens"; Article 31, "Governing Law"; and Article 32, "Title".

IN WITNESS WHEREOF, the Parties have caused this Contract to be executed by their authorized representatives shown below.

ASHLAND NIGERIA EXPLORATION UNLIMITED

STOLT COMEX SEAWAY S.A

EXHIBIT A

MISCELLANEOUS INFORMATION

EXHIBIT B

SCOPE OF WORK

SCOPE OF WORK

1. The Work shall include design and fabrication of the production flowlines and risers, gas lift flowlines and risers, riser midwater arch, riser buoyancy, and other accessories as detailed in Exhibit C and D.
2. The Work shall include design and fabrication of the production control umbilicals, junctions plates and other accessories as detailed in Exhibits C and D.
3. The Work shall include installation of the flowlines and risers, including provisions of all installation equipment, as detailed in Exhibits C and D.
4. The Work shall include the following supporting activities in conjunction with providing the aforementioned equipment as further detailed in Exhibits C and D.
 - Engineering and Project Management
 - Inspection, Testing and Commissioning
 - Project Documentation
 - Transportation of Materials and Personnel

EXHIBIT C

CONTRACTOR'S PROPOSAL AND COMMERCIAL TERMS

EXHIBIT D

SPECIFICATIONS AND DRAWINGS

EXHIBIT E

CHANGE ORDER NOTICE AND FORMS

**ASHLAND NIGERIA EXPLORATION UNLIMITED
OKWORI FLOWLINE AND UMBILICAL SUPPLY AND INSTALLATION
CHANGE ORDER NOTICE**

CHANGE ORDER NO: _____ DATE: _____ REV: _____ CONTRACT NO. _____

CONTRACTOR NAME/ADDRESS _____ ORIGINATOR: CONTRACTOR COMPANY

NAME: _____

DEPT: _____

TELEPHONE NO: _____

DESCRIPTION OF PROPOSED CHANGE (USE CONTINUATION SHEET AS REQUIRED)

REQUIRED AUTHORIZATION DATE: _____ START OF WORK DATE: _____ COMPLETION OF WORK: _____

CONTRACTOR'S ESTIMATED SUMMARY (ATTACHED DETAILED COST BREAKDOWN AS REQUIRED)

PROPOSED PRICE CHANGE: _____

PROPOSED SCHEDULE CHANGE: _____

CONTRACTOR: _____

ASHLAND NIGERIA EXPLORATION UNLIMITED

BY: _____

By: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

This Change Order Notice is not an authorization to proceed nor an authorization for the expenditure of monies under the Contract. CONTRACTOR shall submit a copy of all documents related to the origin of this Change Order Notice, a detailed estimate in a format acceptable to COMPANY, or as may be attached hereto, of the cost and schedule impacts, if any, of this proposed change to the undersigned no later than _____.

**ASHLAND NIGERIA EXPLORATION UNLIMITED
OKWORI FLOWLINE AND UMBILICAL SUPPLY AND INSTALLATION
CONTRACT CHANGE/EXTRA WORK ORDER**

Change Order No. _____	Effective Date: _____	Contract No. _____
Contractor Name/Address: _____ _____ _____	Originator: <input type="checkbox"/> CONTRACTOR <input type="checkbox"/> COMPANY	Name: _____
		Dept.: _____
		Telephone No: _____

Except as otherwise expressly provided herein, CONTRACTOR hereby agrees to perform the below described work in accordance with all of the terms and conditions of the Contract referenced above. CONTRACTOR's invoices must show charges for this work separately identified by the Change Order number.

Description of Change (Use continuation sheets as required.)

1. **Scope of Work:**

2. **Compensation:**

SCHEDULE IMPACT	COST IMPACT
-----------------	-------------

Commencement Date: _____	Original Contract: _____
	Lump Sum Price _____
Completion Date: _____	Total Prior Approved Change Orders: _____
Current Contract Completion Date: _____	Amount of this Change Order: _____
Extension: _____ Days Improvement: _____ Days	Total Revised Contract Lump Sum Price: _____
Revised Contract Completion Date: _____	

CONTRACTOR: _____	ASHLAND NIGERIA EXPLORATION UNLIMITED
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

EXHIBIT F

PROVISIONAL AND FINAL ACCEPTANCE CERTIFICATIONS

FINAL ACCEPTANCE CERTIFICATE

COMPANY hereby accepts on this _____ day of _____, 199_____, all associated systems and everything else constituting the Work under this Contract.

Nothing contained herein, shall be construed as relieving CONTRACTOR of any of its guarantees under the Contract covering the Construction Work hereby accepted.

Reference is made Contract No. _____ dated _____, 199_____ between Ashland Nigeria Exploration Unlimited, (COMPANY) and _____ (CONTRACTOR).

COMPANY

COMPANY Representative

Signed: _____

Signed: _____

Name: _____

Name: _____

Title: _____

Title: _____

CONTRACTOR's Representative

Signed: _____

Name: _____

Title: _____

PROVISIONAL ACCEPTANCE CERTIFICATE

Reference is made to Contract No. _____ dated _____, 199____ between Ashland Nigeria Exploration Unlimited (COMPANY) and _____ (CONTRACTOR). COMPANY hereby provisionally accepts, in accordance with Article 11, "Acceptance", of the Contract, on this _____ day of _____, 199____, all associated systems and everything else constituting the portion of Work for the _____ under the Contract subject to the defects and deficiencies set forth on the attached Provisional Acceptance Punch List, which CONTRACTOR is obligated to correct and make conform to the requirements of the Contract.

This Provisional Acceptance Certificate for the _____ is also subject to completion and fulfillment of all of CONTRACTOR's other obligations under the Contract including completion of the Work strictly in accordance with the Contract.

Nothing contained herein, shall be construed as relieving CONTRACTOR of any of its guarantees under the Contract covering the Construction Work hereby transferred.

COMPANY

COMPANY Representative

Signed: _____

Signed: _____

Name: _____

Name: _____

Title: _____

Title: _____

CONTRACTOR's Representative

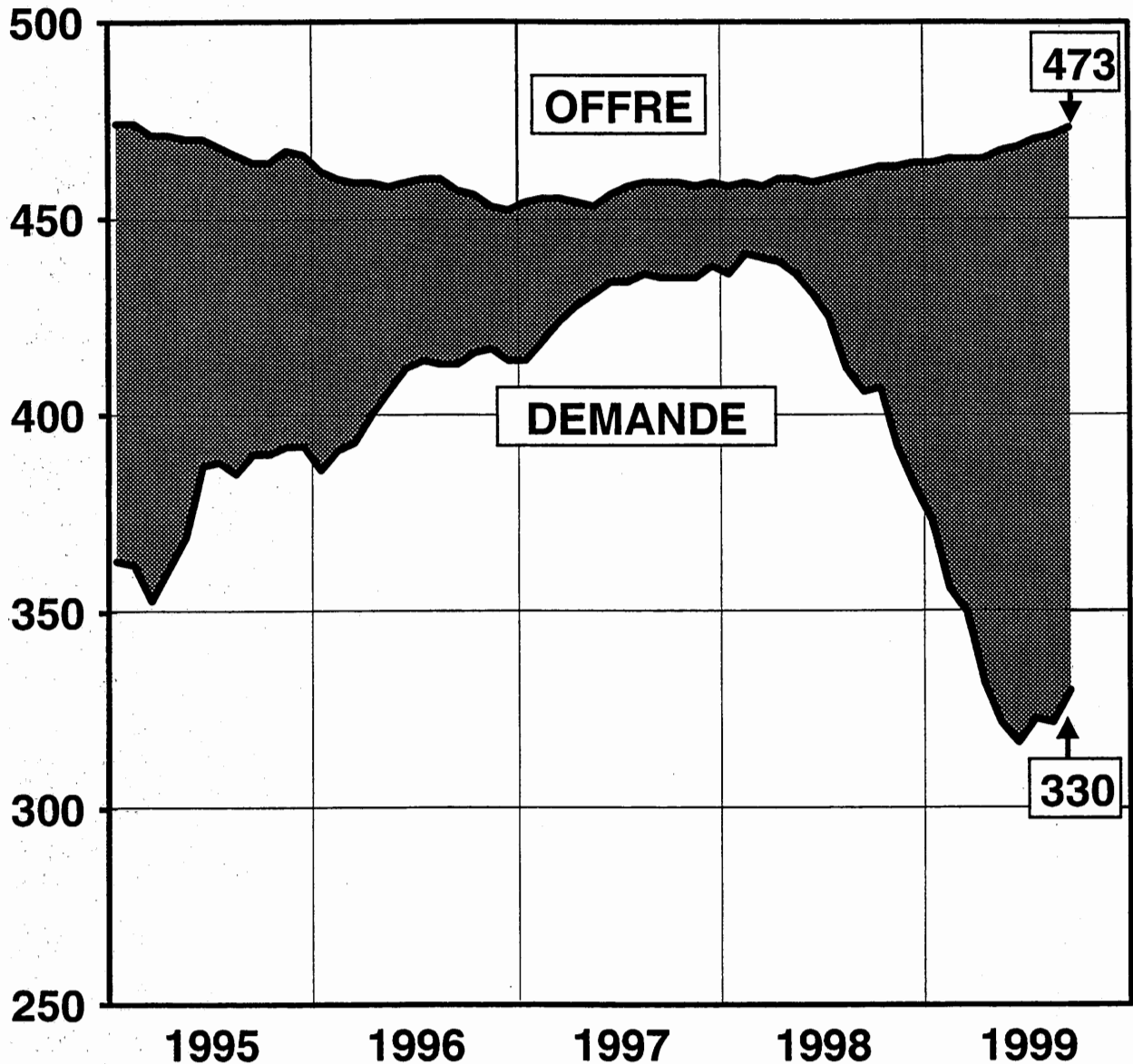
Signed: _____

Name: _____

Title: _____

APPENDIX 2

Évolution de l'offre et de la demande mondiale de supports de forage en mer

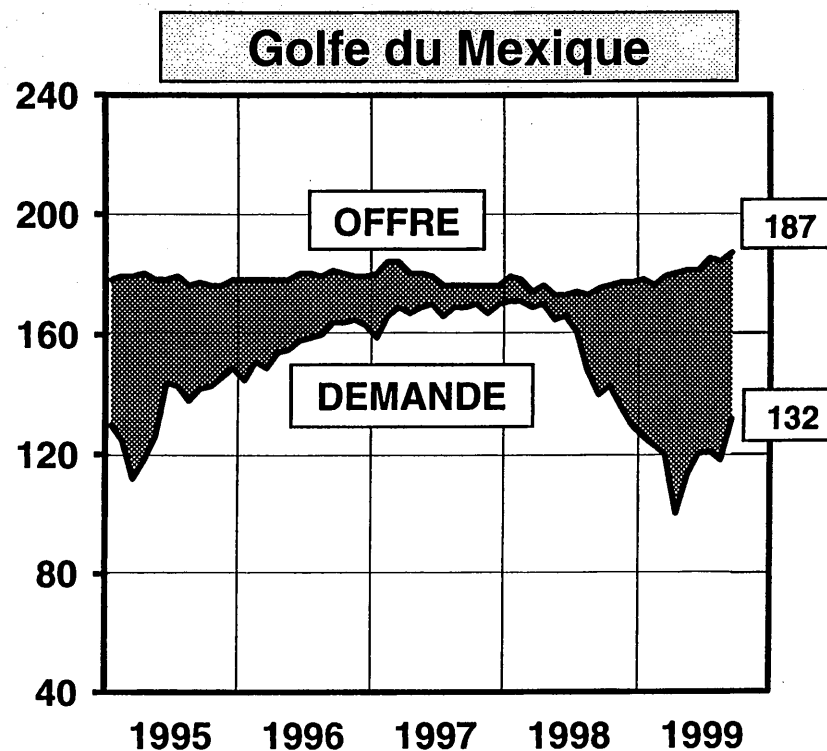
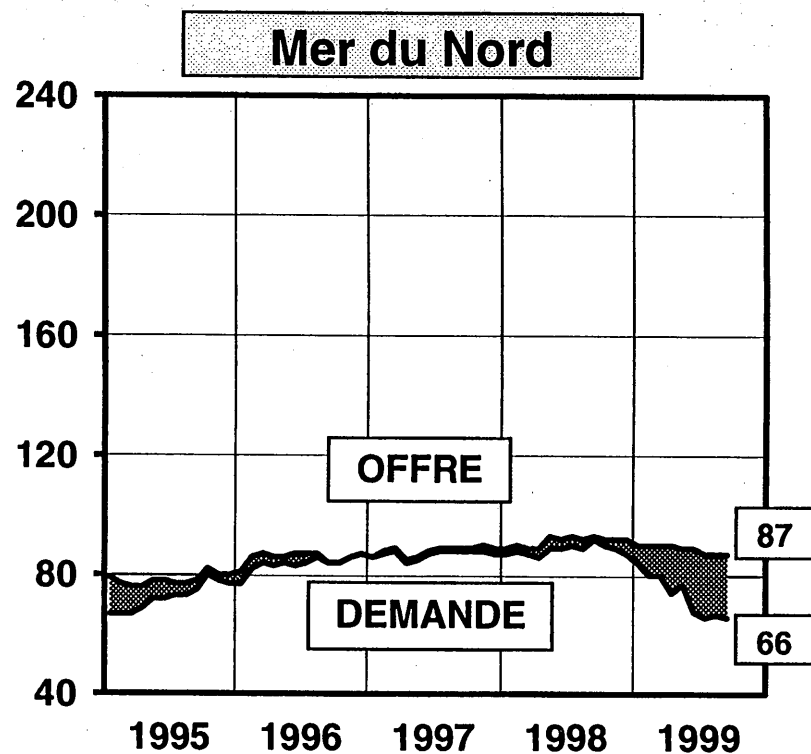


Source : Offshore Rig Locator

IFP/Direction Stratégie-Économie-Plan/1999

Nota : Le graphique concerne la classe des supports de forage "compétitifs", c'est-à-dire qui appartiennent à des contracteurs et qui peuvent être déplacés d'une zone à l'autre. Ne sont pas pris en considération les appareils des compagnies nationales ou ceux destinés à une affectation géographique spécifique.

Évolution de l'offre et de la demande de supports de forage en mer

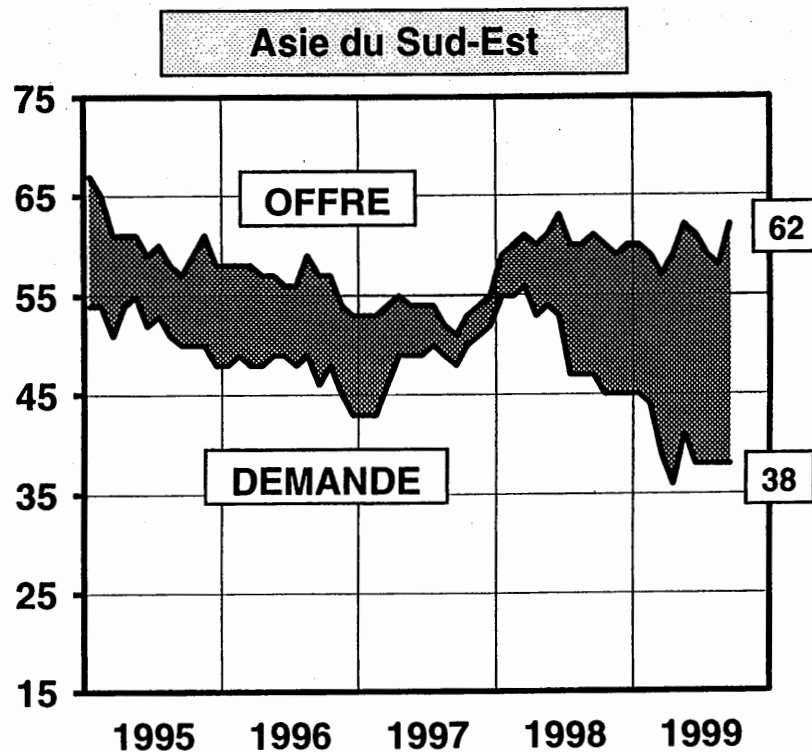
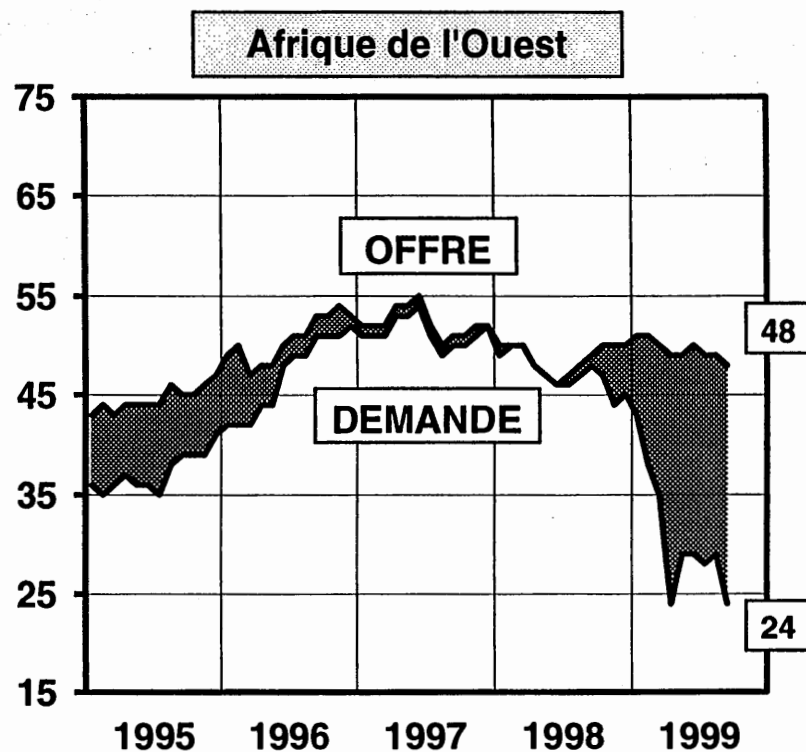


Source : Offshore Rig Locator

IFP/Direction Stratégie-Économie-Plan/1999

Nota : Le graphique concerne la classe des supports de forage "compétitifs", c'est-à-dire qui appartiennent à des contracteurs et qui peuvent être déplacés d'une zone à l'autre. Ne sont pas pris en considération les appareils des compagnies nationales ou ceux destinés à une affectation géographique spécifique.

Évolution de l'offre et de la demande de supports de forage en mer

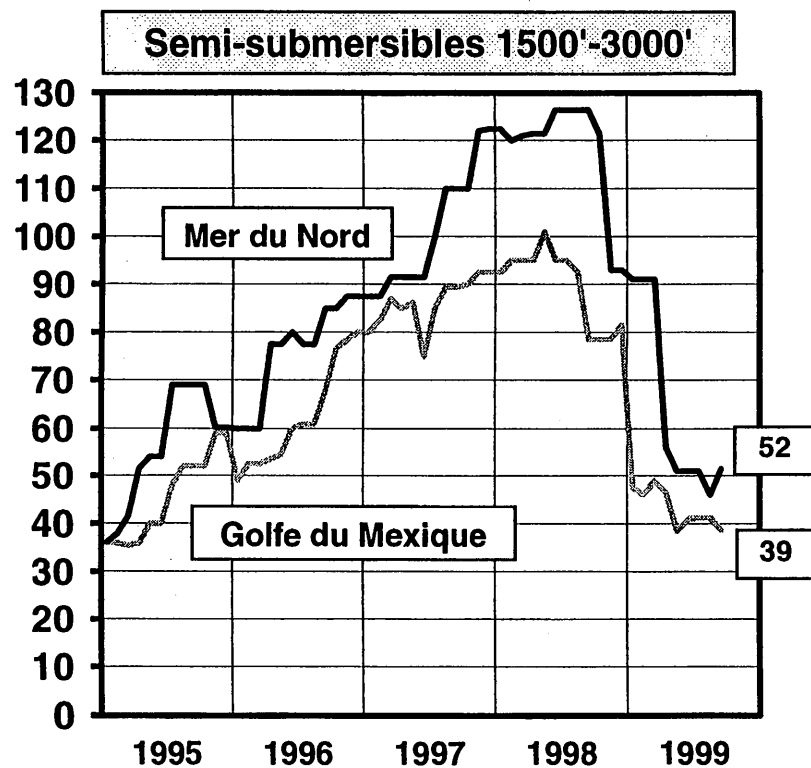


Source : Offshore Rig Locator

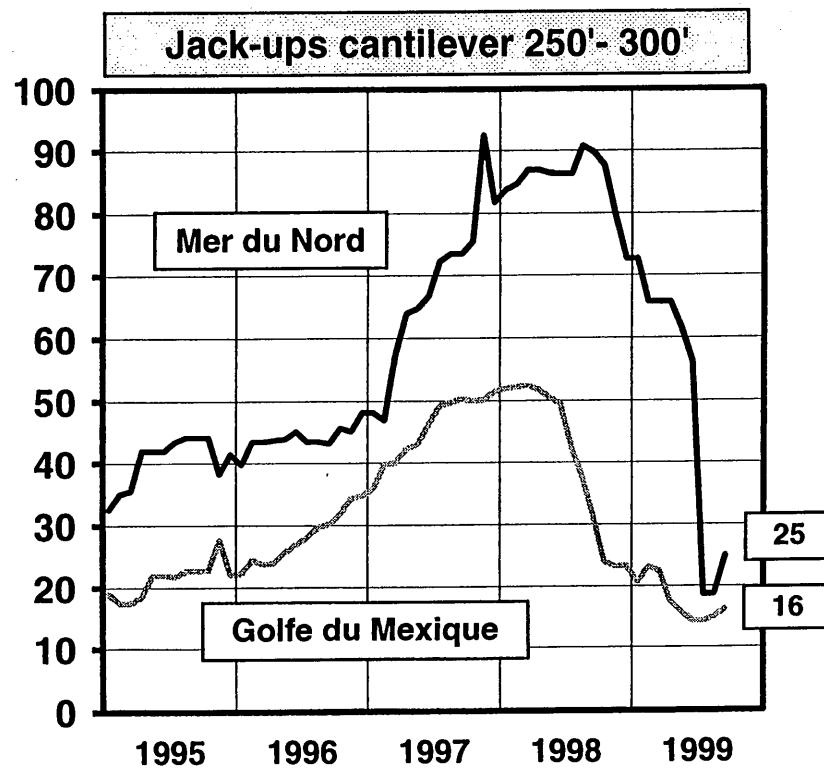
IFP/Direction Stratégie-Économie-Plan/1999

Nota : Le graphique concerne la classe des supports de forage "compétitifs", c'est-à-dire qui appartiennent à des contracteurs et qui peuvent être déplacés d'une zone à l'autre. Ne sont pas pris en considération les appareils des compagnies nationales ou ceux destinés à une affectation géographique spécifique .

Taux de location des plates-formes de forage en mer (en milliers de \$ par jour)



Source : Offshore Rig Locator



IFP/Direction Stratégie-Économie-Plan/1999

Constructions et projets en mer

Comparaison Juin 1998 - Juin 1999

	Plates-formes*				Modules sous-marins				Canalisations			
	1998		1999		1998		1999		1998		1999	
	En construction	En projet	En construction	En projet	En construction	En projet	En construction	En projet	En construction	En projet	En construction	En projet
Amérique du Nord	44	34	30	45	19	27	17	18	8	213	11	181
Amérique latine	29	45	33	27	16	1	10	5	20	15	36	24
Europe de l'Ouest	39	26	20	20	78	34	37	30	7	78	8	54
Afrique	23	32	23	37	8	3	6	5	1	42	2	31
Moyen-Orient	43	33	17	26	0	0	0	0	0	13	0	9
Asie/Pacifique	56	100	38	106	9	10	2	12	1	129	5	115
Total	234	270	161	261	130	75	72	70	37	490	62	414

* Supports fixes et flottants

Source : Offshore Data Services

IFP/Direction Stratégie-Économie-Plan/1999

Principales fusions-acquisitions-alliances intervenues depuis le 01/10/98

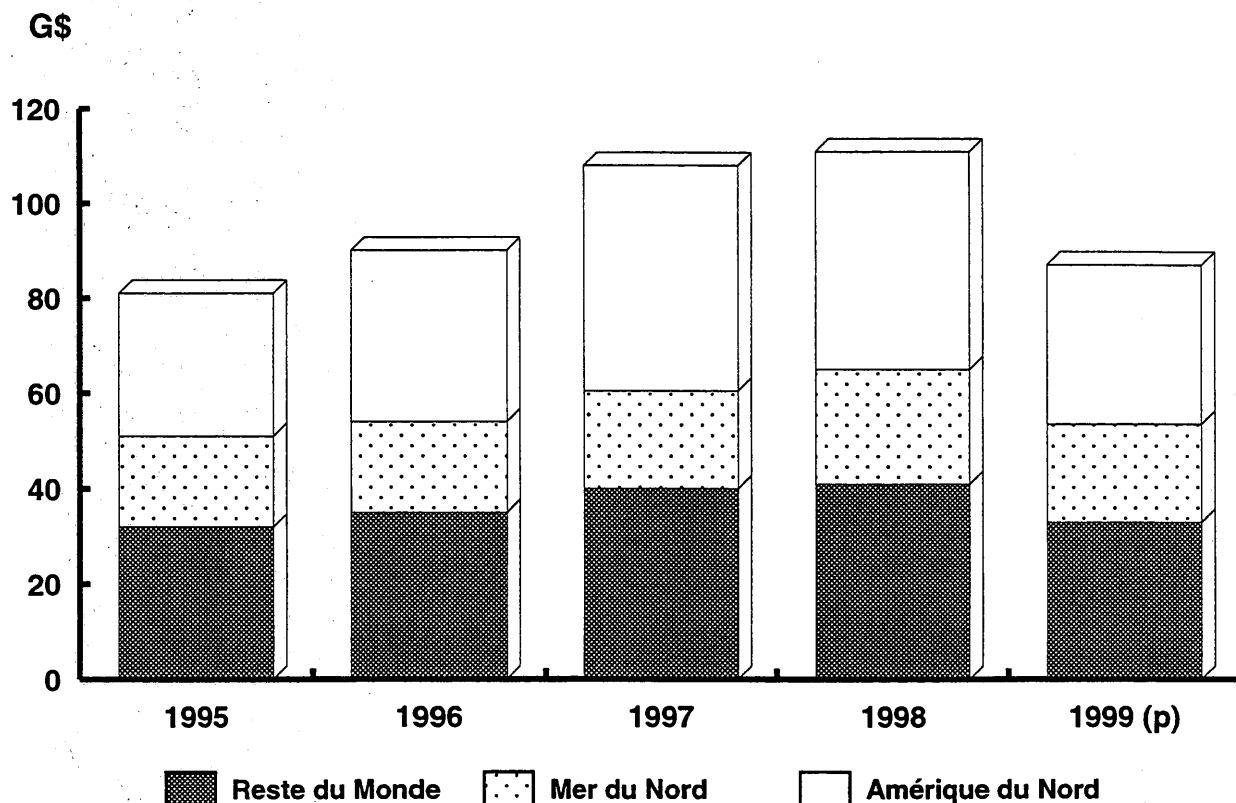
Acquisitions

Date	Acquéreur	Objectif	Montant de la transaction	Principaux domaines concernés	Type
10/98	Nabors Industries	Bayard Drilling Technologies	220 M\$	Forage	Acquisition
11/98	Deutag	Smedvig UK	45 M\$	Forage	Acquisition
01/99	Nabors Industries	Pool Energy Services	518 M\$	Forage et Workover	Acquisition
02/99	Veritas DGC	Enertec	24 M\$	Sismique	Acquisition
05/99	McDermott	J Ray McDermott (37 %)	513 M\$	Construction & travaux en mer	Acquisition
05/99	Bouygues Offshore	Kvaerner France	50 M\$	Ingénierie	Acquisition
05/99	Precision Drilling	Uderbalance Drilling Systems	5 M\$	Forage en dépression	Acquisition
05/99	Weatherford	Dailey International	195 M\$	Forage dirigé	Acquisition
06/99	Precision Drilling	Computalog	95 M\$	Forage dirigé	Acquisition
06/99	BJ Services	Fracmaster	58 M\$	Services de pompage	Acquisition
07/99	Core Laboratories	Reservoir Inc.	n.d.	Services en pétrophysique	Acquisition
07/99	National Oilwell	CE Drilling Products	100 M\$	Équipements de forage	Acquisition
07/99	Global Industries	ETPM	300 M\$	Construction & travaux en mer	Acquisition
09/99	Weatherford	Petroline WellSystems	165 M\$	Équipements & services de complétion	Acquisition
09/99	Weatherford	Williams Toll	65 M\$	Équipements pour forage en dépression	Acquisition

Fusions

Date	Société 1	Société 2	Montant de la transaction	Principaux domaines concernés
03/99	MFI	Smedvig Technologies	n.d.	Débitmétrie polyphasique et caractérisation de réservoir
06/99	Halter Marine	Friede Goldman International	218 M\$	Chantiers navals
06/99	Tuboscope	Newpark Resources	630 M\$	Équipements de traitement de boues de forage
07/99	Sedco Forex Offshore	Transocean Offshore	3 200 M\$	Forage en mer

Investissements d'exploration-production (hors pays à économie planifiée)



(valeurs arrondies)

G\$	1995	1996	1997	1998	1999 (p)
Amérique du Nord	30	36	47,5	46,0	33,5
Mer du Nord	19	19	20,5	24,0	20,5
Reste du monde	32	35	40	41	33
Total	81	90	108	111	87

Source : IFP/Direction Stratégie-Économie-Plan/1999

(p) prévisions

Nota : ces investissements ne sont pas les seules dépenses des compagnies pétrolières, il faut en effet y ajouter les coûts opératoires, notamment ceux relatifs à la maintenance ou à la réparation des installations (une partie de ces dépenses constitue un marché important pour certaines sociétés parapétrolières).

Nombre de puits forés par zone géographique (*)

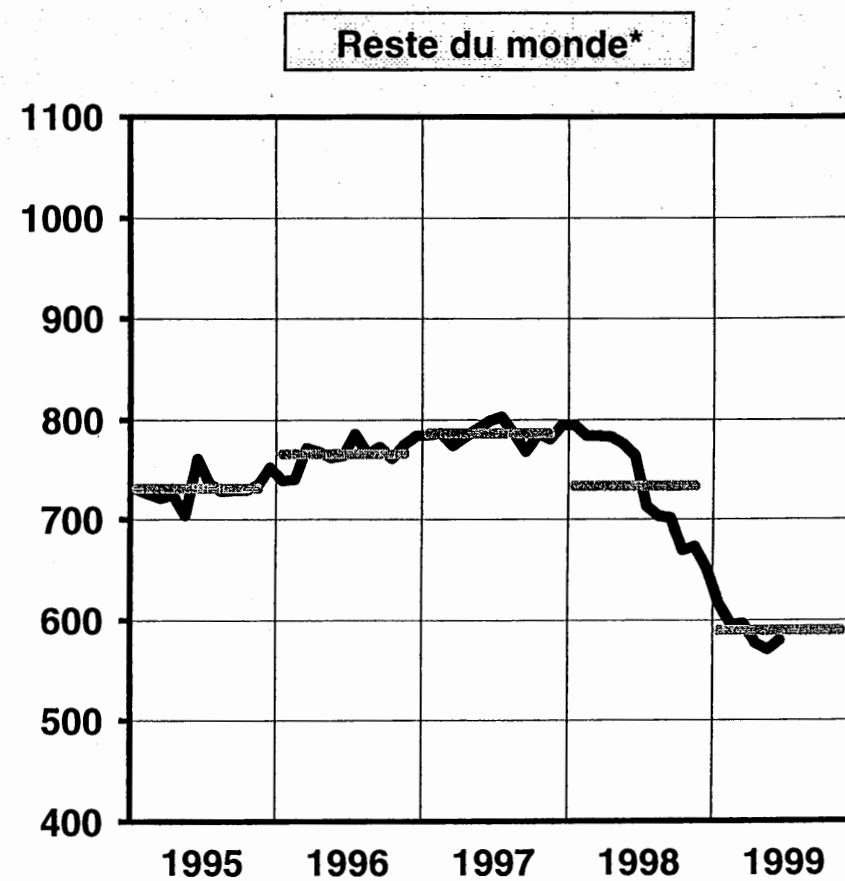
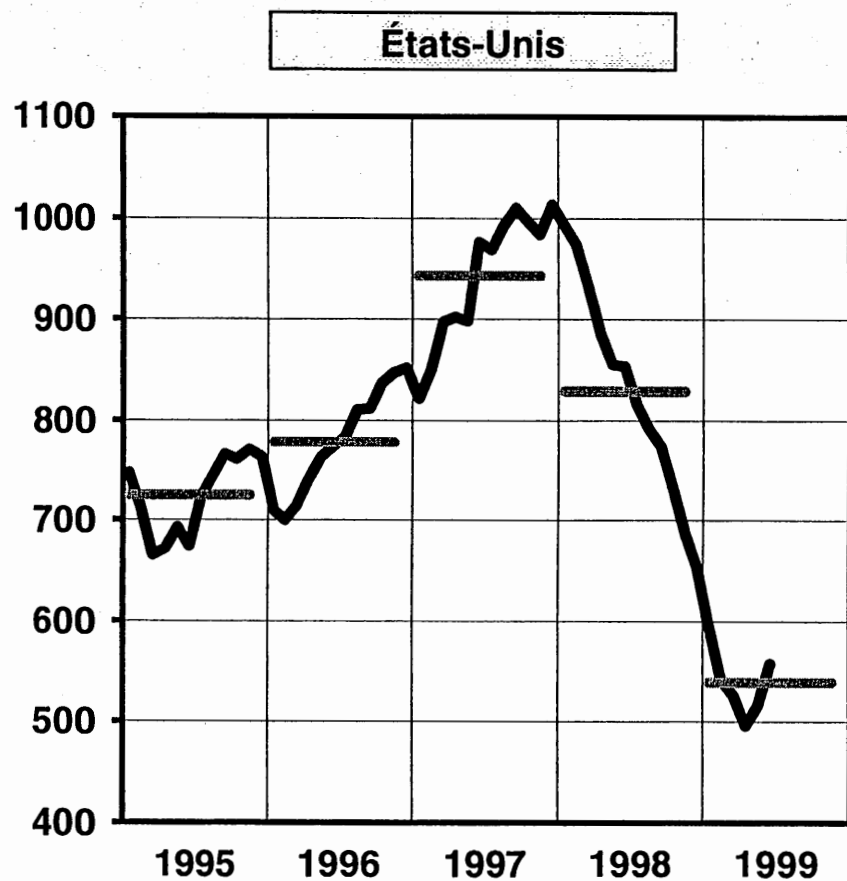
	1995	1996	1997	1998	1999 (p)
Amérique du Nord	32 064	36 548	44 317	34 220	25 760
Reste du monde	6 869	7 649	7 966	7 627	5 881
<i>dont: Amérique latine</i>	<i>2 969</i>	<i>3 335</i>	<i>3 354</i>	<i>2 791</i>	<i>2 043</i>
<i>Europe de l'Ouest</i>	<i>653</i>	<i>683</i>	<i>726</i>	<i>698</i>	<i>583</i>
<i>Afrique</i>	<i>619</i>	<i>730</i>	<i>780</i>	<i>862</i>	<i>585</i>
<i>Moyen-Orient</i>	<i>996</i>	<i>1 031</i>	<i>1 176</i>	<i>1 337</i>	<i>1 133</i>
<i>Asie/Océanie</i>	<i>1 632</i>	<i>1 870</i>	<i>1 930</i>	<i>1 939</i>	<i>1 537</i>
TOTAL	38 933	44 197	52 283	41 847	31 641

(*) puits d'exploration et de développement hors Chine, C.E.I. et pays d'Europe orientale

(p) prévisions

Sources : DOE, CAPP, Petroconsultants et IFP/Direction Stratégie-Économie-Plan/1999

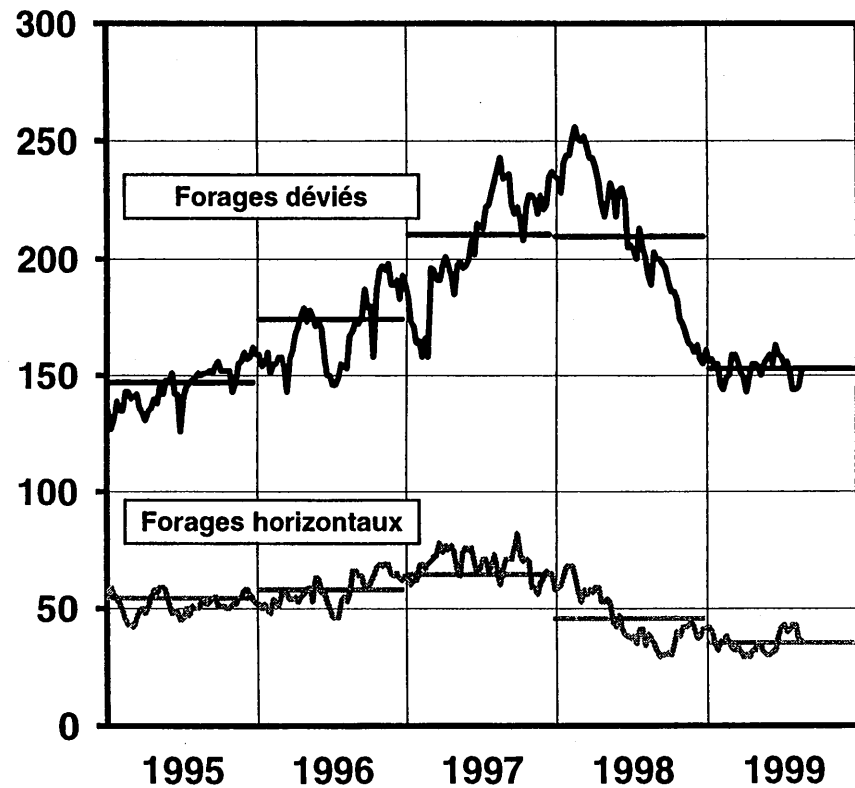
Nombre d'appareils de forage en activité



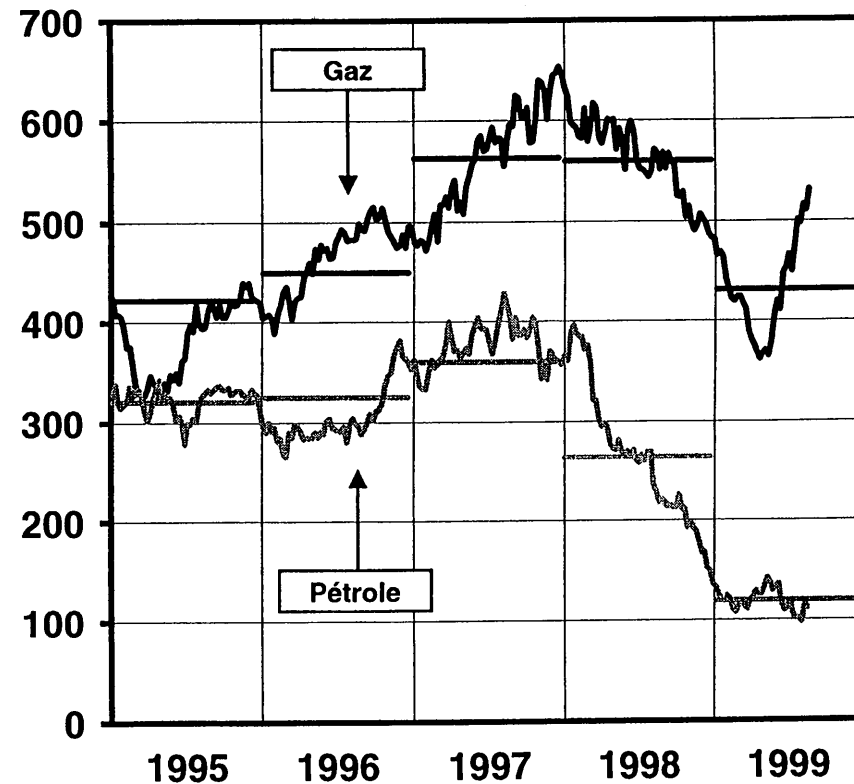
(* hors États-Unis, Canada, C.E.I., Chine et pays d'Europe centrale)

Activité de forage aux États-Unis

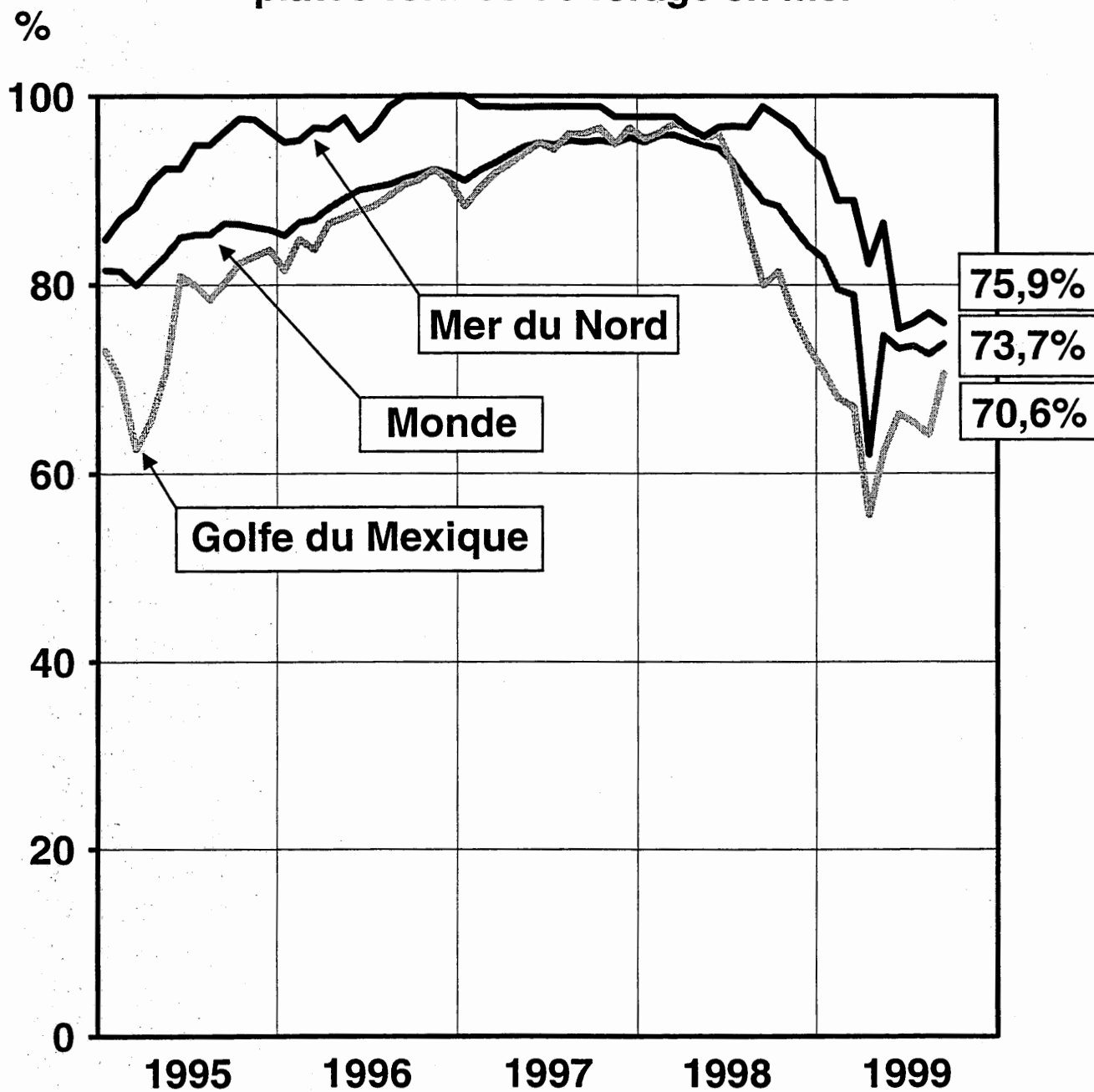
Nombre de rigs actifs sur des objectifs déviés ou horizontaux



Nombre de rigs actifs sur des objectifs gaziers et pétroliers



Taux d'utilisation des plates-formes de forage en mer

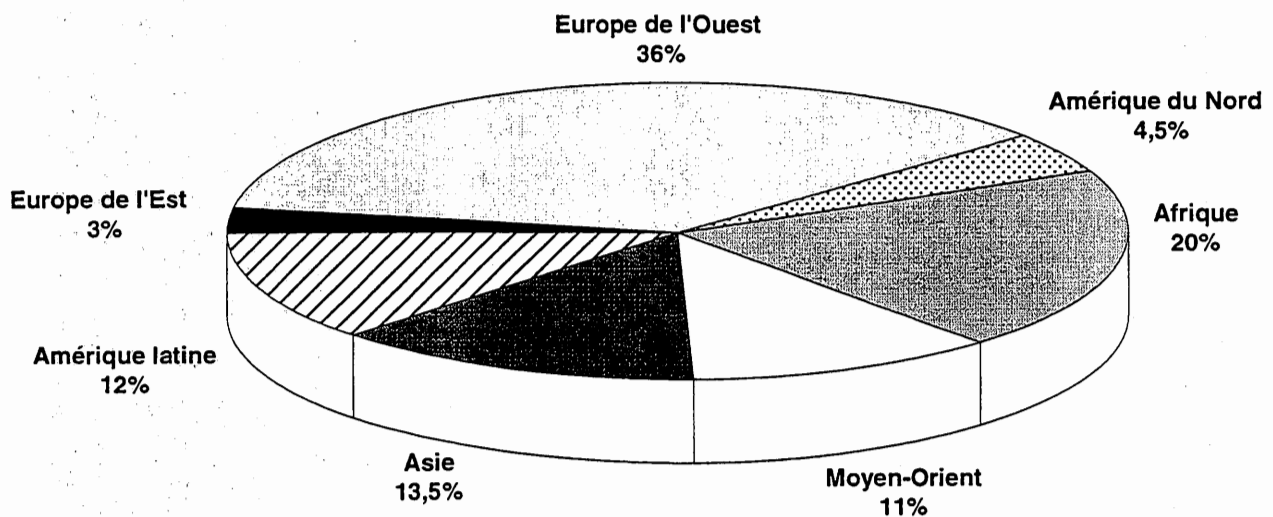


L'industrie parapétrolière française
Chiffre d'affaires réalisé à l'étranger
 (hors transport international)

(valeurs arrondies)

GF	1995	1996	1997	1998	1999 (p)
Chiffre d'affaires	48	54	66,5	73	65,5-67
dont réalisé à l'étranger	41	48	59,5	65,5	57-58

L'industrie parapétrolière française
Répartition géographique du chiffre d'affaires réalisé à l'étranger en 1998



C.A. réalisé à l'étranger : 65,5 GF

L'industrie parapétrolière française
Valeur ajoutée
 (hors transport international)

(valeurs arrondies)

GF	1995	1996	1997	1998
Chiffre d'affaires	48	54	66,5	73
Valeur ajoutée	19	23	27	29

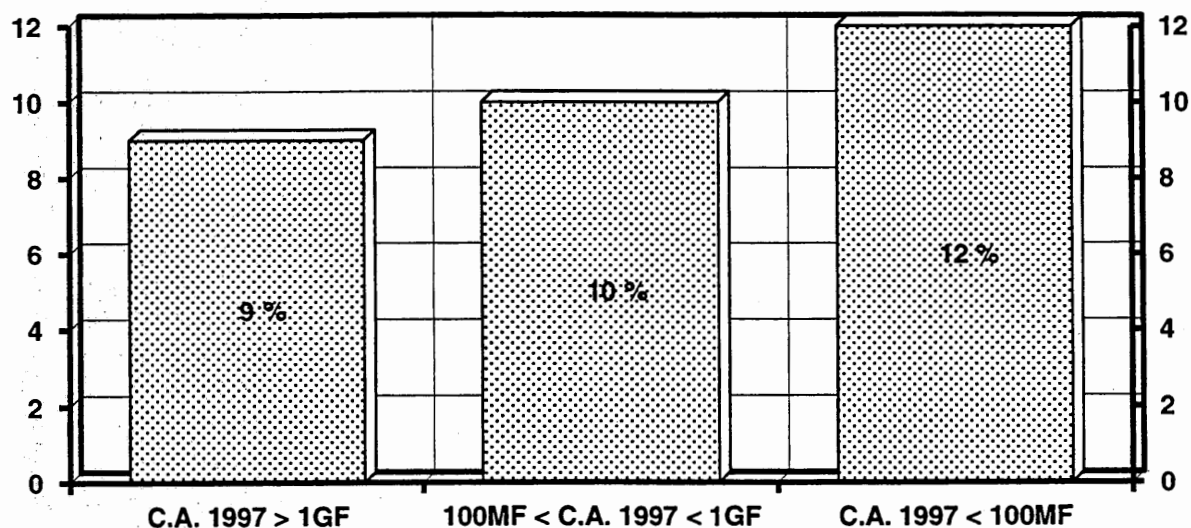
L'industrie parapétrolière française
Effectifs
 (hors transport international)

(valeurs arrondies)

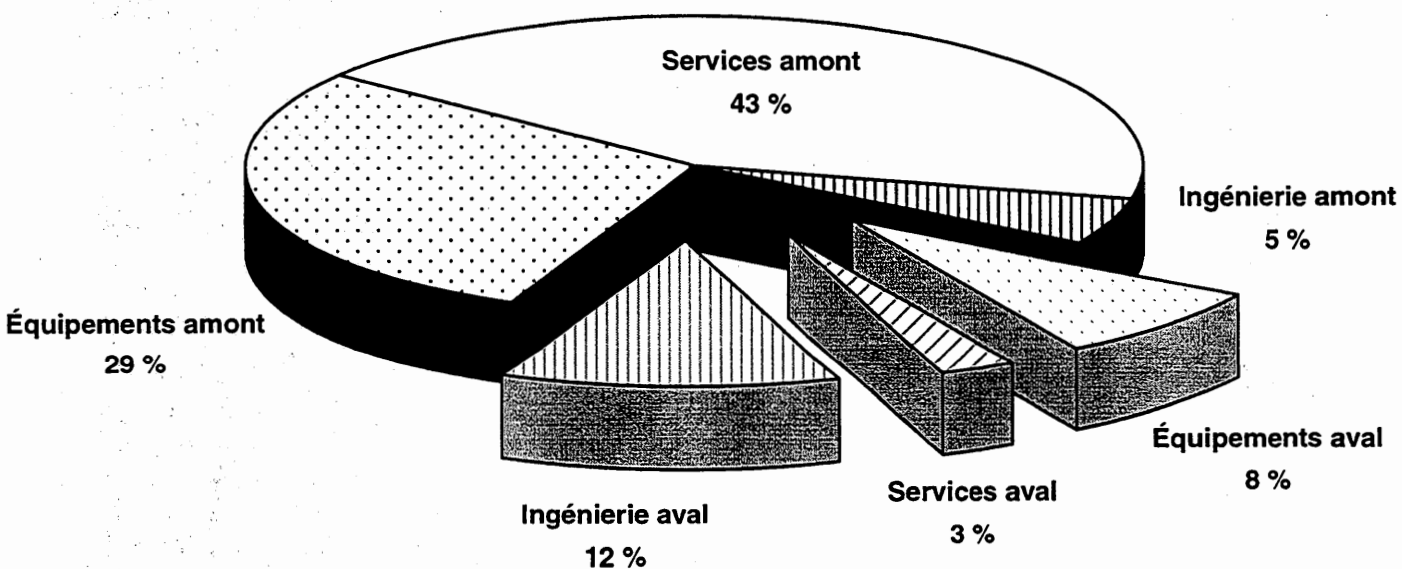
Milliers de personnes	1995	1996	1997	1998	1999 (p)
Total	45	47	51	53	48-49
dont offshore	12,5	14	17	19	16-17

L'industrie parapétrolière française
Variation 1998/1997 du chiffre d'affaires par taille d'entreprise

Variation du C.A. total de l'échantillon (%)



L'industrie parapétrolière française
Décomposition du chiffre d'affaires 1998 par secteur d'activité



L'industrie parapétrolière française
Chiffre d'affaires par secteur d'activité
 (hors transport international)

(valeurs arrondies)

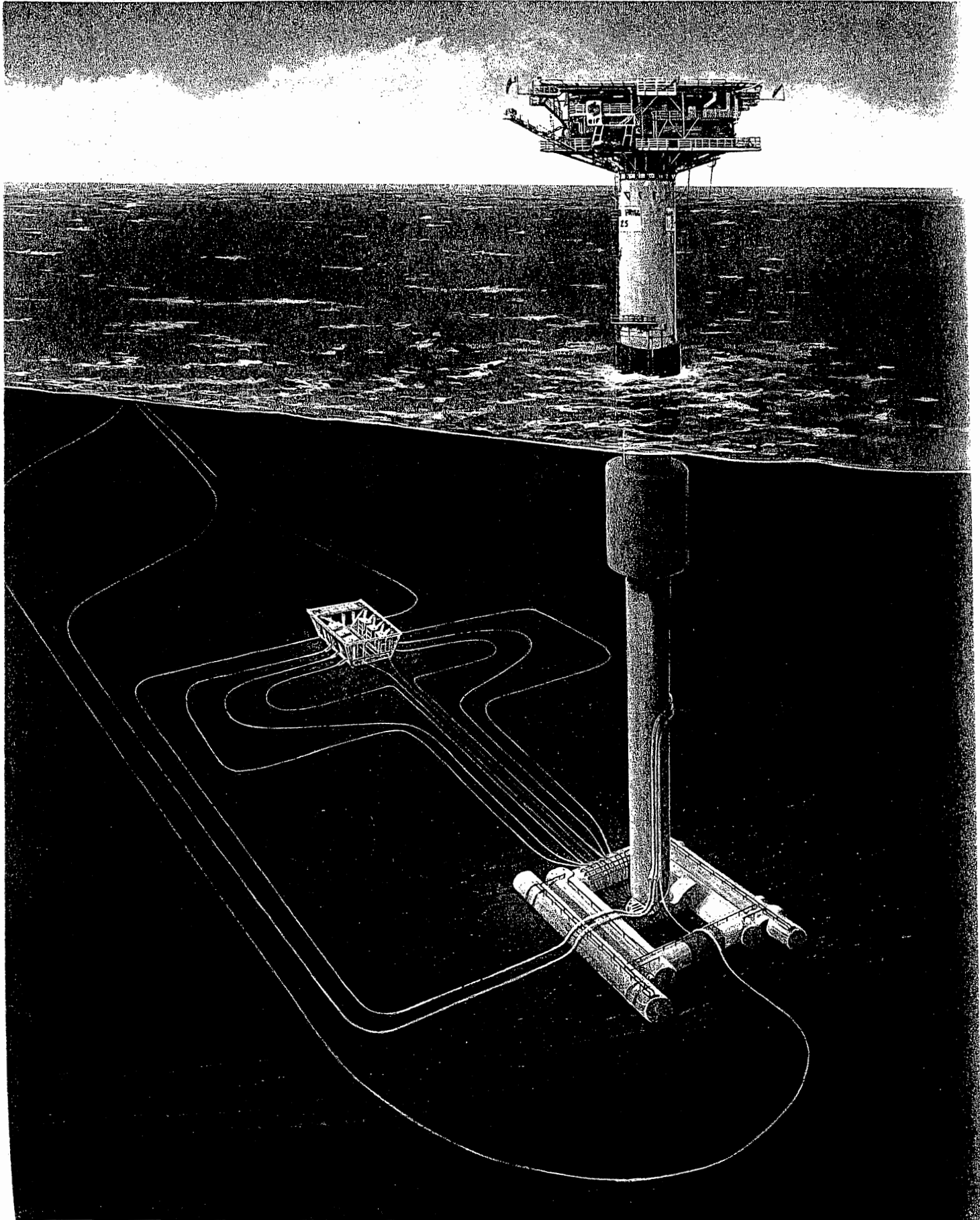
GF	1995	1996	1997	1998	1999 (p)
Fournisseurs d'équipements et chantiers navals	24	25,5	31	35	30,5-31
Prestataires de services	15	18,5	26	28,5	23,5-24
Ingénieries et bureaux d'études	9	10	9,5	9,5	11,5-12
Total	48	54	66,5	73	65,5-67

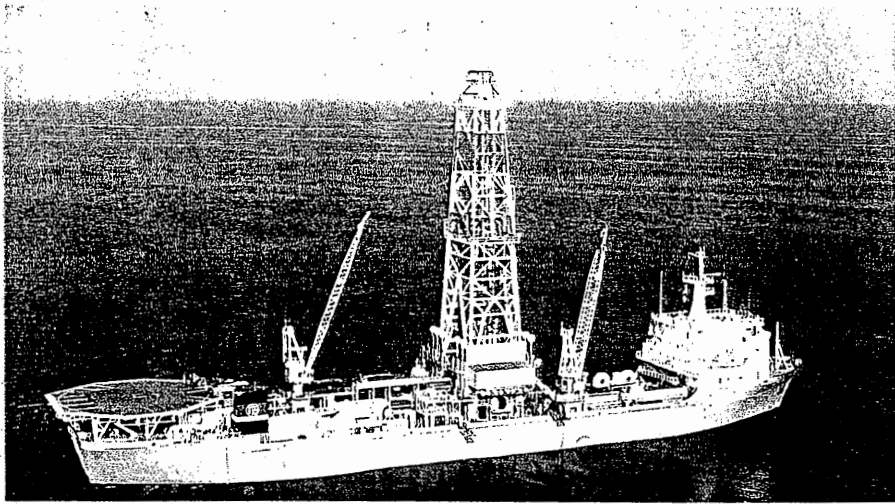
L'industrie parapétrolière française
Chiffre d'affaires offshore

(valeurs arrondies)

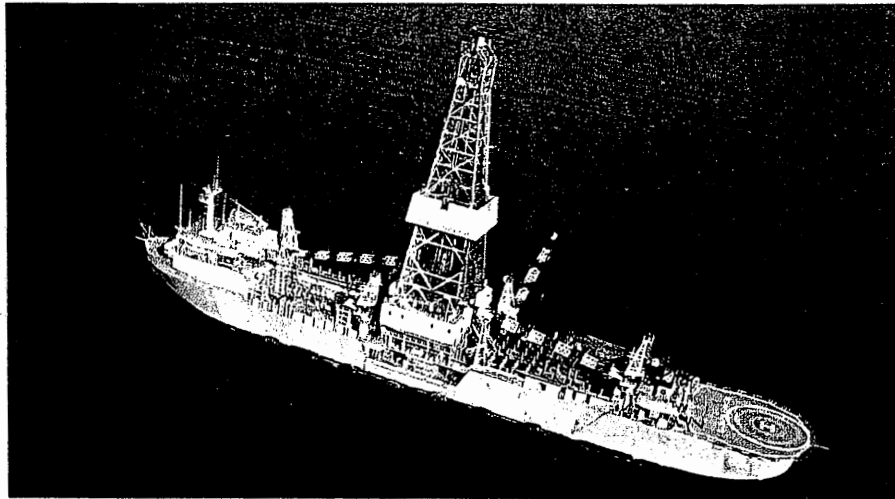
GF	1995	1996	1997	1998	1999 (p)
Fournisseurs d'équipements et chantiers navals	9	9,5	12	13	10,5-11
Prestataires de services et ingénieries	6	6,5	10	13	12-12,5
Total	15	16	22	26	22,5-23,5

APPENDIX 3

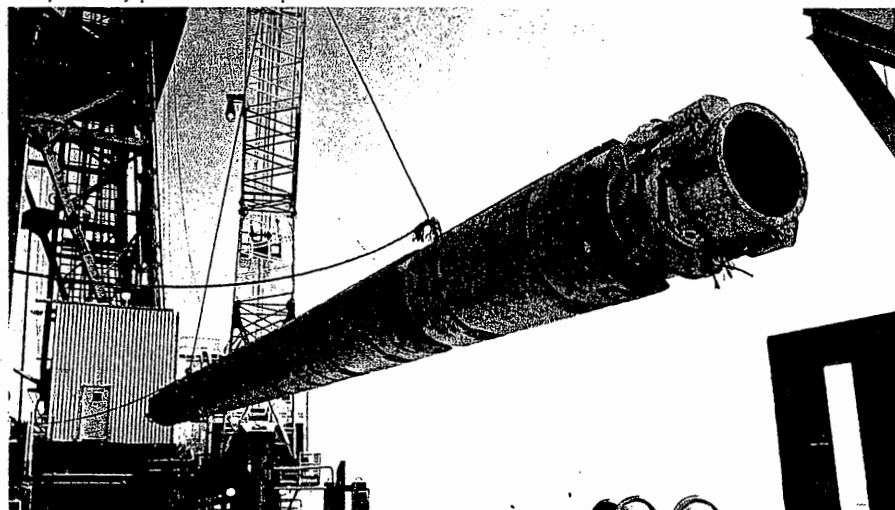




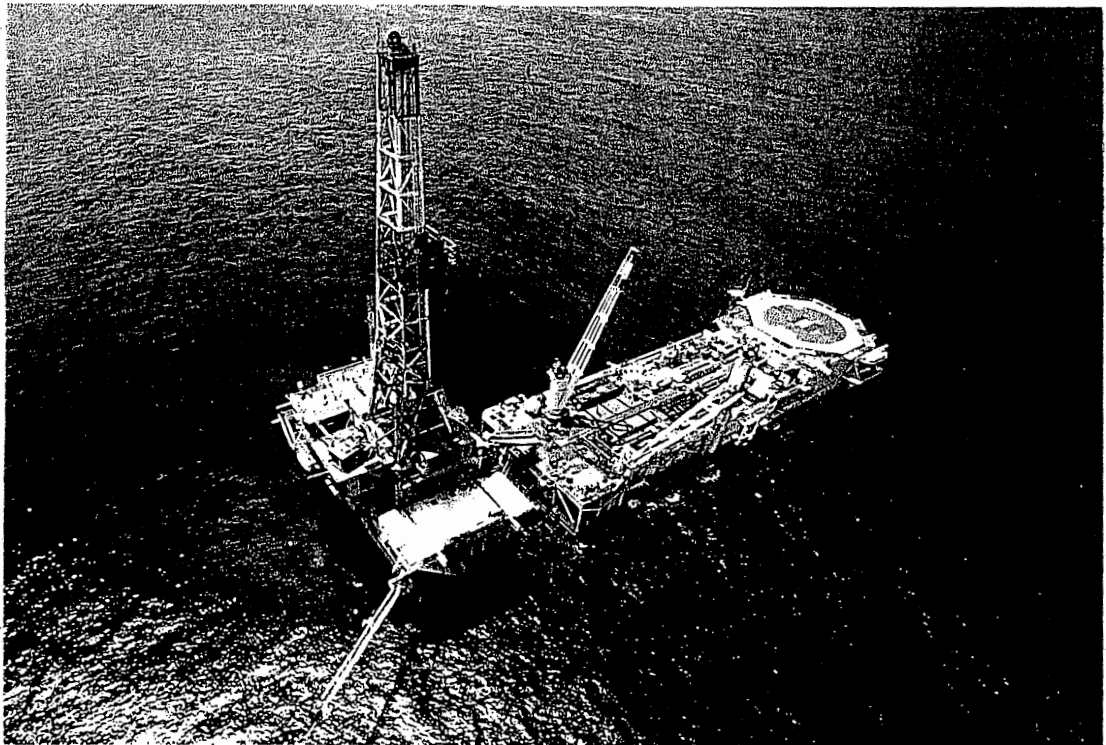
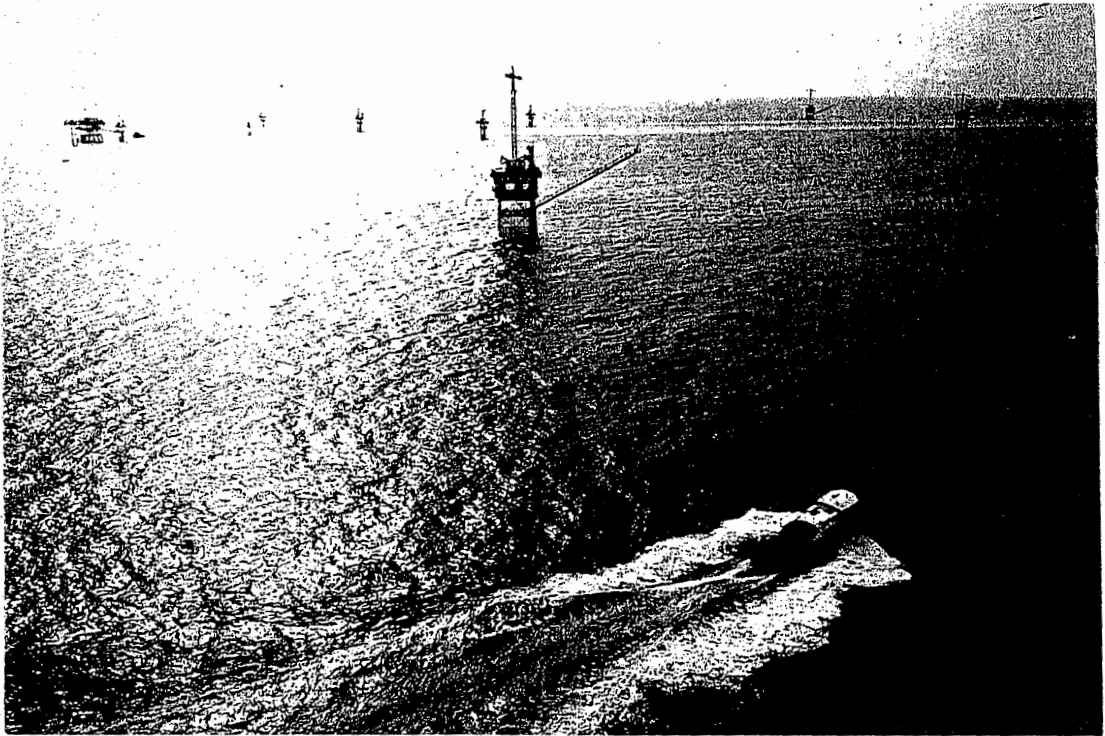
The dynamically positioned drillship "Pétrel".

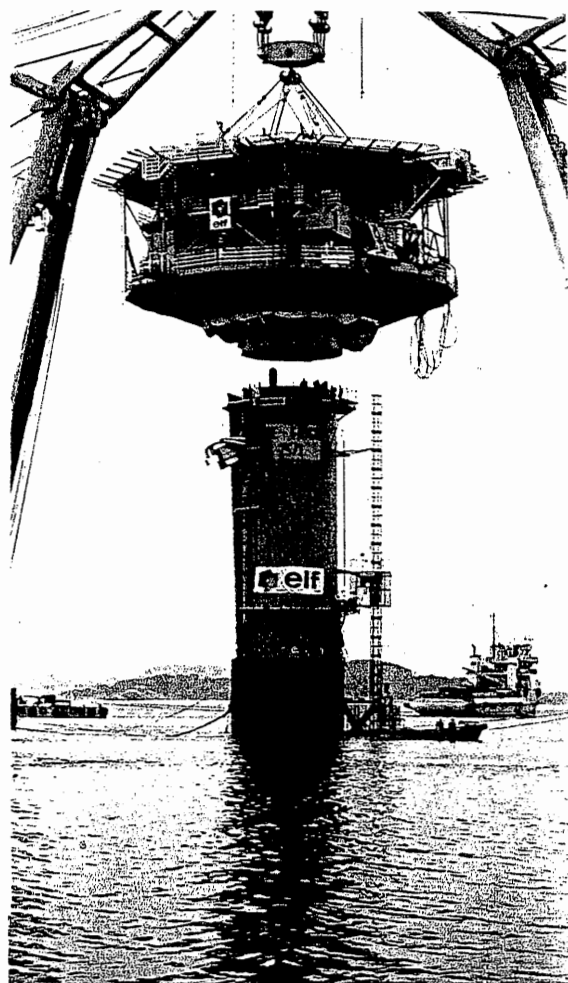
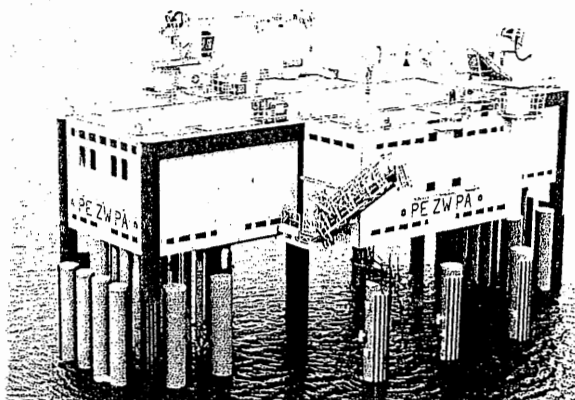


The dynamically positioned drillship "Discoverer Seven Seas".

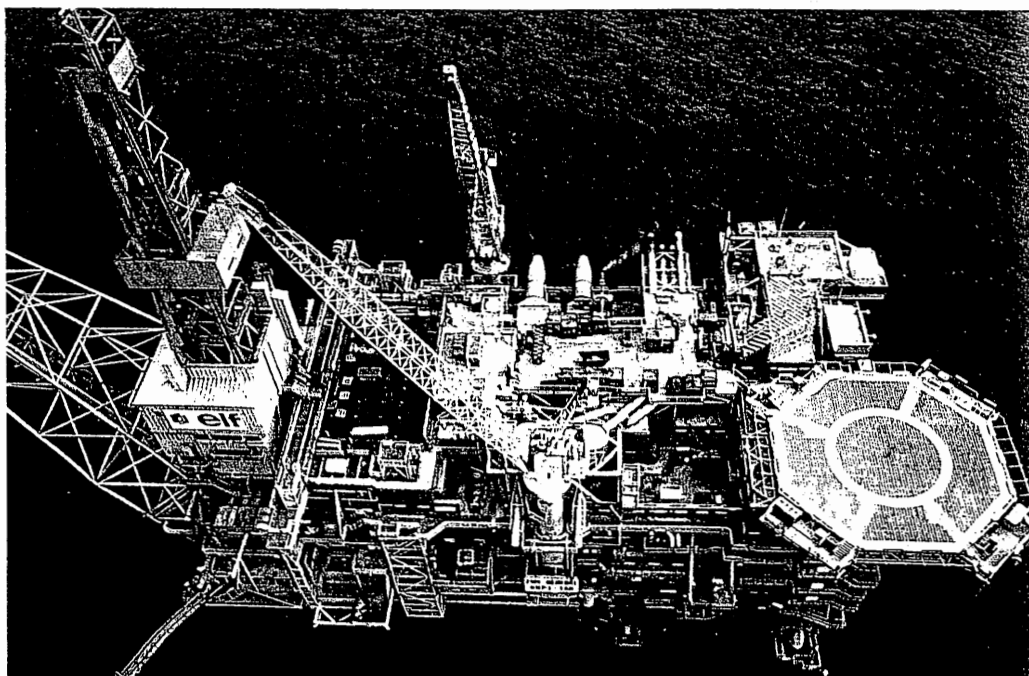


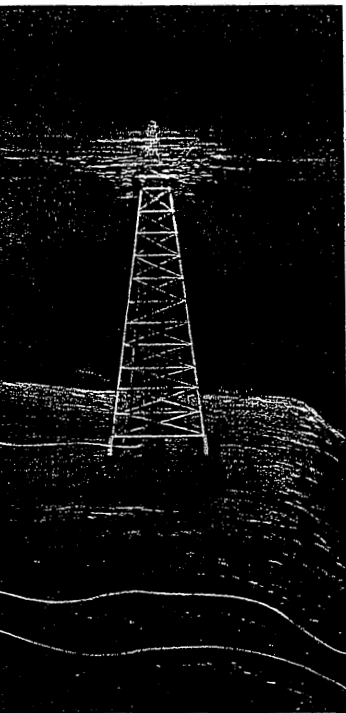
Section of riser equipped with buoyancy shells.





*Installation of the deck
on NORTH-EAST FRIGG articulated
column, before being towed to site.*





FIXED PLATFORMS

These rigid structures can be fixed in water depths down to 400 m. The Xmas trees are fixed above the surface, at deck level. The design and engineering of these platforms presents no major difficulties. But it does require in-depth knowledge of structural dynamics, and the need for in-place and launch analysis.

COMPLIANT STRUCTURES

Contrary to fixed platforms, these structures follow wave movement, instead of resisting it. They are lighter, thus allowing important savings on steel weight and construction time. They are also capable of supporting the Xmas trees at deck level. Six different concepts have been developed.

Guyed-tower

The tower is fixed to the seabed by piles located close to its vertical axis. The use of guy-cables restricts movements during storm conditions. The LENA tower (Exxon) in the Gulf of Mexico was the first platform to use this principle.

"Roseau" (reed) tower

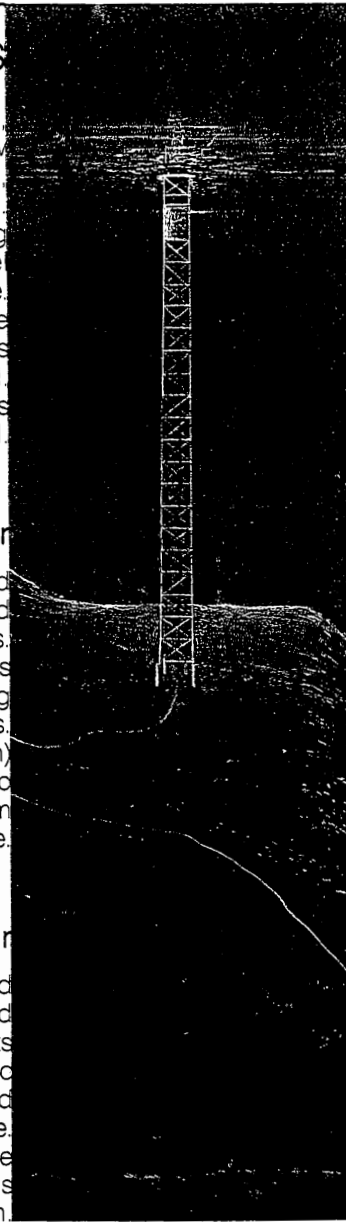
Piling to the seabed is the same as for a fixed jacket. The movements are limited by a hydrodynamic damping screen located near the surface. This type of structure is designed for water depths between 400 m and 800 m.

Compliant jacket and Delta tower

The compliant jacket is fixed to the seabed by off-centre, "elastic" piles, rendering the assembly rigid. The Delta tower comprises a rigid jacket piled to the seabed, above which is placed a compliant jacket. This configuration allows the tensile forces in the elastic piles to be transferred smoothly to the soil. This makes the concept very attractive in poor soil conditions.

Articulated column and Gamma tower

The articulated column's structure is attached to its base by means of a spherical or a "universal" joint. The Gamma tower's foundation is assured by low-stiffness piles. In both cases, a buoyancy section located near the surface exerts a vertical force, reducing topside movement. Such structures have already been built and installed in the North Sea, in water depths between 100 m and 150 m. These lightweight structures may be designed for water depths of up to 600 m. However, their topside movements may limit their field of application.



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