

Guarantees and Contractual Liabilities in Offshore Wind

A Contractor's reflections

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Aker Solutions and Offshore Wind

Track Record

- Track record includes:
 - Jackets for Nordsee Ost project
 - Concrete floating substructures + T&I for Hywind Tampen
 - HVDC substations for Sunrise, East Anglia 3, Norfolk Vanguard East and West



Aker Solutions and Offshore Wind

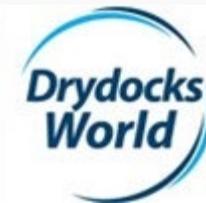
Offerings

- For offshore wind developers in need of a one-stop shop, Aker Solutions can deliver all but the turbine.

- Together with DeepOcean and Solstad Offshore, Aker Solutions has established Windstaller Alliance to provide a highly flexible service offering for offshore renewables and marine operations by combining the expertise of the partners.



- Together with Drydocks World – Dubai, Aker Solutions has established a joint venture entity in Dubai to serve as the contracting entity towards customers and suppliers in connection with EPC delivery of HVDC Substations.



Guarantees and Contractual Liabilities

Contractual background

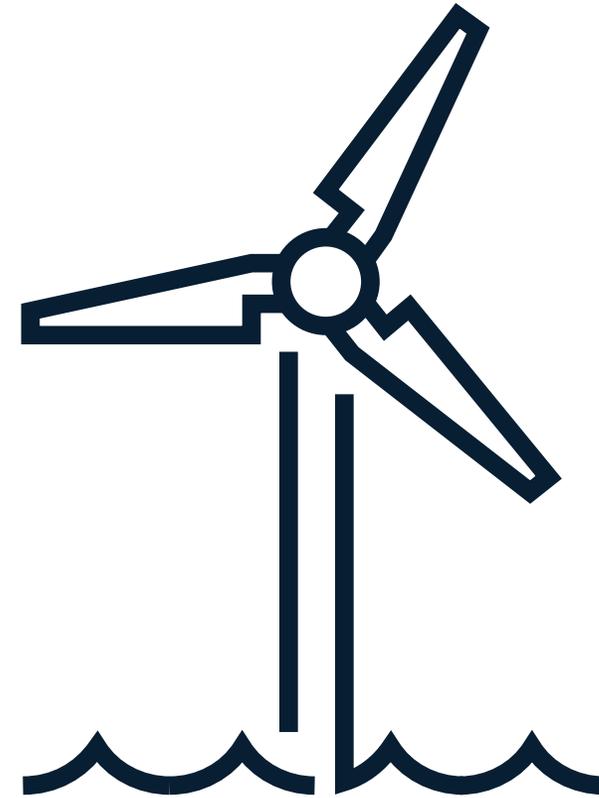


- Majority of tier one contractors with offshore wind capabilities have a long track record within oil and gas projects.
 - Experience and risk models are consequently based on execution of oil and gas projects.
- Currently no industry standard contract is specifically made for offshore EPC(I) wind projects, resulting in Employers applying their own in-house contract or industry standard contracts not originally meant for offshore projects, typically FIDIC.
- As the FIDIC contracts were originally not intended for offshore projects, significant modifications are required.
- Offshore wind projects are, in addition, often subject to project finance, and lenders are apparently seeking to transfer significant risk down the supply chain to make the contracts “*bankable*”.

Guarantees and Contractual Liabilities

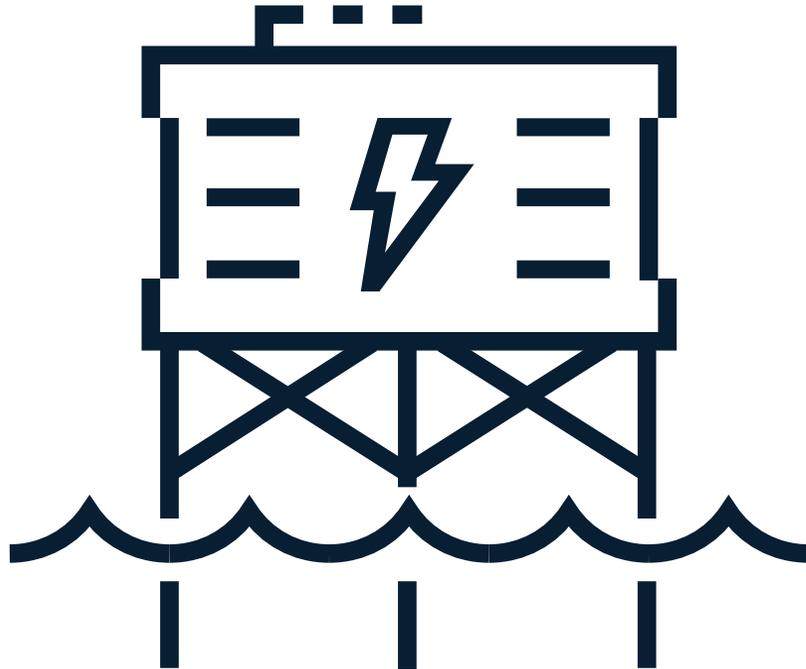
Trends and observations

- Significantly longer guarantee periods for offshore wind projects than what has been considered the standard for oil and gas projects
 - Typically 2 years for oil and gas projects vs. 5 years ++ for offshore wind projects
- Higher limitations of liability for contractor, with extensive carve-outs
 - Defects correction/warranty work typically not covered by overall limitation of liability



Guarantees and Contractual Liabilities

Trends and observations



- Exclusions from guarantee liability normally agreed for oil and gas projects, i.e. costs for offshore works, are being rejected for offshore wind projects.
- All-risk insurance for the offshore wind projects are understood to provide reduced cover compared to Welcar on best terms often offered for oil and gas projects.
 - i.e. limited availability/willingness to offer defective part buy-back cover, and higher deductibles for offshore wind contracts than for oil and gas.

Guarantees and Contractual Liabilities

The Contractors' challenges

- Offshore wind is still considered «new technology» and although similarities between oil and gas project are evident, risk picture is different with uncertainties.
- Guarantee periods far in excess of the maintenance period offered under the all risk insurance, limited protection as additional assured under the Operational All Risk Insurance increases Contractor's risk.
- Obligation for Contractor to insure assets for repair of «tow to shore» defects is challenging.



Guarantees and Contractual Liabilities

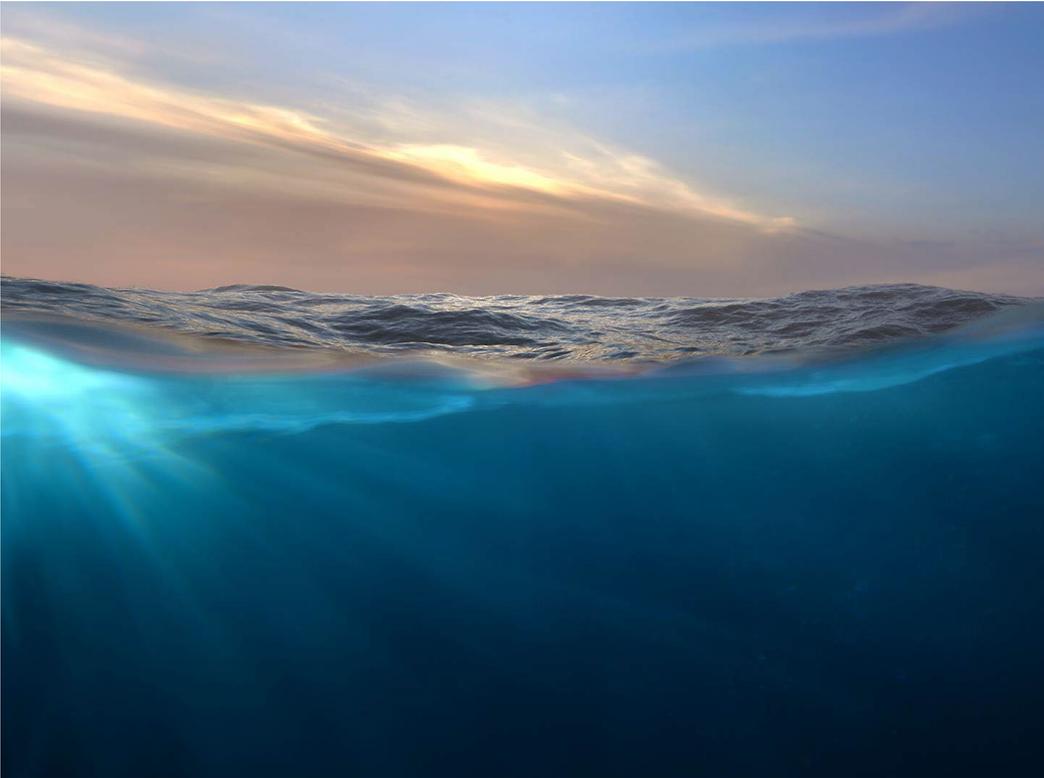
The Contractors' challenges



- Unlimited liability for defects correction costs, including liability for all costs associated with the repair (vessel time, etc.), as well as obligation to perform rectification work and provide suitable vessels within set time-limits, is nearly impossible to price.
- Risks normally allocated to Employers/Company in oil and gas projects (soil + weather) are difficult to price, and may lead to artificially high risk allowances/contingencies being added.
 - Increased prices to account for risks may deem the development unprofitable.

Guarantees and Contractual Liabilities

Contractor's «wish list»



- Defect rectification obligations and liability for defects should be subject to a financial cap and be included in the overall limitation of liability.
- The Contractor's obligation to remedy a 'defect' should be limited to rectifying the defect and should not extend to damage caused by events outside Contractor's control (e.g., seabed movement, lack of proper maintenance or normal 'wear and tear').
 - All other implied liabilities and warranties should be expressly excluded.
- After Take Over, Employer should have the burden of proof to demonstrate that there is a defect for which Contractor is responsible.
- The Employer should have the contractual obligation to reasonably cooperate and collaborate with the Contractor in order to mitigate Contractor's costs.
- Contractor's liability under or relating to the contract and the Project Works shall end at the end of the DNP.

Construction All Risk insurance

Contractor's «wish list»

- The Employer should procure and provide the CAR policy which would cover the whole of its Project.
- The Contractor should receive details of such cover at the outset to ensure clarity of insurance cover and avoid duplication of insurance, gaps, and unnecessary claims dispute.
- Sums insured should be for the full project value with no limitations, with reasonable deductibles considering the Contractor's contract value and scope of work.
- The duration of the CAR policy should align with, and remain in full force and effect for, the duration of the project work including the guarantee period of the contract.



New Industry Standards for Offshore Wind

Looking ahead

- Norsk Industri, Offshore Norge and Fornybar Norge have established a working group with the mandate to negotiate standard conditions for offshore wind projects on the Norwegian continental shelf for EPC (and potentially EPCI) based on the existing Norwegian Total Contract (NTK).
- FIDIC has started on developing a new contract for offshore wind farm projects with the aim of achieving a balanced form of FIDIC contract dedicated to and addressing the special features and requirements for the offshore wind farm sector.
- The International Marine Contractor's Association (IMCA) published the industry's first standard contract for transport and installation (T&I) works in offshore wind projects in November 2023, aiming to ensure a fairer allocation of risk.

New standard conditions for offshore wind in Norway

The process and roles

- The negotiation committee consists of representatives from Equinor, Hydro REIN, Hafslund and Statkraft on the Employers' side, and representatives from Aker Solutions, Subsea7, Nexans and Siemens Energy.
- The parties in the negotiation committee "own" the process and the outcome, and shall propose amendments, draft clauses, negotiate and agree.
 - The final result requires consensus
- Sondre Dyrland from the Scandinavian Institute of Maritime law at the University of Oslo is appointed to be a neutral mediator to facilitate the negotiations and be a sparring partner for the negotiation committee.
 - The mediator has no influence (or opinion) on the substantive matters

New standard conditions for offshore wind in Norway

Mandate

- Develop general terms and conditions (T&Cs) for use in relation to offshore wind projects on the NCS
- Offshore wind T&Cs shall be suitable for projects based on an EPCI execution model
 - Full Engineering, Procurement, Construction and Installation scope
 - But shall also be easily adaptable to other execution models
- Offshore wind T&Cs shall be based on the NTK 15
 - Amendments to the NTK shall be limited to what is relevant for adaption to use in offshore wind

New standard conditions for offshore wind in Norway

Mandate from SKS (cont.)

- Topics to be discussed include:
 - Provisions on installation and spread
 - The "I" part, NTK covers only the "EPC" part
 - Risks and liabilities for subsea conditions
 - Risks and liabilities for interfaces and coordination
 - Liabilities, limitation of liabilities and indemnities
 - Adjustments related to project financing of projects

New standard conditions for offshore wind in Norway

What is relevant for adaption of NTK to offshore wind?

- Basic questions
 - Any existing provisions in NTK that are not relevant for wind?
 - Any existing provisions in NTK that need to be adjusted/adapted?
 - Any new provisions that need to be added to NTK?
- Related to scope?
 - Installation/spread
- Related to differences between offshore wind and O&G?
 - Three questions – what is different, what is the relevance (i.e. what are the relevant differences) and how should NTK be amended?

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