

## **TERMS AND CONDITIONS OF PURCHASE**

### **1. DEFINITIONS**

In these Conditions:

- 1.1 "Contract" means the contract between Purchaser and Supplier consisting of the Purchase Order and these Conditions. Should there be any inconsistency between the documents comprising the Contract, these Conditions shall have precedence unless otherwise stated in the Purchase Order.
- 1.2 "Goods" means all goods covered by the Purchase Order.
- 1.3 "Purchase Order" means Purchaser's Purchase Order which specifies that these Conditions apply to it together with any other documents (or part thereof) specified in the Purchase Order and any other amendments thereto communicated by Purchaser to Supplier.
- 1.4 "Purchaser" means the relevant entity purchasing the Supplies and shall be either The Felixstowe Dock and Railway Company, Harwich International Port Limited, Hutchison Ports (UK) Limited or Thamesport (London) Limited, as stipulated on the Purchase Order.
- 1.5 "Services" means all services covered by the Purchase Order.
- 1.6 "Supplier" means the person, firm or company to whom the Purchase Order is issued.
- 1.7 "Supplies" means Goods and Services (as applicable) covered by the Purchase Order.

### **2. TITLE**

Supplier represents and warrants that:

- 2.1 Supplier has the right to and shall sell Goods (which shall remain the absolute property of the Supplier until property therein passes to Purchaser) free of charge, lien or other encumbrance;
- 2.2 Supplier has obtained and shall make available to Purchaser all licences, clearances, consents and authorisations necessary for the provision of Services to Purchaser and the purchase of Goods by Purchaser and their use for all purposes for which Supplier is or ought reasonably to be aware that they are required by Purchaser.

### **3. PRICE**

Unless stated otherwise in the Purchase Order or elsewhere in the Contract, the price agreed by Purchaser for Goods and Services is a fixed price which includes packing, labelling, carriage, insurance, delivery, royalties and licence fees (if applicable) and all other charges, taxes, duties and impositions (other than UK VAT which Purchaser shall pay in addition at the appropriate rate subject to receipt of appropriate tax invoices) and is not subject to alteration for any reason whatsoever.

### **4. PAYMENT**

Without prejudice to any early payment, discount or other benefit agreed between Purchaser and Supplier, Purchaser will pay for Supplies by the end of the month following the month of receipt of an appropriate tax invoice to the correct purchasing entity which specifies the correct Purchase Order number. Value added tax (if applicable) shall be shown separately on all invoices as a net extra charge.

### **5. QUALITY AND DEFECTS**

- 5.1 All Supplies must be in accordance with the Purchase Order.
- 5.2 Supplier must ensure that Goods and Services (as applicable) correspond strictly with any and all specifications and samples made or given by Supplier or stipulated by Purchaser, and that they are in every respect fit for any purpose for which Purchaser has expressly or by implication made known that it requires them, durable, of satisfactory and acceptable quality, in compliance with any applicable national or international standards and also of a standard not less than that of any previous supplies approved by Purchaser and shall be safe, free from defect and in compliance with the general safety requirements, any applicable safety regulations and all other applicable legal requirements.
- 5.3 All Services shall be carried out with proper and reasonable skill and care.
- 5.4 Supplier shall, as soon as reasonably practicable, repair or replace all Goods which are or become defective where such defects occur under proper usage and are due to faulty design, Supplier's erroneous instructions as to use or erroneous use data, or inadequate or faulty materials or workmanship, or any other breach of Supplier's warranties or representations, express or implied. Supplier shall further be liable in damages (if any) in respect of each Purchase Order.

6. **INDEMNITY**

Supplier shall indemnify Purchaser and all other Purchaser group companies and its and their officers, employees and agents from and against any and all losses, damages, costs, liabilities and expenses (including legal expenses) suffered or incurred by any of them as a consequence of any breach of any of Supplier's obligations under these Conditions or any Contract between Supplier and Purchaser or any misrepresentation, negligence, fraud, wilful misconduct or breach of statutory duty wilful default of or by Supplier in relation to Goods supplied or Services provided.

7. **INSPECTION AND PROGRESS**

Purchaser reserves the right at any time during normal working hours before or after delivery or provision to inspect the Goods and supervise the Services which are the subject of the Contract but such inspection or supervision shall not relieve Supplier of any obligation, responsibility or liability under the Contract or otherwise. Purchaser's representative may adopt any reasonable means to satisfy himself or herself that the correct materials, workmanship and/or care and skill are or have been actually used and he/she shall have the power to reject any part of the Supplies which do not conform to the Purchase Order.

8. **DELIVERY DATE**

8.1 The date for delivery of Goods and the provision of Services (as applicable) shall be as specified in the Purchase Order unless agreed otherwise between Purchaser and Supplier. Supplier shall at once give notice to Purchaser of any likely delay in delivery of which it becomes aware and shall provide Purchaser with prompt and reasonable notice of the re-scheduled delivery date.

8.2 If Supplier is late with any delivery of Goods or provision of Services, Purchaser shall have the right to cancel the Contract at any time before delivery of relevant Goods or provision of relevant Services (as applicable) is effected.

9. **PASSING OF PROPERTY AND RISK TO PURCHASER**

9.1 The property in Goods shall pass to Purchaser once Goods have been safely off-loaded at the destination(s) specified in the Purchase Order.

9.2 The Goods shall remain at Supplier's risk (including, without limitation, the risk of deterioration in transit) until the property in them has passed. Supplier shall keep Goods insured until risk passes to Purchaser and shall retain the insurance and any proceeds thereof together with all its rights against any carrier of Goods, on trust for Purchaser until Supplier has

fulfilled all its obligations under the Contract to Purchaser's satisfaction.

10. **LOSS OR DAMAGE IN TRANSIT**

10.1 Purchaser shall advise Supplier in writing, within thirty (30) days of receipt of the Goods of any loss or damage to the Goods.

10.2 Supplier shall make good at no additional charge to Purchaser any loss or damage to or defect in the Goods.

11. **ACCEPTANCE**

11.1 Purchaser shall have the right to reject Goods which do not conform with the Contract within a reasonable time of delivery (being not less than thirty (30) days). If any Goods are so rejected, at Purchaser's option, Supplier shall forthwith re-supply substitute Goods which conform with the Contract. Alternatively, Purchaser may cancel the relevant Contract and claim damages from Supplier.

11.2 Purchaser's rejection of Goods shall not prejudice any other claim which Purchaser may have against Supplier.

11.3 Purchaser's payment for Goods shall not prejudice Purchaser's right of rejection or any other claim Purchaser may have against Supplier.

11.4 If the Purchaser rejects any Goods, the property and risk shall immediately revert to Supplier. Rejected Goods shall be returned to Supplier at its expense and Supplier shall reimburse Purchaser for the storage costs and any other expense incurred by Purchaser in respect of them.

12. **INTELLECTUAL PROPERTY RIGHTS**

12.1 Supplier shall indemnify Purchaser from and against all losses, damages, costs, liabilities and expenses (including legal expenses) suffered or incurred by Purchaser arising out of or in connection with any demand, claim or action alleging the use or resale of any Goods or that the performance of the Services infringes the intellectual property rights belonging to a third party.

12.2 Any specifications, plans, drawings, process information, patterns, designs or other materials or information supplied by Purchaser to Supplier in connection with the Contract shall be kept in good condition and, together with the copyright, design rights or any other intellectual property rights therein shall remain the property of Purchaser. Furthermore, the information derived therefrom or otherwise communicated to Supplier in connection with the Contract shall be

kept secret and shall not, without the consent in writing of Purchaser, be published or disclosed to any third party, or made use of by Supplier except for the purpose of implementing the Contract. Any specifications, plans, drawings, process information, patterns, designs or other materials or information supplied by Purchaser must be returned at Supplier's risk to Purchaser on fulfilment of the Contract or on demand.

13. **MATERIALS**

Where Purchaser for the purpose of the Contract issues samples or materials "free of charge" to Supplier, such samples and materials shall be and remain the property of Purchaser. Without prejudice to any other rights of Purchaser, Supplier shall deliver up such samples and materials, whether further processed or not to Purchaser on demand.

14. **HAZARDOUS GOODS**

14.1 Supplier shall not deliver any hazardous or toxic substances to Purchaser's premises without Purchaser's prior written approval.

14.2 Hazardous Goods must be marked by Supplier with the appropriate International Danger Symbol(s) and a description of the material must be displayed in English. Transport and other documents must include a declaration of the hazard and a description of the material in English. Goods must be accompanied by appropriate emergency information in English in the form of written instruction labels or markings. Supplier must observe the requirements of UK and international agreements relating to the packing, labelling and carriage of hazardous Goods.

14.3 All operating instructions and information held by, or reasonably available to, Supplier regarding any potential hazards known or believed to exist in the transport, handling, storage or use of Goods supplied shall be promptly notified to Purchaser in writing.

15. **WORK ON PURCHASER'S PREMISES**

Where any Purchaser Order involves work being carried on Purchaser's premises or sites, Supplier and its employees, sub-contractors and agents working on or about Purchaser's premises or sites are obliged to observe all relevant statutory rules regulations and by-laws. All personnel working within Purchaser's premises or sites must report to Purchaser's engineer or production manager before commencing such work.

16. **CANCELLATION**

Purchaser may by notice in writing to Supplier or any person in whom the Contract may become vested, cancel any Contract forthwith without prejudice to any of Purchaser's other rights if:

16.1 Supplier breaches the Contract or any other contract with Purchaser and the breach, if remedial and previously notified to Supplier, is not remedied within seven (7) days of such notification;

16.2 Supplier compounds with or negotiates any composition with its creditors generally or permits any judgment debt against it to remain unsatisfied for seven (7) days or ceases or threatens to cease to carry on business;

16.3 being an individual or partnership Supplier or any partner shall die or a bankruptcy order is made against him/her or any partner;

16.4 being a company, Supplier becomes insolvent, makes an arrangement with its creditors or has an administrative receiver or administrator appointed or commences to be wound up (other than for the purposes of amalgamation or reconstruction); or

16.5 anything analogous to the above occurs in any jurisdiction.

17. **NOTICES AND CORRESPONDENCE**

Supplier must quote Purchase Order in all advice notes, invoices and correspondence. Any notice that is required to be given under the Contract shall be sent to the intended recipient's address as specified in the Purchase Order (unless either party shall otherwise notify the other). Notice shall be regarded as having been properly given if sent in writing or by fax or other media resulting in a tangible record of a notice being sent and received.

18. **GOVERNING LAW AND JURISDICTION**

The construction, validity and performance of these Conditions and the Contract shall be governed by the laws of England, and any dispute between Supplier and Purchaser relating to these Conditions or any Contract shall be subject to the exclusive jurisdiction of the English courts.

19. **BRIBERY AND CORRUPTION**

The Supplier represents and warrants that it and its agents, directors, employees, officers and sub-contractors shall comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("Relevant Regulations") and shall not engage in any activity, practice or conduct which would constitute an offence

under the Bribery Act 2010 and the Supplier represents and warrants that it shall have and shall maintain in place throughout the term of the Contract its own policies and procedures, including “adequate procedures” under the Bribery Act 2010, to ensure compliance with the Relevant Regulations.

20. **GENERAL**

- 20.1 Purchaser’s rights shall not be prejudiced or restricted by any concession, indulgence or forbearance extended to Supplier. No waiver by Purchaser of any breach shall operate as a waiver of any other or subsequent breach. Purchaser’s rights under these Conditions are in addition to any other rights which Purchaser may have otherwise.
- 20.2 Supplier shall not sub-contract, assign, mortgage, charge or otherwise dispose of the Contract or any rights or obligations hereunder without Purchaser’s prior written agreement. Any purported such act shall be void.
- 20.3 If any of these Conditions is found to be illegal, invalid or unenforceable under any applicable law, such term shall, insofar as it is severable from the remaining terms, be deemed omitted from the Contract and shall in no way affect the legality, validity or enforceability of the remaining terms.
- 20.4 Headings are purely for ease of reference and do not form part of or affect the interpretation of these Conditions.
- 20.5 References to each party herein include references to its successors in title, permitted assigns and novatees.
- 20.6 No variation of or addition to these Conditions or any Contract is effective unless and until Purchaser so agrees in writing.
- 20.7 No conditions submitted or referred to by Supplier when tendering or otherwise shall form part of the Contract unless otherwise agreed to in writing by Purchaser. The Contract contains all the terms agreed between the parties regarding its subject matter and supersedes any prior agreement, understanding or arrangement between the parties, whether oral or in writing.