

FORTH PORTS LIMITED

STANDARD TERMS AND CONDITIONS OF PURCHASE (GOODS AND/OR SERVICES 2011/01)

Note: Purchase Order must specify/incorporate details of the following:

- The Vendor
- The Purchaser (FP or PODL)
- The Goods (with appropriate technical specifications and description of their purpose)
- The Services (with appropriate technical specifications)
- The Site for delivery/performance
- Contract Price
- Terms of Payment
- Delivery date for the Goods
- The period for completing the Services

**Forth Ports Limited
1 Prince of Wales Dock
Leith
Edinburgh
EH6 7DX**

Standard Terms and Conditions of Purchase (Forth Ports Limited and Associated Companies)

Conditions of Purchase

1. Definitions

In these Conditions (and throughout the Contract, as appropriate) the following words and expressions shall have the following meanings unless a contrary intention shall appear:

- "Contract" - means the contract for (a) the sale and purchase of the Goods and/or (b) supply and acquisition of the Services, between FP and the Vendor, on the basis of these Conditions and the Purchase Order;
- "FP" - means Forth Ports Limited registered in Scotland under number 134741 and having its registered office at 1 Prince of Wales Dock , Leith, Edinburgh EH6 7DX, or such of its subsidiary companies as may be specified as the purchaser in the Purchase Order (in which event the term FP shall be construed accordingly);
- "Goods" - means the goods (including any instalment of such goods or any part of them) described in the Purchase Order (and any specifications and other documents annexed thereto);
- "Purchase Order" - means the purchase order issued by FP to the Vendor for (a) the sale and purchase of the Goods and/or (b) supply and acquisition of the Services, and any attachments thereto, or where previously agreed with FP a telephone order made by an authorised officer of FP;
- "Services" - means the services described in the Purchase Order (and any specifications and other documents annexed thereto);
- "Site" - means the site at which the Goods are to be delivered and/or Services are to be performed, as specified in the Purchase Order; and
- "Vendor" - means the party specified as such in the Purchase Order.

Any references in these Conditions to a statute or provision thereof shall be deemed to be a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

The paragraph headings contained in these Conditions are inserted for convenience only and shall not affect the construction of this Contract.

Singular shall include the plural and vice versa. Unless the context otherwise requires, words

importing any gender shall include the other gender, and words importing natural persons shall include corporations.

2. Contract

- 2.1** The Purchase Order constitutes an offer to purchase the Goods and/or acquire the Services subject to the terms and conditions of the Contract. In the event of conflict between the Purchase Order and these Conditions, the terms of the Purchase Order shall prevail. The Contract contains the whole agreement between FP and the Vendor to the exclusion of any other terms and conditions howsoever referred to (including, without limitation, the Vendor's standard conditions or any tender, quotation, advice note, invoice, acknowledgement, letter or other document issued or sent by the Vendor). No servant or agent or other whatsoever of FP shall have power to vary these Conditions. If the Vendor shall not previously have accepted these Conditions, then delivery of the Goods (or part of the Goods) or performance of the Services (or part of the Services) shall constitute such acceptance. The terms of the Contract shall not be varied without the prior written agreement of FP.
- 2.2** At any time prior to delivery of the Goods or prior to the commencement of the Services FP may cancel the Contract and will only be obliged to meet the reasonable expenses of the Vendor up to the date of cancellation.
- 2.3** The Vendor is deemed to have understood the nature of the obligations under this Contract and hereby warrants that it has sufficient information to perform such obligations.

3. Intellectual Property

- 3.1** Any specification or piece of equipment supplied by FP to the Vendor or specifically produced for FP by the Vendor, together with ideas, copyright, design rights or any other intellectual property rights relating thereto, shall be the exclusive property of FP and the Vendor shall not disclose to any third party such specification or the specification of such piece of equipment except to the extent that it is or becomes public knowledge through no fault of the Vendor, or as required for the purpose of the Contract, and the Vendor shall hold such third parties similarly bound. All inventions patentable or otherwise made during or as a result of research and development by the Vendor or other third parties on behalf of FP shall be the sole property of FP, and the Vendor shall take such steps as FP may require to transfer or otherwise give it the benefit of such rights.
- 3.2** The Vendor shall indemnify and keep indemnified FP from and against all costs, claims, actions, demands, liabilities, damages and expenses in respect of the infringement of any patent, copyright, registered design or other right of intellectual property relating to the Goods or Services.

4. Compliance with Laws

The Vendor shall comply with all relevant regulations or legal requirements in the country in which the Goods are to be manufactured or used, or the Services rendered, with regard to the manufacture, packaging, packing and delivery of the Goods or the performance of the Services, and will supply prior to delivery all necessary authorisation documents and in particular procure that all Goods are marked with such authority as may be required for the operation of the Goods.

5. Inspection

The Vendor shall not unreasonably refuse any request by FP or its authorised nominee to inspect and test the Goods at any time during their manufacture, testing or subsequent storage under the control of the Vendor, and shall procure that any third parties involved in the manufacture, testing and storage of the Goods also co-operate with and give access to FP in a like manner. The Vendor shall provide or procure such facilities as FP may reasonably require for such inspection and testing. If the Contract provides for inspection at any stage or stages then the Vendor shall give FP seven days notice of readiness for such inspection. If as a result of such inspection FP is not satisfied that the Goods comply with the terms of the Contract and FP so informs the Vendor following its inspection or testing, the Vendor shall take such steps as are necessary to ensure compliance. Such inspection and testing or failure to inspect and test shall not be deemed to be a waiver by FP of any of the Vendor's obligations or FP's rights under the Contract.

6. Price

The price of the Goods and the Services shall be as stated in the Purchase Order and unless otherwise stated shall be exclusive of value added tax (payable if due by FP subject to production of a VAT invoice). Such price shall be inclusive of all other charges, which shall include without prejudice to the foregoing generality charges for packing, packaging, shipping, carriage, insurance and delivery of the Goods to the Site and any duties, imposts or levies other than value added tax. No increase in the price may be made for whatever reason without the prior consent of FP in writing.

7. Terms of Payment

7.1 The Vendor's invoices shall be paid according to the Terms of Payment stated in the Purchase Order, and time shall be calculated from the date of FP's receipt of the Goods or the Services to which the invoice relates in a satisfactory form, or the date of receipt of the invoice, whichever is later, provided such invoice is properly drawn and accompanied by required supporting documents.

7.2 In the event of delay or default in payment of any portion of the sums due, the Vendor shall be entitled to charge and receive interest on such delayed payment for the period between the due date of such delayed payment and the date on which payment is received by the Vendor at the rate of 2% (two percent) per annum over and above the base unsecured lending rate of The Royal Bank of Scotland plc.

8. Delivery

The Goods shall be delivered to and the Services shall be performed at the Site on the date or within the period stated in the Purchase Order, in either case within FP's normal business hours. The time of delivery of the Goods and of performance of the Services is of the essence of the Contract. If the Vendor becomes aware of any matter or thing which might lead to a delay in delivery of the Goods or performance of the Services the Vendor shall immediately advise FP in writing. If the Goods are to be delivered or the Services performed in instalments, the Contract will be treated as a single contract and not severable.

9. Acceptance

FP shall be entitled to reject any Goods delivered or Services performed which are not in

accordance with the Contract, and shall not be deemed to have accepted any Goods or Services until FP has had a reasonable time to inspect them following delivery or performance or, if later, within a reasonable time after any latent defect in the Goods or issue arising out of the Services has become apparent. FP shall not be obliged to return to the Vendor any packaging or packing materials for the Goods, whether or not the Goods are accepted by FP, and the Vendor shall remove rejected Goods from the Site expeditiously causing the minimum inconvenience to FP.

10. Manuals, Drawings etc

The Vendor shall supply to FP, at no additional cost and in good time, any instructions, drawings, maintenance manuals, information, mill certificates giving chemical compositions and mechanical properties fabrication reports and the like as may be reasonably required to enable FP to accept delivery of the Goods or performance of the Services (the "Information"), which without prejudice to the foregoing generality shall include such information regarding the use of the Goods or provision of the Services as will enable FP to comply with the Health and Safety at Work Act 1974 or any other relevant applicable regulations or legislation, and by acceptance of Information FP does not acknowledge its accuracy nor does the Information form part of the Contract unless otherwise specifically stated.

11. Risk and Property

Risk of damage to or loss of the Goods shall pass to FP upon delivery to FP in accordance with the Contract. Property in the Goods shall pass to FP on delivery to FP, unless payment or part payment has been made prior to delivery when it shall pass to FP once payment has been made and the Goods have been appropriated to the Contract.

12. Compliance with Order

The Goods will be of merchantable quality and fit for any purpose held out by FP or made known to the Vendor at or before the date of the Purchase Order. The quantity, nature and description of the Goods shall be as specified in the Contract and will be free from defects in design material and workmanship. The Services will be performed by appropriately qualified and trained personnel with due care and diligence and to the highest standard of quality. FP's rights under the Contract are in addition to statutory terms implied in favour of FP.

13. Vendor on Site

If the Vendor or any of its employees, agents or sub-contractors should be on the Site for any reason in connection with the Contract, then the Vendor shall be responsible for its or their acts and omissions (including negligent acts or omissions) as if they were in the Vendor's direct employ. At all times when the Vendor or its foreaids are on the Site they shall comply with FP's health and safety regulations for contractors working within FP premises (copies of which have been provided to the Vendor and which form part of this Contract), and shall avoid hindrance to other activities on the Site and more generally on FP's property.

14. Remedies

Without prejudice to any other remedy, if any Goods or Services are not delivered, supplied or performed in accordance with the Contract then FP may:

- (a) require the Vendor to repair the Goods or to supply replacement Goods or Services in

accordance with the Contract within 7 days; or

- (b) at FP's sole option and whether or not FP may previously have requested repair or replacement as aforesaid, to treat the Contract as discharged by the Vendor's breach and require repayment of any part of the price which has been paid.

15. Indemnity

The Vendor shall indemnify FP in full against all liability, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by FP as a result of or in connection with:

- (a) any breach of any warranty given by the Vendor in relation to the Goods or the Services;
- (b) any breach of any other obligation of the Vendor under the Contract;
- (c) any claim that the Goods impinge, or their importation, use or resale infringes the patent, copyright, design right, trade mark or other intellectual property rights of any other party, except to the extent that such a claim arises from compliance with a specification prepared and supplied by FP;
- (d) FP reasonably apprehends that any of the events mentioned at (a) to (c) above is about to occur and notifies the Vendor; or
- (e) control of the Vendor is transferred and for this purpose "control" means the ability to require directly or indirectly, compliance in another whether by the exercise of voting rights, contractual rights or otherwise howsoever.

17. Assignment/Sub-contracting

17.1 The Purchase Order is personal to the Vendor and the Vendor shall not assign or transfer or purport to assign or transfer to any other person any of its rights or sub-contract any of its obligations under the Contract, save that sub-contracting may be permitted by FP subject to:

- (a) FP's prior written consent; and
- (b) FP having obtained suitable warranties and/or indemnities direct from such sub-contractor.

17.2 The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assignees, and it is not intended to be enforceable by anyone else.

18. Notices

Any notice required in accordance with the Contract shall be in writing addressed, in the case of the Vendor to the address shown in the Purchase Order, and in the case of FP to its registered office, and shall be deemed to have been received 48 hours after posting a hard copy by recorded delivery post or equivalent.

19. Waiver

No waiver by FP of any breach of the Contract by the Vendor shall be considered as a waiver of any subsequent breach of the same or any other provision.

20. Severability

If any provision of the Contract is held by any competent authority to be invalid or unenforceable in whole or in part the validity of any other of the provisions of the Contract and the remainder of the provision in question shall not be affected.

21. Force Majeure

21.1 Neither party shall be liable to the other for any loss or damage suffered by the other if such loss or damage is attributable to an Event of Force Majeure which shall mean any Act of God, war, lightning, strike, lockout, hurricane, tempest or flood in each case rendering the continuation of the manufacturing of the Goods or provision of the Services impracticable.

21.2 If either party is affected by an Event of Force Majeure it will forthwith notify the other of the nature and extent and the parties will enter into bona fide discussions with a view to alleviating its effects and to agreeing such alternative arrangements as may be fair, reasonable and practicable.

22 Insurance

22.1 The Vendor shall have in force and shall require any sub-contractor to have in force:

- (a) Employer's Liability Insurance;
- (b) Public Liability Insurance; and
- (c) Product Liability Insurance,

in each case for a sum of not less than £10,000,000 in respect of each and every claim, or

- (d) Combined General Liability Insurance for a sum not less than £10,000,000 in respect of each and every claim.

22.2 The policy or policies of insurance shall be exhibited to FP together with satisfactory evidence of payment of premiums at least fourteen days prior to the commencement of manufacture of the Goods or delivery of the Services (whichever is earlier), and at renewal dates which may occur during the period of the Contract.

23. Termination

23.1 FP shall be entitled to terminate this Agreement with immediate effect by giving notice in writing to the Vendor if:

- (a) the Vendor commits a material breach of its obligations under this Agreement and (if such is remediable) fails to remedy that breach within a period of 30 days after receipt of notice in writing requiring it to do so; or

- (b) the Vendor commits a series of persistent minor breaches which, when taken together, amount to a material breach; or
- (c) the Vendor suspends, or threatens to suspend, payment of its debts or is, or is deemed to be, insolvent or unable to pay its debts as they fall due for payment, or admits inability to pay its debts; or
- (d) the Vendor enters into any composition or arrangement with its creditors; or
- (e) an order is made, or a resolution is passed, or any analogous proceedings are taken for winding-up, administration or dissolution (other than for the purposes of a solvent amalgamation or reconstruction) of the Vendor; or
- (f) any liquidator, trustee in bankruptcy, receiver, administrative receiver, administrator or similar officer is appointed over, or in respect of, the Vendor or any part of its business or assets; or
- (g) a creditor or encumbrancer of the Vendor attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
- (h) any event occurs, or proceeding is taken, with respect to the Vendor in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above; or
- (i) the Vendor ceases, or threatens to cease, to carry on all or substantially the whole of its business; or
- (j) any Force Majeure event prevents the Vendor from performing its obligations under the Contract for any continuous period of three months.

23.2 Termination of the Contract shall not prejudice any of the parties' rights and remedies which have accrued as at termination.

24. Employees

24.1 The Vendor hereby indemnifies and agrees to hold FP and its group companies indemnified and harmless in respect of any claim of whatever nature brought against FP or any member of its group by any employee or former employee of the Vendor (or a contractor of the Vendor) arising out of or in connection with such person's employment with the Vendor (or a contractor of the Vendor) and claims arising out of the employment by FP of any former employees of the Vendor (or a contractor of the Vendor) or the termination of such employment based on the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time.

24.2 Not later than three months prior to the end of the Contract the Vendor shall, and shall procure that any sub-contractor shall, fully and accurately disclose to FP all information that FP may reasonably request in relation to all persons employed by the Vendor or any sub-contractor and assigned to the provision of the Services (the "Staff"), including (without limitation) the total

number of Staff assigned to the provision of the Services, the terms and conditions of employment of such Staff, and any other materially relevant information. The Vendor shall deliver to FP at least monthly a complete update of all such information. FP may use the information it receives from the Vendor pursuant to this clause for the purposes of TUPE and/or any re-tendering process to ensure an effective handover of the Services on termination. The Vendor shall indemnify and keep indemnified and hold FP harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which FP may incur as a result of or in connection with a breach of this clause.

25. Confidentiality

The parties and all their employees, agents and representatives shall keep confidential all information supplied by either party under the Contract, save where disclosure is required by law or regulation.

26. Jurisdiction

The Contract will be governed by and construed in accordance with the law of Scotland and the parties hereto hereby prorogate the exclusive jurisdiction of the Scottish Courts.