

FORTH PORTS LIMITED

GENERAL CONDITIONS OF CONTRACT (SMALL WORKS 2011)

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

- The Contractor
- The Scope of Works
- The location of the Works
- The Completion Date
- Any retention for defects/faults
- Defects Liability Period
- Contract Price

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

GENERAL CONDITIONS OF CONTRACT (Small Works 2011)

Conditions

These General Conditions together with the Purchase Order form the basis of the contract (the "**Agreement**") between the Company and the Contractor. Notwithstanding anything to the contrary in the Contractor's standard conditions or any tender, quotation, advice note, invoice, acknowledgement, letter or any other document issued or sent by the Contractor, these General Conditions shall apply except insofar as expressly agreed in writing by the Company. No servant or agent or other whatsoever of the Company shall have power to vary these General Conditions. If the Contractor shall not previously have accepted these General Conditions, then execution by him of the Works or part of the Works shall constitute such acceptance. These General Conditions shall be subject to such further Special Conditions as may be prescribed from time to time by the Company in writing (including, without limitation, any signed agreement to which these General Conditions are annexed). In the event of any conflict between the Special Conditions and these General Conditions, the Special Conditions shall prevail.

1 DEFINITIONS

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

"Company" shall mean Forth Ports Limited, a company incorporated under the Companies Acts (No. 134741) and having its registered office at 1 Prince of Wales Dock, Edinburgh EH6 7DX;

"Completion Date" shall mean the date specified in the Purchase Order;

"Contract Price" shall mean the sum specified in the Purchase Order;

"Contract Supervisor" shall mean the person appointed by the Company or such person as may from time to time be nominated by him for the purpose of issue of notices, certificates, consents, notifications, instructions or other communications to the Contractor;

"Contractor" shall mean the person or company to whom the Purchase Order is addressed;

"Defect Liability Period" shall mean the period specified in the Purchase Order from the date of Practical Completion of the Works for all new and/or repair works carried out under the Agreement;

"Practical Completion of Works" shall mean the date as at which the Contract Supervisor shall agree and certify in writing that the Works have in all material respects been completed in accordance with the Agreement;

"Purchase Order" shall mean the purchase order issued by the Company to the Contractor for the performance of the Works, or any signed agreement to which these General Conditions are annexed;

"Retention" shall mean the sum specified in the Purchase Order forming part of the Contract Sum to be retained by the Company for a period equal to 12 calendar months from Practical Completion of the Works;

"Site" shall mean the site upon which the Works are to be carried out as specified in the Purchase Order; and

"Works" shall mean the works specified in the Scope of Work which is given in the schedule to the Purchase Order, and any part of such works from time to time. The "Scope of Work" shall mean the description of the Works as contained in the Schedule to the Purchase Order.

- 1.2 Singular shall include the plural and vice versa. Unless the context otherwise requires words importing any gender shall include all other genders and words importing natural persons shall include corporations.
- 1.3 The headings are inserted for convenience only and shall not affect the construction of this Agreement.
- 1.4 Any reference in these General 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.

2 PERFORMANCE OF THE AGREEMENT

- 2.1 The Contractor shall undertake the Works during the term of and in accordance with the provisions of the Agreement, and shall ensure that on completion the Site shall conform in all respects to the requirements of the Company (acting reasonably). The Works will be performed by appropriately qualified and trained personnel using reasonable skill and care in accordance with this Agreement (and in particular the Scope of Works) and all applicable laws and regulations (including all Byelaws, Regulations, Rules, Directions and the like applicable to the Ports), and otherwise in compliance with the Company's reasonable instructions.
- 2.2 The Contractor is deemed to have understood the nature and extent of the Works, and to have visited the Site. It shall make no claim founded on its failure to do so and shall warrant that it has sufficient information to carry out the Works and perform its obligations in accordance with the Agreement. The Company shall, on request of the Contractor, grant such access as may be reasonable for this purpose (subject to the terms of this Agreement and other security restrictions). The Contractor shall be deemed to have willingly accepted any risks inherent in carrying out the Works.
- 2.3 All operations necessary for the execution of the Works shall be carried out so as not to:
 - (a) damage or injure any property or persons at the Site, or any other property or persons;

- (b) interfere unnecessarily or improperly with the convenience of the public or access to or use of public or private goods or property; or
- (c) create any unreasonable or unlawful noise or disturbance,

and the Contractor shall satisfy all claims founded thereupon which arise out or in consequence of any operations under the Agreement, whether such claims are made by the Company or by a third party against the Contractor or against the Company.

- 2.4 The Company may agree to provide (and the Contractor accepts) certain equipment for the execution of the Works, provided however that the Contractor accepts responsibility for the suitability and safety of all equipment to be used in undertaking the Works. The Contractor shall be liable for maintenance of any equipment provided by the Company, and shall either return the equipment in the condition in which it is provided (fair wear and tear excepted) or, if this is not possible, shall provide replacement equipment. The Contractor shall ensure that only equipment intended to be used in the execution of the Works or as a contingency against breakdown or service down time is brought to the Ports.
- 2.5 The Contractor shall ensure that plant and equipment to be used in the execution of the Works (including without limitation any owned by the Company and provided to the Contractor in accordance with Clause 2.4) is held secure for the whole period of the Works. The Contractor shall make no claim on the Company for loss of or damage to any of its own plant or equipment brought to the Port founded on its failure to do so, and shall be liable to the Company for loss or damage to any of the Company's equipment where it has failed to keep such equipment secure.
- 2.6 The Contractor shall indemnify the Company against all actions, demands, damages, costs, charges and expenses arising out of or in consequence of the carrying out of this Agreement (subject to the terms set out herein).
- 2.7 Nothing in this Agreement shall exclude or limit the Company's liability for death or personal injury resulting from its negligence or that of any of its officers, employees or agents, or shall render the Contractor liable for any claim arising from any unlawful or negligent act or omission of the Company, its servants or agents, or any other contractor not being employed or engaged by the Contractor.

3 CONTRACT PRICE

- 3.1 In consideration of the execution of the Works in accordance with the terms of this Agreement, the Contractor shall be entitled to receive from the Company, and the Company shall be bound to pay to the Contractor, the Contract Price.
- 3.2 Save as provided under Clause 4, the Contract Price shall be a firm price and shall include all costs referred to in Clause 3.3, and no variation shall be valid unless agreed in writing by the Company.

- 3.3 The Contract Price shall be inclusive of all costs and charges for all materials, labour, plant, equipment, transport, handling of materials and plant and equipment, and for the accommodation necessary for the Works and for all guarding, watching and lighting, and all insurance called for, or necessary to cover, the Contractor's liabilities under the Agreement, and the statutory duties, safety provisions and environmental considerations contained within the Scope of Works or special terms noted within the Agreement.
- 3.4 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.
- 3.5 The Contractor shall on Practical Completion of the Works submit an invoice for the Contract Price to the Contract Supervisor. The invoice must state the relevant Purchase Order number.
- 3.6 Prior to submission of an invoice for payment in respect of the Works, the Contractor shall provide the Contract Supervisor with evidence sufficient to satisfy the Contract Supervisor that the Contractor is a Contractor for the purposes of the following Act and Regulations:
- Finance (No. 2) Act 1975 and any subsequent amendments;
- The Income Tax (Sub-Contractors in the Construction Industry) Regulations; and
- Income Tax (Construction Operations) Order.
- It shall be sufficient for the Contractor pursuant to this General Condition 3.6 to present to the Contract Supervisor an Inland Revenue Certificate of Tax Deduction currently in force and which will continue in force for the duration of the Works.
- 3.7 If an invoice is agreed and approved for payment by the Contract Supervisor, the payment shall be due (subject to General Condition 3.6) by the Company to the Contractor no later than 30 days following the receipt of the invoice by the Contract Supervisor, unless otherwise agreed. In the event of delay or default in payment of sums due, the Contractor 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 Customer, at the rate of 2% (two per cent) per annum over and above the base unsecured lending rate of The Royal Bank of Scotland plc.
- 3.8 The Company shall be entitled to retain from the amount of the payment pursuant to General Condition 3.5 a sum equal to the Retention.
- 3.9 If the Company retains sums pursuant to General Condition 3.6, the Retention shall become due in accordance with General Condition 8.4.

- 3.10 The Contract Supervisor shall in the case of disapproval of any invoice for payment, as soon as is reasonably practicable, notify the Contractor in writing confirmation of the fact which shall clearly state his reasons for disapproval of the invoice.
- 3.11 In the event of the Contract Supervisor disapproving any invoice for payment, the Contract Supervisor and the Contractor shall in good faith meet and attempt a resolution of differences.

4 VARIATION TO THE WORKS

- 4.1 The Contractor shall not refuse to carry out any requested variation to the Works, provided that the variation is in keeping with the requirements of the nature of the works and the intent of the Agreement. Any refusal to do so shall be deemed to be a material breach of the Agreement terms.
- 4.2 The Contract Price shall only be varied as a result of a material change in the extent of the Scope of Works, or arising as a result of a written instruction from the Contract Supervisor which shall then operate as a variation to the Works.
- 4.3 Any variation in or to the Works as provided for in General Condition 4.2 shall be agreed in writing between the Company and the Contractor.

5 INSURANCE

- 5.1 The Contractor shall have in force and shall require any sub-contractor to have in force and keep in force for the duration of the Works:
- (a) Employer's Liability Insurance;
 - (b) Public Liability Insurance; and
 - (c) Contractors All-Risk Insurance,

each with a limit of indemnity of not less than £10,000,000 (Ten Million Pounds Sterling) in respect of each and every claim.

- 5.2 The policy or policies of insurance shall be exhibited to the Company together with satisfactory evidence of payment of premiums at least fourteen days prior to the commencement of the Works, and at renewal dates which may occur during the Agreement period. The insurance policies shall include an Indemnity to Principal clause and the Insurers' agreement to waive any rights of subrogation against the Company.

6 SERVICE LEVELS

- 6.1 Where the Contractor is unable to carry out the Works at the level set out in the Scope of Works, it shall advise the Contract Supervisor immediately of the actual or anticipated occurrence giving reasons for the failure. In such circumstances, or where the Contract Supervisor notifies the

Contractor of an actual or anticipated failure to carry out the Works to the required standard, the Parties shall agree corrective measures which shall be put in place as soon as reasonably practicable.

- 6.2 Where the Contractor fails to comply with the agreed corrective measures (or the Parties are unable to agree such measures) the Company may, at its sole discretion, employ such measure as it deems necessary to ensure that the Company complies with any obligations to its customers, the cost of which shall be for the Contractor's account.
- 6.3 The Contractor shall indemnify the Company against all losses or claims (including damage) as a result of the Contractor failing to carry out the Works at the level set out in the Scope of Works. For the avoidance of doubt the Contractor acknowledges that a breach by it of the terms of this Agreement is likely to result in a claim being made against the Company by its customers and it is expressly agreed that such losses (including without prejudice to the foregoing generality, demurrage, the Company's overtime costs and the Company's customer costs) are recoverable by the Company from the Contractor under this Agreement.

7 EXTENSION OF TIME

- 7.1 If and whenever it becomes apparent that the progress of the Works is being or is likely to be delayed, the Contractor shall forthwith give notice to the Contract Supervisor of the material circumstances, including the cause or causes and length or likely length of the delay and identify in such notice any event which in his opinion is a Relevant Event. For the purpose of this Clause a Relevant Event shall be:-
- a) Force Majeure, being any events or circumstances which are beyond the reasonable control of either party which do not arise out of particular circumstances which are within the knowledge of that party at the time of entering into the Agreement and which results in or causes the failure of that party to perform any of its obligations under the Agreement (provided that lack of funds shall not be interpreted as a cause beyond that party's reasonable control);
 - b) exceptionally adverse weather conditions;
 - c) loss or damage occasioned by any one or more of the insured risks;
 - d) the execution of work not forming part of this Agreement by the Company itself or by persons employed or otherwise engaged by the Company or failure to execute such work, and/or the supply by the Company of materials and goods which the Company has agreed to provide for the Works or the failure so to supply; or
 - e) an instruction from the Contract Supervisor pursuant to the terms of General Condition 4 which is a variation to the Works, which would cause Practical Completion of the Works to be delayed beyond the Completion Date, taking into account any savings of time effected or to be effected by the Contractor in carrying out the Works.

- 7.2 Within fourteen days of the receipt of such notice the Contract Supervisor shall make such extension of time, if any, for completion of the Works beyond the Completion Date as is fair and reasonable, by fixing a later date as the Completion Date. The Contract Supervisor shall, in making such extension of time, state which of the Relevant Events it has taken into account. If it is not fair and reasonable for the Contract Supervisor to fix a later date as a new Completion Date, the Contract Supervisor shall forthwith so notify the Contractor along with a note of the reasons for not allowing an extension of time.
- 7.3 If the Contract Supervisor declines to allow an extension of time to the Contractor for whatever reason and the Works are not completed by the Completion Date, then the Contract Supervisor shall be entitled at his discretion to claim from the Contractor a payment equal to one half of one percent of the Contract Sum for each week in excess of the Completion Date providing that the excess of time does not exceed five weeks.
- 7.4 If the Contractor is unable to complete the Works by the Completion Date plus the excess of time allowed for in this General Condition 7, then the Contract Supervisor shall at his discretion be entitled to terminate the Contract forthwith and seek to employ another contractor to complete the Works. The cost of completion of the Works under these circumstances shall be deducted from any sum due to the Contractor.

8. WORKS

- 8.1 The Contractor shall notify the Contract Supervisor of the date on which in his opinion he has achieved Practical Completion of the Works, and if the Contract Supervisor shall agree that the Works have been in all material respects completed in accordance with the Contract then the Contract Supervisor shall forthwith issue a certificate to that effect specifying the date on which Practical Completion of the Works has been deemed to have taken place.
- 8.2 Any defects or other faults which shall appear within the Defects Liability Period and which are due to failure of the Contractor to comply with his obligations under the Agreement shall be specified by the Contract Supervisor in a Schedule of Defects. Within fourteen days of delivery to the Contractor of such Schedule of Defects the defects or other faults therein specified shall be made good by the Contractor at no cost to the Company, unless the Contract Supervisor advises that it will procure such remedial works, in which event the cost of such remedial works shall be deducted from the Retention. If the cost of the remedial works exceeds the Retention, the Contractor shall be liable to pay the Company the amount of the shortfall.
- 8.3 When any defects or other faults which the Contract Supervisor may require to be made good under General Condition 8.2 have been completed, the Contract Supervisor shall forthwith issue a notice to that effect and completion of making good defects shall be deemed for all purposes of this Agreement to have taken place on the day named in such notice (the "Notice of Completion of Making Good Defects").

8.4 The Retention (subject to any deductions pursuant to General Condition 8.2) shall be paid over by the Company (a) in the event that the Contractor carries out the remedial works pursuant to General Condition 8.2, on issue of the Notice of Completion of Making Good Defects, or (b) in the event that the Company instructs a third party to carry the remedial works pursuant to General Condition 8.2, on completion of those works and determination of the associated costs, or (c) on the expiry of the Defects Liability Period, whichever is the last to occur.

9. TERMINATION

9.1 The Company shall be entitled to terminate this Agreement with immediate effect by giving notice in writing to the Contractor if:

- (a) the Contractor 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 such shorter period as may be appropriate having regard to the nature of the breach); or
- (b) the Contractor commits a series of persistent minor breaches which, when taken together, amount to a material breach; or
- (c) the Contractor 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 Contractor 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 Contractor; or
- (f) any liquidator, trustee in bankruptcy, receiver, administrative receiver, administrator or similar officer is appointed over, or in respect of, the Contractor or any part of its business or assets; or
- (g) a creditor or encumbrancer of the Contractor 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 Contractor 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 Contractor ceases, or threatens to cease, to carry on all or substantially the whole of its business.

10 FURTHER UNDERTAKINGS

- 10.1 The Contractor shall report the progress of the Works to the Contract Supervisor on a regular basis or as and when required by the Contract Supervisor, acting reasonably.
- 10.2 The Contractor shall agree with the Contract Supervisor all arrangements regarding patterns of working, access to and from and to areas within the Site, all parking at the Site, storage of equipment at the Site and any other matter ancillary to the carrying out of the Works or the establishment by the Contractor on the Site. The Contractor shall at all times comply with the Company's document entitled "Safety Rules for Contractors and Sub-Contractors in Forth Ports Premises" a copy which has been supplied to the Contractor and receipt of which is hereby acknowledged. The Contractor shall not be entitled to commence working on the Site without returning a signed copy of the acknowledgement section of such Rules. The Contractor also acknowledges and agrees that all persons, vehicles and goods entering the Site are subject to the byelaws, regulations, rules and directions made by the Company or otherwise applicable to the Site (including, without limitation, all ISPS requirements).
- 10.3 The Contractor shall take all reasonable and proper measures to the satisfaction of the Contract Supervisor to minimise the spread of dust and noise arising out of the Works and shall prevent the operation of the Works from giving rise to any form of nuisance which is actionable at law.
- 10.4 The Contractor shall take all reasonable and proper measures to ensure that any roadways adjoining the Site are maintained free from dirt and debris arising out of the Works.
- 10.5 The Contractor shall ensure as far as is practicable that the Works are carried out so that there shall be no interference with or interruption to the use of any buildings, structures, roads or footpaths adjoining or in close proximity to the Site and shall ensure that the Works shall not interrupt or interfere with the daily business of the Company, its tenants or any persons going about lawful business with the authority of the Company and/or its tenants.
- 10.6 No services may be disconnected or diverted without the prior approval in writing of the Company.
- 10.7 The Works are to be carried out without damage to any part of any structure or adjoining plant or buildings, and if such damage shall occur in the carrying out of the Works the Contractor shall reinstate and make good the same at his own expense to the reasonable satisfaction of the Company.
- 10.8 All plans, drawings, designs or specifications supplied by the Company to the Contractor shall remain the property of, and shall be returned to, the Company on completion of the Contract and shall not be copied, and no information relating to the Works shall be disclosed to any third party except for the purpose of the Works.

- 10.9 The Contractor shall have a competent supervisor for the Works who shall be contactable at all times during business hours and any instructions given to him (written or oral) shall be deemed to be given to the Contractor.
- 10.10 No explosives or naked lights shall be used without the prior written consent of the Company.
- 10.11 When burning gear is used care shall be taken to ensure that no fires are started or left smouldering when workmen leave the Site and the Contractor shall ensure that all necessary permits to works are obtained. Burning of rubbish shall not be permitted.
- 10.12 The Contractor shall use every reasonable means to prevent any of the highways or bridges communicating with or on the routes to the Site from being subjected to extraordinary traffic within the meaning of the Road Traffic Act 1930 or any statutory modification or re-enactment thereof by any traffic of the Contractor or his sub-contractors. In particular the Contractor shall select routes and use vehicles and restrict and distribute loads so that any such extraordinary traffic arising from the moving of plant, materials or dismantled structures to and from the Site shall be limited as far as is reasonably possible and so that no damage or injury may be caused to such highways and bridges.
- 10.13 Unless otherwise provided for in the Agreement, the Contractor shall be responsible for and shall pay the cost of strengthening any bridges or altering or improving any highways communicating with the Site to facilitate the movement of plant, materials or dismantled structures arising out of or necessary for the execution of the Works. The Contractor shall indemnify the Company against all claims for damage to any highway or bridge caused by such movement including, without limitation, such claims as may be made by any competent authority directly against the Company pursuant to any Act of Parliament or other Statutory Instrument.
- 10.14 If, notwithstanding the above, any damage shall occur to any bridge or highway arising from the movement of such plant, materials or dismantled structures, the Contractor shall notify the Company as soon as it becomes aware of such damage or receives any claim.
- 10.15 The Contractor shall ensure that all personnel of the Contractor requiring to visit the Site for whatever reason obtain, on entry to the site, a temporary personal pass which must be displayed on the person at all times. Vehicles entering the site must obtain a temporary vehicle pass which must be visible within the vehicle at all times. All temporary passes must be surrendered to the security gate on leaving the site.
- 10.16 The Company operates a drugs and alcohol policy and where any person entering the Site is involved in an incident or accident, and the Company is of the opinion that a drugs and/or alcohol test is appropriate, the person concerned may be, at the Company's discretion, asked to undergo a prescribed test. The Contractor and all personnel of the Contractor shall be obliged to comply with the terms of such policy and all other Health and Safety policies of the Company from time to time in force.

10.17 For the avoidance of doubt on termination or expiry of the Agreement howsoever arising, the Company shall have no liability in respect of any redundancy or other employment liabilities of the Contractor or in respect of any claims made by any employees of the Contractor for redundancy or unfair dismissal or under the terms of the Transfer of Undertakings (Protection of Employment) Regulations 2006 and that whether or not the Company subsequently enters into an agreement with a party other than the Contractor for the provision of the same or similar Works and the Contractor hereby undertakes to indemnify the Company against any such losses, claims, costs or liabilities.

11 GENERAL

11.1 Time shall be of the essence of this Agreement.

11.2 This Agreement shall supersede and prevail over any prior communications whether verbal or in writing between the parties.

11.3 The terms of the Agreement shall not, without the Company's prior written consent, in any way, either directly or indirectly be used for the benefit of any third party.

11.4 Any waiver by either party of a breach of the Agreement must be in writing and shall not be treated as a waiver of any further of the same or any other provision under the Agreement. The Agreement shall not be amended without the approval of the Parties in writing.

11.5 Nothing in the Agreement shall prejudice or affect the rights powers or obligations under any statute, statutory instrument, regulation, direction or order for the time being in force. The parties to the Agreement shall effect any amendment required to be made to the Agreement as a result of any change in statute or any other instrument having force of law during the term of the Agreement.

11.6 Termination of the Agreement (howsoever and whensoever effected) shall not affect any rights or obligations which may have accrued prior to such termination and shall not affect any rights or obligations of either of the parties which continue whether by virtue of provisions herein contained which are specifically expressed to continue after termination or otherwise.

11.7 All notices are to be sent by first class post or by facsimile to the registered office (or head office if the party is not a registered company) or such other address as may from time to time be notified by one party to the other.

11.8 The Parties and all their employees, agents and representatives shall keep confidential all information supplied by either party under this Agreement or the arrangements relating hereto, save where disclosure is required by law or regulation.

11.9 The Contractor shall not assign or sub-contract the Works (or any part of the Works) without the prior written consent of the Company.

11.10 The Agreement shall 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.