

Terms & Conditions – Site Contractors (T&C-02)

Conditions

These General Conditions together with the Purchase Order shall form the basis of the Contract (“the Contract”) 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 Head Office of the Company. No servant or agent or other whatsoever shall have power to vary these General Conditions orally. If the Contractor shall not previously have accepted these General Conditions, then execution by him of the Works or part of 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. In the event of any conflict between the Special Conditions and these General Conditions, the Special Conditions shall prevail.

Definitions

In these General Conditions the following words and expressions shall have the following meanings unless a contrary intention shall appear:

- 1.1 "The Company" shall mean Port of Tilbury London Ltd, a company incorporated under the Companies Acts (No. 2659118) and having its registered office at Leslie Ford House, Tilbury Freeport, Tilbury, Essex. RM18 7EH
- 1.2 "The Contractor" shall mean the person or company to whom the Purchase Order is addressed.
- 1.3 "The Works" shall mean the works specified in the "Scope of Work" which is given in the schedule to the Purchase Order. The “Scope of Work” shall mean the description of the Works as contained in the Schedule to the Purchase Order
- 1.4 "The Site" shall mean the site upon which the Works are to be carried out as specified in the Purchase Order.
- 1.5 The "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.
- 1.6 The "Completion Date" shall mean the date specified in the Purchase Order.
- 1.7 "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 Contract.
- 1.8 "Retention" shall mean the sum specified in the Purchase Order forming part of the Contract Sum to be retained by the Company effective from Practical Completion of the Works.
- 1.9 The "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 Contract.
- 1.10 “Force Majeure” means any event or circumstances which are beyond the reasonable control of either party which does not arise out of particular circumstances which are within the knowledge of that party at the time of entering into the Contract and which results in or causes the failure of that party to perform any of its obligations under the Contract, including

act of God, strike, lock-out or other industrial disturbance, terrorist threat, act of the public enemy, war declared or undeclared, threat of war, blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism, lightning, fire, storm, flood, earthquake, accumulation of snow or ice, explosion, fault or failure of plant and apparatus which could not have been prevented by good industrial practice, government restraint, any act of Parliament or legislation, bye-law, prohibition, measure or directive of any kind of any governmental, parliamentary, local or other competent authority, provided that lack of funds shall not be interpreted as a cause beyond that party's reasonable control.

1.11 "Purchase Order" shall mean the purchase order issued by the Company to the Contractor for the performance of the Works.

1.12 "Contract Sum" shall mean the sum specified in the Purchase Order.

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.

The headings are inserted for convenience only and shall not affect the construction of this agreement.

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.

1.13 "Security" shall mean measures defined by POTLL that must be adhered to by the appointed contractor. Non-compliance of these measures may lead to termination of the contract.

2 PERFORMANCE OF THE AGREEMENT

2.1 The Contractor shall take full responsibility for the Works during the execution of the Contract and shall ensure that on completion the Site shall conform in all respects to the requirements of the Contract.

2.2 The Contractor is deemed to have understood the nature and extent of the Works, and to have visited the Site and shall make no claim founded on his failure to do so and shall warrant that he has sufficient information for him to carry out the Works and perform his obligations for the Contract Sum and by the Completion Date. The Company shall, on request of the Contractor, grant such access as may be reasonable for this purpose. The Contractor shall be deemed to have willingly accepted the risks of the Works.

2.3 Save as provided under Clause 4 the Contract Sum shall, unless otherwise agreed, be a firm price and shall include all the requirements referred to in Clause 3.1 and no variation shall be allowed unless agreed in writing by the Company.

2.4 All operations necessary for the execution of the Works shall be carried out so as not to:

- (a) damage or injure any property adjoining the Works or other property, or persons, or
- (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 Contract whether such claims are made by the Company or by a third

party against the Contractor or against the Company, and the Contractor shall indemnify the Company against all actions, demands, damages, costs, charges and expenses arising in connection therewith provided, however, that nothing in this clause 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 by the Contractor.

In return for the performance of his obligations pursuant to sub-clause 2.1 to 2.5 the Contractor shall be entitled to receive from the Company and the Company shall be bound to pay to the Contractor the Contract Sum subject to the provisions of the Contract.

- 2.5** The Contractor shall accept responsibility for the suitability and safety of any equipment brought to the Site by him to be used in the execution of the Works and shall ensure that only equipment intended to be used in the execution of the Works is brought to the Site.
- 2.6** The Contractor shall ensure that the Site is held secure for the whole period of the Works and shall make no claim on the Company for loss of or damage to any equipment or materials brought to the Site founded on his failure to do so.

3 CONTRACT SUM

- 3.1** The Contract Sum shall include 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 for all insurance called for, or necessary to cover, the Contractor's liabilities under the Contract, and the statutory duties and safety provisions.
- 3.2** The terms of payment shall be as stated in the Purchase Order. Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.
- 3.3** In the case of performance pursuant to Clause 2 of these General Conditions, the Contractor shall on Practical Completion of the Works submit an invoice to the Contract Supervisor for payment 30 days from receipt of such invoice by the Contract Supervisor, representing the Contract Sum.
- 3.4** 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.

Income Tax (Construction Operations) Order.

It shall be sufficient for the Contractor pursuant to this clause 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.

- 3.5** If an invoice is agreed and approved for payment by the Contract Supervisor the payment shall be due by the Company to the Contractor on the thirtieth day following the receipt of the invoice by the Contract Supervisor.
- 3.6** In case of payment pursuant to 3.5 the Company shall be entitled to retain from the amount of such payment a sum equal to the Retention.

- 3.7** In case the Company shall make a Retention pursuant to 3.6 then this Retention shall become due by the Company to the Contractor at the completion of the Defect Liability Period providing that all defects or faults which shall have appeared within the Defect Liability Period which are due to the failure of the Contractor to comply with his obligations under the Contract have been rectified to the satisfaction of the Contract Supervisor.
- 3.8** The Contract Supervisor shall on approval or disapproval of any invoice for payment, as soon as in practicable, notify the Contractor in writing confirmation of the fact.
- 3.9** 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 CONTRACT

- 4.1** Save as hereinafter provided, the Company and the Contractor agree that the Contract is a fixed price contract for the performance of the Works in return for payment of the Contract Sum as provided for under the Contract.
- 4.2** The Contract Sum shall only be varied as a result of a change in the extent of the Scope of Work or any matter or thing in relation to the Works which was material to the carrying out of the Works and could not have been reasonably contemplated by the Company or the Contractor at the time of entering into the Contract, 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 Clause 4.2 may result in a variation in the Contract Sum. Such variations to the Contract Sum shall be as agreed in writing between the Contract Supervisor and the Contractor. Failing agreement the matter shall be determined by arbitration in accordance with the provisions of Clause 9.

5 INSURANCE

- 5.1** The Contractor shall have in force and shall require any sub-contractor to have in force:
- (a) Employer's Liability Insurance and
 - (b) Public and Product Liability Insurance for a sum of not less than £5,000,000 for any one accident unless agreed by the Company in writing
 - (c) For Port of Tilbury Grain Terminal, insurance for a sum of not less than £10,000,000 for any one accident unless agreed by the company in writing
 - (c) Contractors All-Risk Insurance.
- 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.
- 5.3** The Contractor shall indemnify the Company against any claim for infringement of any letters patent, registered design, copyright, trade mark or trade name by the use of any article or material supplied by the Contractor to the Company and against all costs and damages which the Company may incur in any action for such infringement, or for which the Company may become liable in any such action. Provided always that this indemnity shall not apply to any

infringement which is due to the Contractor having followed a design or instruction furnished or given by the Company or to the use of such article or material in a manner or for a purpose not specified by or reasonably to be inferred from the Contract.

- 5.4** The Contractor shall indemnify the Company against all losses and claims for injuries or damage to any person or property which may arise out of or in consequence of the carrying out of the Contract, including personal injury or death and injuries or damage to property resulting from the negligence of the Company, their servants or agents.

6 EXTENSION OF TIME

- 6.1** 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;
- 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 Contract 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 Clause 4 which is a variation in and 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.

- 6.2** 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.

- 6.3** If the Contract Supervisor declines to allow an extension of time to the Contractor for whatever reason and the Completion Date is exceeded 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.

If the Contractor is unable to complete the works by the Completion Date plus the excess of time allowed for in this clause 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.

7. WORKS

- 7.1** 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.
- 7.2** 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 Contract shall be specified by the Contract Supervisor in a Schedule of Defects which the Contract Supervisor shall deliver to the Contractor as an instruction of the Company not later than fourteen days after the expiration of the Practical Completion of the Works and within fourteen days of receipt 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 shall otherwise instruct; and if the Contract Supervisor does so otherwise instruct then an appropriate deduction in respect of any such defects or other faults not made good shall be made from the Contract Sum.
- 7.3** When any defects or other faults which the Contract Supervisor may have required to be made good under Sub-clause 7.2 shall have been made good 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 Contract to have taken place on the day named in such notice (the "Notice of Completion of Making Good Defects").
- 7.4** The Retention shall be paid over by the Contract Supervisor on issue of the Notice of Completion of Making Good Defects or the expiry of the Defects Liability Period, whichever shall be later.

8. TERMINATION

- 8.1** The Contract shall automatically terminate on the occurrence of any of the following events:
- a) the liquidation, receivership or winding up of either party or the making of an Administration Order in respect of either party; or
 - b) either party being unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986.
- 8.2** The Contract shall be immediately terminable by either party in the event that the other party is in material breach of the Contract, provided that the party not in default shall have given the party in material breach the opportunity of remedying such breach within a period of twenty one days or such other period as shall be reasonable in the circumstances. A breach of the Contract shall be material having regard to the nature and extent of the Works.

9 ARBITRATION

- 9.1** All differences or disputes between the parties arising out of the Contract shall be resolved, failing agreement by an arbiter to be selected by the parties which failing to be selected by the President of The Royal Institution of Chartered Surveyors, being a person of experience in the matter of construction contract disputes. Prior to referring any differences or dispute to

arbitration, however, the parties shall first and expeditiously in good faith meet and attempt to resolve such difference or dispute.

10 GENERAL

- 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 the Site, all parking 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 on Port of Tilbury premises" a copy, which will be supplied with the Purchase Order. The Contractor shall not be entitled to commence working on the Site without returning a signed copy of the acknowledgement section of such Rules.
- 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 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** The Contractor shall not assign or sub-let any portion of the Works without the prior written consent of the Company. No sub-letting shall relieve the Contractor from the responsibility of the Works or from active supervision of the Works during their progress.
- 10.11** No explosives or naked lights shall be used without the prior written consent of the Company.

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 Contract 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, and 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 10.13 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 he becomes aware of such damage or receives any claim.
- 10.15** Time shall be of the essence of this agreement.
- 10.16** The Contract shall supersede and prevail over any prior communications whether verbal or in writing between the parties.
- 10.17** The Contract shall be governed by and construed in accordance with the law of England and the parties hereto hereby prorogate the exclusive jurisdiction of the English Courts.
- 10.18** The Purchase Order is confidential and the terms and contents of all orders of the Company or information supplied thereunder or derived there from are strictly confidential and 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
- 10.19** The rights and remedies provided by the Contract to the parties are exclusive and not cumulative and exclude and are in place of all substantive (but not procedural) rights or remedies express or implied and provided by common law or statute, including without prejudice to the generality any rights either party may possess in delict which shall include without prejudice to the generality actions brought in negligence and/or nuisance. Accordingly each of the parties hereby waives to the fullest extent possible all such rights and remedies provided by common law or statute, and releases the party liable to the same extent from all duties, liabilities, responsibilities or obligations provided by common law or statute in respect of the matters dealt with in the Contract and undertakes not to enforce any of the same except as expressly provided herein.
- 10.20** Any waiver by either party of a breach of the Contract must be in writing and shall not be treated as a waiver of any further of the same or any other provision under the Contract.
- 10.21** Nothing in the Contract 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 Contract shall effect any amendment required to be made to the Contract as a

result of any change in statute or any other instrument having force of law during the term of the Contract.

- 10.22** Termination of the Contract (howsoever and whensoever effected) shall not effect any rights or obligations which may have accrued prior to such termination and shall not effect 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.
- 10.23** All notices are to be sent by first class post or by facsimile to the address given in the Purchase Order for whom it is being sent or such other address as may from time to time be notified by one party to the other.

11 SECURITY

- 11.1** All Contractors must complete a Security Declaration form, signing and dating it before sending to the POTLL Procurement Department.
- 11.2** The Senior Procurement and Facilities Manager shall liaise with the relevant Asset Manager and Chief Police Officer to assess what level of security and/or security arrangements must be put in place before the respective Contractor is permitted to commence work.
- 11.3** The Senior Procurement and Facilities Manager shall inform the relevant Asset Manager and Chief Police Officer if the terms of engagement with the appointed Contractor are to change to establish if revised security arrangements should be designed and implemented.
- 11.4** The Contractor is required to inform the Senior Procurement and Facilities Manager of any issue that may prevent the Contractor from adhering to the agreed security arrangements. This will include when Contractors employees either leave site or leave the Contractors employment to enable the Senior Procurement and Facilities Manager to terminate the respective employees access rights.
- 11.5** The Contractor understands that if they do not adhere to the security arrangements relating to the respective area of work then the Contractor may be liable to have the contract terminated.