

**PORTLAND PORT LIMITED  
STANDARD TERMS AND CONDITIONS OF PURCHASE**

**1. INTERPRETATION**

1.1. Definitions. In these Conditions, the following definitions apply:

**Business Day:** a day (other than a Saturday, Sunday or public holiday in England), when banks in London are open for business.

**CDM 2015:** the Construction (Design and Management) Regulations 2015.

**Commencement Date:** has the meaning set out in clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 17.7.

**Contract:** the contract between the Port and the Supplier for the supply of Goods and/or Services in accordance with these Conditions, which is comprised of the Order and these Conditions.

**Control:** the ability or discretion to direct the affairs of another person or entity, whether by virtue of the ownership of shares, under contract or otherwise.

**Deliverables:** all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services, in any form or media including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

**Goods:** the goods (or any part of them) set out in the Order.

**Goods Specification:** any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Port and the Supplier.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Order:** the Port's order for the supply of Goods and/or Services, as set out in the Port's purchase order form, or in the Port's written acceptance of the Supplier's quotation (as the case may be), a copy of which is attached to these Conditions.

**Port:** Portland Port Limited, company number 03158010.

**Port Materials:** has the meaning set out in clause 5.3.9.

**Port Regulations:** all or any of the following (copies of which are available to the Supplier on request) as amended from time to time:

- (a) Portland Port Emergency Plan;
- (b) the Portland Harbour Management Plan;
- (c) the Portland Harbour Revision Orders 1997, and 2011 and any other Harbour Revision Order affecting Portland Harbour;
- (d) the Oil Spill Contingency Plan,

and any regulations made by the Port from time to time and notified in writing to the Supplier.

**Services:** the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification.

**Service Specification:** the description or specification for Services agreed in writing by the Port and the Supplier.

**Supplier:** the person, firm or company from whom the Port purchases the Goods and/or Services, and whose details are set out in the Order.

1.2. Construction. In these Conditions, the following rules apply:

- 1.2.1. a reference to a party includes its, successors or permitted assigns;
- 1.2.2. a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 1.2.3. a reference to writing or written includes e-mail but no other form of electronic communication.

**2. BASIS OF CONTRACT**

- 2.1. The Order constitutes an offer by the Port to purchase Goods and/or Services from the Supplier in accordance with these Conditions.
- 2.2. The Order shall be deemed to be accepted on the earlier of:
  - 2.2.1. the Supplier issuing written acceptance of the Order; or
  - 2.2.2. any act by or on behalf of the Supplier consistent with fulfilling the Order,at which point and on which date the Contract shall come into existence ("**Commencement Date**").

2.3. These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.4. All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

**3. SUPPLY OF GOODS**

- 3.1. The Supplier shall ensure that the Goods shall:
  - 3.1.1. correspond with their description and any applicable Goods Specification;
  - 3.1.2. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the Port, expressly or by implication, and in this respect the Port relies on the Supplier's skill and judgment;
  - 3.1.3. be free from defects in design, materials and workmanship and remain so for 12 months after delivery; and
  - 3.1.4. comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 3.2. The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.
- 3.3. The Port shall have the right to inspect and test the Goods at any time before delivery.
- 3.4. If following such inspection or testing the Port considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 3.1, the Port shall inform the Supplier and the Supplier shall immediately take such remedial action (at its own cost) as is necessary to ensure compliance.
- 3.5. Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and the Port shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

**4. DELIVERY OF GOODS**

- 4.1. The Supplier shall ensure that:
  - 4.1.1. the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
  - 4.1.2. each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
  - 4.1.3. if the Supplier requires the Port to return any packaging material for the Goods to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.
- 4.2. The Supplier shall deliver the Goods:
  - 4.2.1. on the date specified in the Order or, if no such date is specified, then within 30 days of the date of the Order;
  - 4.2.2. to the location set out in the Order or such other location as instructed by the Port in writing at any time before delivery ("**Delivery Location**");
  - 4.2.3. during the Port's normal hours of business on a Business Day, or as instructed in writing by the Port.
- 4.3. Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
- 4.4. If the Supplier:
  - 4.4.1. delivers less than 95 per cent of the quantity of Goods ordered, the Port may reject the Goods; or
  - 4.4.2. delivers more than 105 per cent of the quantity of Goods ordered, the Port may at its sole discretion reject the Goods or the excess Goods, and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and the Port accepts the delivery, a pro-rata adjustment shall be made to the invoice for the Goods.
- 4.5. The Supplier shall not deliver the Goods in instalments without the Port's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Port to the remedies set out in clause 6.1.
- 4.6. Title and risk in the Goods shall pass to the Port on completion of delivery.

**5. SUPPLY OF SERVICES**

- 5.1. The Supplier shall from the date set out in the Order and for the duration of this Contract, provide the Services to the Port in accordance with the terms of the Contract.
- 5.2. The Supplier shall meet any performance dates for the Services specified in the Order or notified to the Supplier by the Port.
- 5.3. In providing the Services, the Supplier shall:

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- 5.3.1. co-operate with the Port in all matters relating to the Services, and comply with all instructions of the Port;
- 5.3.2. perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- 5.3.3. use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;
- 5.3.4. ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Port;
- 5.3.5. provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- 5.3.6. use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Port, will be free from defects in workmanship, installation and design;
- 5.3.7. obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
- 5.3.8. observe and at all time comply with (and procure that all of its personnel, staff, workers and subcontractors involved in performing the Services in whole or in part observe and at all times comply with):
- a. all health and safety rules and regulations and any other security requirements that apply at any of the Port's premises (including but not limited to the Port Regulations);
- b. if applicable, CDM 2015;
- 5.3.9. report any accident or injury arising in connection with the Services, to the Port;
- 5.3.10. at its own cost, dispose of all waste and rubbish arising out of the performance of the Services, in a safe and proper manner using methods of disposal approved by the Port;
- 5.3.11. hold all materials, equipment and tools, drawings, specifications and data supplied by the Port to the Supplier ("**Port Materials**") in safe custody at its own risk, maintain the Port Materials in good condition until returned to the Port, and not dispose or use the Port Materials other than in accordance with the Port's written instructions or authorisation;
- 5.3.12. not do or omit to do anything which may cause the Port to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Port may rely or act on the Services.
- 6. THE PORT'S REMEDIES**
- 6.1. If the Supplier fails to deliver the Goods and/or perform the Services by the applicable date, the Port shall, without limiting its other rights or remedies, have one or more of the following rights:
- 6.1.1. to terminate the Contract with immediate effect by giving written notice to the Supplier;
- 6.1.2. to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
- 6.1.3. to recover from the Supplier any costs incurred by the Port in obtaining substitute goods and/or services from a third party;
- 6.1.4. where the Port has paid in advance for Services that have not been provided by the Supplier and/or Goods which have not been delivered by the Supplier, to have such sums refunded by the Supplier on demand; and
- 6.1.5. to claim damages for any additional costs, loss or expenses incurred by the Port which are in any way attributable to the Supplier's failure to meet such dates.
- 6.2. [If the Goods are not delivered by the applicable date, the Port may, at its option, claim or deduct 1% per cent of the price of the Goods for each week's delay in delivery by way of liquidated damages, up to a maximum of 15% per cent of the total price of the Goods. If the Port exercises its rights under this clause 6.2 it shall not be entitled to any of the remedies set out in clause 6.1 in respect of the Goods' late delivery.]
- 6.3. If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 3.1, then, without limiting its other rights or remedies, the Port shall have one or more of the following rights, whether or not it has accepted the Goods:
- 6.3.1. to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
- 6.3.2. to terminate the Contract with immediate effect by giving written notice to the Supplier;
- 6.3.3. to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
- 6.3.4. to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- 6.3.5. to recover from the Supplier any expenditure incurred by the Port in obtaining substitute goods from a third party; and
- 6.3.6. to claim damages for any additional costs, loss or expenses incurred by the Port arising from the Supplier's failure to supply Goods in accordance with clause 3.1.
- 6.4. These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.
- 6.5. The Port's rights under this Contract are in addition to its rights and remedies implied by statute and common law.
- 7. THE PORT'S OBLIGATIONS AND SECURITY**
- 7.1. The Port shall:
- 7.1.1. subject to clause 5.3.8, provide the Supplier with reasonable access at reasonable times to the Port's premises for the purpose of providing the Services. For the avoidance of doubt, the Port may exclude all or any of the Supplier's personnel, staff, workers and/or subcontractors from the Port's premises at any time if, in Port's reasonable opinion, permitting access to such persons may create any risk to the security of the Port's premises; and
- 7.1.2. provide such information as the Supplier may reasonably request for the provision of the Services and the Port considers reasonably necessary for the purpose of providing the Services.
- 8. CHARGES AND PAYMENT**
- 8.1. The price for the Goods:
- 8.1.1. shall be the price set out in the Order, or if no price is quoted, the price set out in the Supplier's published price list in force at the Commencement Date; and
- 8.1.2. shall be inclusive of the costs of packaging, insurance and carriage of the Goods, unless otherwise agreed in writing by the Port. No extra charges shall be effective unless agreed in writing and signed by the Port.
- 8.2. The charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Port, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 8.3. In respect of Goods, the Supplier shall invoice the Port on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Port on completion of the Services. Each invoice shall include such supporting information required by the Port to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.
- 8.4. In consideration of the supply of Goods and/or Services by the Supplier, the Port shall pay the invoiced amounts within 45 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.
- 8.5. All amounts payable by the Port under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time ("**VAT**"). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Port, the Port shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.
- 8.6. If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank Plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments that the defaulting party disputes in good faith.
- 8.7. The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow the Port to inspect such records at all reasonable times on request.
- 8.8. The Port may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to the Port against any liability of the Port to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.
- 9. INTELLECTUAL PROPERTY RIGHTS**
- 9.1. In respect of the Goods and any goods that are transferred to the Port as part of the Services under this Contract, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the Port, it will have full and unrestricted rights to sell and transfer all such items to the Port.
- 9.2. The Supplier assigns to the Port, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables.
- 9.3. The Supplier shall obtain waivers of all moral rights in the products, including for the avoidance of doubt the Deliverables, of the Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- 9.4. The Supplier shall, promptly at the Port's request, do (or procure to be done) all such further acts and things and the execution of all such

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other documents as the Port may from time to time require for the purpose of securing for the Port the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Port in accordance with clause 9.2.

9.5. All Port Materials are the exclusive property of the Port.

**10. INDEMNITY**

10.1. The Supplier shall keep the Port indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered incurred by the Port as a result of or in connection with:

10.2. any claim made against the Port for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;

10.3. any claim made against the Port by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defects in the Goods are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and

10.3.1. any claim made against the Port by a third party arising out of or in connection with the supply of the Goods or the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.

10.4. If a payment due from the Supplier under this clause is subject to tax (whether by way of direct assessment or withholding at its source), the Port shall be entitled to receive from the Supplier such amounts as shall ensure that the net receipt, after tax, to the Port in respect of the payment is the same as it would have been were the payment not subject to tax.

10.5. This clause 10 shall survive termination of the Contract.

**11. INSURANCE**

11.1. The Supplier shall insure against its full liability under the Contract and maintain all statutory required insurance policies, including but not limited to public liability insurance, employer's liability insurance (subject to the provisions of clause 11.2 below) and motor insurance (if applicable).

11.2. Public liability and employer's liability insurance cover shall for not less than £5,000,000 or, if greater, the minimum sums specified in the Service Specification in respect of any one incident and the number of incidents covered shall be unlimited.

11.3. The Supplier shall be responsible for maintaining such other insurance policies in connection with the provision of the Goods and/or the Services as may be appropriate or as the Port may require from time to time, and shall provide the Port with evidence of such insurance on request.

11.4. The Supplier shall upon request by the Port produce to the Port satisfactory documentary evidence that the insurance required under this clause 11 is properly maintained.

11.5. If the Supplier fails to insure in accordance with this clause 11, the Port may itself affect such insurance and may charge the cost of so doing together with an administrative charge of 5% to the Supplier.

11.6. During the term of the Contract the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance in an amount not less than £5,000,000 and shall, on the Port request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium.

11.7. The Supplier shall give immediate notice to the Port in the event of any accident or damage likely to form the subject of a claim under the Port's insurance and shall give all information and assistance in respect thereof that the Port's insurers may require and shall not negotiate pay settle admit or repudiate any claim without their written consent and shall permit the insurers to take proceedings in the name of the contractor to recover compensation or secure an indemnity from any third party in respect of any of the matters covered by the said insurance.

**12. COMPLIANCE WITH RELEVANT REQUIREMENTS**

12.1. The Supplier shall:

12.1.1. comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("**Relevant Requirements**");

12.1.2. have and shall maintain in place throughout the term of this agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate;

12.1.3. promptly report to the Port any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of the Contract;

12.1.4. on demand, certify to the Port in writing signed by an officer of the Supplier, compliance with this clause 11.1 by the Supplier and all persons associated with it under clause 12.2. The Supplier shall provide such supporting evidence of compliance as the Port may reasonably request.

12.2. The Supplier shall ensure that any person associated with the Supplier who is performing services or providing goods in connection with the Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 11.1. The Supplier shall be responsible for the observance and performance by such persons of the Relevant Requirements, and shall be directly liable to the Port for any breach by such persons of any of the Relevant Requirements.

12.3. Breach of this clause 11.1 shall be deemed a material breach under clause 14.3.1.

12.4. For the purpose of this clause 11.1, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause 11.1 a person associated with the Supplier includes but is not limited to any subcontractor of the Supplier.

**13. CONFIDENTIALITY**

13.1. A party (receiving party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (disclosing party), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract and shall at all times be responsible for the actions and/or omissions of such persons as if such actions and/or omissions were its own. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

13.2. This clause 13 shall survive termination of the Contract.

**14. TERMINATION**

14.1. Without limiting its other rights or remedies, the Port may terminate the Contract:

14.1.1. in respect of the supply of Services, by giving the Supplier one month's written notice; and

14.1.2. in respect of the supply of Goods, in whole or in part at any time before delivery with immediate effect by giving written notice to the Supplier, whereupon the Supplier shall discontinue all work on the Contract. The Port shall pay the Supplier fair and reasonable compensation for any work in progress on the Goods at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.

14.2. In any of the circumstances in these Conditions in which a party may terminate the Contract, where both Goods and Services are supplied, that party may terminate the Contract in respect of the Goods, or in respect of the Services, and the Contract shall continue in respect of the remaining supply.

14.3. Without limiting its other rights or remedies, the Port may terminate the Contract with immediate effect by giving written notice to the Supplier if:

14.3.1. the Supplier commits a material breach of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 10 days of receipt of notice in writing to do so;

14.3.2. the Supplier repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;

14.3.3. the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

14.3.4. the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;

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- 14.3.5. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company);
- 14.3.6. the Supplier (being an individual) is the subject of a bankruptcy petition or order;
- 14.3.7. a creditor or encumbrancer of the Supplier 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;
- 14.3.8. an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier (being a company);
- 14.3.9. the holder of a floating charge over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 14.3.10. a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
- 14.3.11. any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.3.3 to clause 14.3.10 (inclusive);
- 14.3.12. the Supplier suspends or ceases, or threatens to suspend, or cease, to carry on all or a substantial part of its business;
- 14.3.13. there is a change of Control of the Supplier (being a company or a partnership); or
- 14.3.14. the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 14.4. Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.
- 14.5. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
- 15. CONSEQUENCES OF TERMINATION**
- On termination of the Contract for any reason, the Supplier shall immediately deliver to the Port all Deliverables whether or not then complete, and return all Port Materials. If the Supplier fails to do so, then the Port may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
- 16. FORCE MAJEURE**
- 16.1. Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such a delay or failure result from an event, circumstances or cause beyond its reasonable control ("**Force Majeure Event**").
- 16.2. The Supplier shall use all reasonable endeavours to mitigate the effect of a Force Majeure Event on the performance of its obligations.
- 16.3. If a Force Majeure Event prevents, hinders or delays the Supplier's performance of its obligations for a continuous period of more than 40 Business Days, the Port may terminate the Contract immediately by giving written notice to the Supplier.
- 17. GENERAL**
- 17.1. Assignment and other dealings.
- 17.1.1. The Port may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 17.1.2. The Supplier may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Port.
- 17.2. Notices.
- 17.2.1. Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class recorded delivery post, commercial courier or e-mail to the email addresses set out in the Order.
- 17.2.2. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 17.2.1; if sent by pre-paid first class recorded delivery post, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by e-mail, one Business Day after transmission.
- 17.2.3. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 17.3. Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 17.4. Waiver. A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 17.5. No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 17.6. Third parties. A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 17.7. Variation. Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Port.
- 17.8. Conflict. If there is any conflict between the provisions of these Conditions and the Order, the provisions of the Order shall prevail.
- 17.9. Governing law. The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.
- 17.10. Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).