

# CONDITIONS OF CONTRACT FOR CONSULTANCY SERVICES OTHER THAN WORKS CONSULTANTS

**These conditions may only be varied with the written agreement of the Client. No terms or conditions put forward at any time by the Consultant shall form any part of the Contract.**

## 1. DEFINITIONS

In these conditions:

'Client' means Caledonian Maritime Assets Limited, a company incorporated in Scotland under Company Number SC001854 and having its registered office at Dalmore House, 310 St Vincent Street, Glasgow, G2 5QR;

'Consultant' means the person, firm or company to whom the Contract is issued;

'Project' means the services to be provided as specified by the Client in the Purchase Order and shall, where the context so admits, include any materials, articles and goods to be supplied thereunder;

'Premises' means the location where the Project is to be performed, as specified in the Purchase Order;

'Contract' means the contract between the Client and the Consultant consisting of the Purchase Order, quote or tender accepted by the Client, these Conditions, and any other documents (or parts thereof) specified in any Purchase Order, tender or quote and any Schedules annexed;

'Conditions' means the terms and conditions set out in this document as amended, novated, restated or supplemented from time to time by any written special terms and conditions of sale or supply set out in the Purchase Order;

'Purchase Order' means the document setting out the Client's requirements for the Contract.

## 2. THE PROJECT

2.1 The Consultant shall complete the Project with reasonable skill, care and to the reasonable satisfaction of the Client and shall conform in all respects with any particulars specified in the Contract and in any variations thereto.

2.2 The Project shall conform in all respects with the requirements of any Statutes, orders, regulations or bye-laws from time to time in force.

2.3 In all circumstances the Client relies on the skill and judgement of the Consultant in the performance of the Project and the execution of the Contract.

2.4 The Consultant shall provide the Client with such reports of his work on the Project at such intervals and in such form as the Client may from time to time require.

2.5 The Client reserves the right by notice to the Consultant to modify its requirement in relation to the Project and any alteration to the Contract fee or the completion date arising by reason of such modification shall be agreed between the parties (acting reasonably). Failing agreement the matter shall be determined by arbitration in accordance with the provisions of Condition 18.

2.6 The Consultant shall begin performing the Project on the date stated in the Contract as the start date and shall complete it by the date stated in the Contract as the end date or continue to perform it for the period stated in the Contract (whichever is applicable). The Consultant will devote such time to

the Project as is stated in the Contract. Time is of the essence of the Contract. The Client may by written notice require the Consultant to carry out the Project in such order as the Client may decide. In the absence of such notice the Consultant shall submit such detailed programmes of work and progress reports as the Client may from time to time require.

2.7 The Project shall be carried out at the Premises. Any access to premises and any labour and equipment that may be provided by the Client in connection with the performance of the Project shall be provided without acceptance by the Client of any liability whatsoever and the Consultant shall indemnify the Client in respect of any actions, suits, claims, demands, losses, charges, costs and expenses which the Client may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of performance of the Project to the extent that any such damage or injury is attributable to any act or omission of the Consultant or any of his employees, servants, agents or sub-contractors.

2.8 Any storage or transportation that may be provided by the Client for any property belonging to the Consultant shall be provided without acceptance by the Client of any liability whatsoever in respect of such property.

2.9 Where any access to the Premises is necessary in connection with performance of the Project the Consultant and any employees, servants, agents or sub-contractors shall at all times comply with the reasonable requirements of the Client's security and fire arrangements and shall conduct themselves in an appropriate manner to minimise disruption to the locality, others working and neighbours of such Premises.

2.10 Time of performance of the Project shall be of the essence and failure within the time promised or specified shall enable the Client (at his sole option) to release himself from any obligation to accept and pay for the Project and/or cancel all or part of the Contract therefore, in either case without prejudice to his other rights and remedies.

## 3. [CONSULTANT'S PERSONNEL

3.1 The Consultant shall make available for the purpose of the Project any individuals named on the Contract or otherwise as key personnel. The Consultant shall provide the Client with a list of the names and addresses of all persons regarded by the Consultant as key personnel and, if and when instructed by the Client, all other persons who may be at any time concerned with the Project or any part of it, specifying in each case the capacities in which they are so concerned and giving such other particulars and evidence of identity and other supporting evidence as the Client may reasonably require. The Client may at any time by notice to the Consultant designate any person concerned with the Project or any part of it as a key person. The Consultant shall not without the prior written approval of the client make any changes in the key personnel referred to in this paragraph.]

3.2 The Consultant shall take all steps reasonably required by the Client to prevent unauthorised persons being admitted to the Premises. If the Client

gives the Consultant notice that any person is not to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the Project, the Consultant shall take all reasonable steps to comply with such notice.

3.3 The decision of the Client as to whether any person is to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the Project or as to the designation or approval of key personnel and as to whether the Consultant has furnished the information or taken the steps required by him by this Condition shall be final and conclusive.

3.4 The Consultant shall bear the cost of any notice, instruction or decision of the Client under this Condition.

3.5 The Consultant agrees that all personnel performing the Project for the Client shall be its employees and that, under the contract of employment of each, any intellectual property rights arising out of or relating to work done by that person for the Consultant will vest or will be caused to vest in the Consultant and that employees will have no title right or interest whether legal or beneficial in any such intellectual property rights.

3.6 If any of the Consultant's personnel shall be prevented by illness or injury from performing the Project the Consultant or the person himself shall report that fact forthwith to the Client and, in the case of an absence of uncertain duration, shall keep the Client informed of the reason for his continued absence and of its expected duration. If the absence through illness or injury continues for more than 7 consecutive calendar days the Consultant or the person himself shall provide the Client with a Doctor's Certificate for each week of his continued absence.

## 4. FEES AND EXPENSES

4.1 The Client shall pay to the Consultant fees at the rate specified in the Contract.

4.2 The Consultant shall be entitled to be reimbursed by the Client the amount of all expenses reasonably and properly incurred by him in the performance of his duties hereunder subject to production of such evidence thereof as the Client may reasonably require.

4.3 Unless otherwise stated in the Contract, payment will be made within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed to the satisfaction of the Client.

4.4 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.

## 5. AUDIT

The Consultant shall keep and maintain for a minimum of two years after the Contract has been completed records to the satisfaction of the Client of all expenditures which are reimbursable by the Client and of the hours worked and costs incurred by the Consultant or in connection with any employees of the Consultant paid for by the Client on a time charge basis. The Consultant shall on request afford the Client or his representatives such access to those records as may be required by the Client in connection with the Contract.

## 6. CORRUPT GIFTS OR PAYMENTS

The Consultant shall not offer or give, or agree to give, to any member, employee or representative of the Client any gift or consideration of any kind as an inducement or reward for doing or refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other contract with the Client or for showing or refraining from showing favour or disfavour to any person in relation to this or any such contract. The attention of the Consultant is drawn to the criminal offences created by the **Public Bodies Corrupt Practices Act 1889** and the **Prevention of Corruption Acts 1906 and 1916**.

## 7. PATENTS, INFORMATION AND COPYRIGHT

7.1 Except to the extent that the Project incorporates designs furnished by the Client that nothing done by the Consultant in the performance of the Project shall infringe any patent, trade mark, registered design, copyright or other right in the nature of industrial or intellectual property of any third party and the Consultant shall indemnify the Client against all actions, claims, demands, costs and expenses which the Client may suffer or incur as a result of or in connection with any breach of this Condition.

7.2 All rights (including ownership and copyright) in any reports, documents, specifications, instructions, plans, drawings, patents, models or designs whether in writing or on magnetic or other media;

(a) furnished to or made available to the Consultant by the Client shall remain vested in the Client;

(b) prepared by or for the Consultant for use, or intended use, in relation to the performance of this Contract are hereby assigned to and shall vest in the Client, and (without prejudice to Condition 11.3) the Consultant shall not and shall procure that his employees, servants, sub-contractors and agents shall not (except to the extent necessary for the implementation of this Contract) without the prior written consent of the Client use or disclose any such reports, documents, specifications, instructions, plans, drawings, patents, models, designs or other material as aforesaid or any other information (whether or not relevant to this Contract) which the Consultant may obtain pursuant to or by reason of this Contract, except information which is in the public domain otherwise than by reason of a breach of this provision, and in particular (but without prejudice to the generality of the foregoing) the Consultant shall not refer to the Client or the contract in any advertisement without the Client's prior written consent.

7.3 The provisions of this Condition 7 shall apply during the continuance of this Contract and after its termination howsoever arising.

7.4 The Client will hold and use the information the Consultant provides for the administration of the Consultant's account. The Client undertakes not to divulge this information to any other party unless required to do so by law or to protect the Client's own business interests. Occasionally the Client may contact the Consultant about general matters that relate to the Client's business. If the Consultant does not wish to be contacted about these matters or if the Consultant wished further information on the Client's Data Protection Policy, the Consultant should write to the Data Protection Officer, Caledonian Maritime Assets Limited, Dalmore House, 310 St Vincent Street, Glasgow, G2 5QR.

## 8. INDEMNITIES AND INSURANCE

8.1 The Consultant shall **indemnify** and keep **indemnified** the Client, its servants and agents against all actions, liabilities, claims, demands, damages, costs and expenses incurred by or made by or against the Client its servants or agents in respect of any loss or damage or personal injury (including death) which arises from any advice given or anything done or omitted to be done under this Contract to the extent that such loss, damage or injury is caused by any breach of Contract by the Consultant, the negligence or other wrongful act of the Consultant, his servants or agents or any defect in the Project.

8.2 The Consultant (if an individual) represents that he is regarded by both the Inland Revenue and the Department of Social Security as self-employed and accordingly shall indemnify the Client against any tax, national insurance contributions or similar impost for which the Client may be liable in respect of the Consultant by reason of this Contract. The Consultant shall be responsible for making appropriate PAYE deductions for tax and national insurance contributions from the remuneration which it pays to its personnel and the Consultant agrees to indemnify the Client in respect of any claims or demands which may be made by the relevant authorities against the Client in respect of income tax relating to the provision of the Project by the Consultant.

8.3 The Consultant shall effect with an insurance company or companies acceptable to the Client a policy or policies of insurance covering all matters which are the subject of the indemnities and undertakings on the part of the Consultant contained in this Contract in the sum of £1,000,000 at least in respect of any one incident and unlimited in total, unless otherwise agreed by the Client in writing.

8.4 If requested, a certificate evidencing the existence of such policies shall be provided by the Consultant to the Client.

## 9. HEALTH & SAFETY AND ENVIRONMENT

9.1 The Consultant shall perform the Project in such a manner as to be safe and without risk to the health or safety of persons in the vicinity of the place where the Project is being performed (whether such persons are in the vicinity of the said place at the time when the Project is being performed or otherwise) and in such a manner as to comply with any relevant health and safety or other legislation (including Statutory Instrument, Orders, or Regulations made under the said legislation) and any requirements imposed by a local or other regulatory authority in connection with the performance of services of the type supplied to the Client, whether specifically or generally. The Consultant shall indemnify the Client against all actions, liabilities, suits, claims, demands, damages, losses, charges, costs and expenses which the Client may suffer or incur as a result of or in connection with any breach of this paragraph.

## 10. DISCRIMINATION

10.1 In relation to the Contract, the Consultant shall not unlawfully discriminate within the meaning and scope of the provisions of the **Race Relations Act 1976**, the **Sex Discrimination Act 1975**, the **Disability Discrimination Act 1995**, the **Equality Act 2006**, the **Employment Equality (Religion or Belief) Regulations 2003** and the **Employment Equality (Sexual Orientation) Regulations 2003** or any statutory modification or re-enactment thereof relating to discrimination in employment. The Consultant shall take all reasonable steps to ensure the observance of these provisions by all servants, employees or agents of the Consultant and all sub-contractors employed in the execution of the Contract.

10.2 [The Consultant acknowledges that it shall be responsible for obtaining a copy of the Client's (i) Code of Respect; and (ii) Dignity at Work Policy and the Consultant shall be responsible for ensuring that it and all servants, employees and agents of the Consultant and all sub-contractors employed in the performance of the Consultant's obligations under the Contract shall comply with the provisions and the spirit of such documents and the Client shall use its reasonable endeavours to provide the Consultant with copies of such documents.]

## 11. CONFIDENTIALITY AND ACCESS TO PUBLIC INFORMATION

11.1 The Consultant shall keep secret and not disclose and shall procure that his employees keep secret and do not disclose, any information of a confidential nature obtained by him by reason of this Contract except information which is in the public domain otherwise than by reason of a breach of this provision.

11.2 All information related to the Contract between the Client and the Consultant which is held by the Consultant on behalf of the Client shall be regarded as being held by the Client and is subject to the provisions of the **Freedom of Information (Scotland) Act 2002**.

11.3 The Client may disclose such information related to the Contract as may be required under the Freedom of Information (Scotland) Act 2002 and the Client shall not be liable for any such disclosure, including without limitation, (i) the disclosure of any information which would constitute an actionable breach of confidence; and (ii) the disclosure of any information which would or would be likely to prejudice the commercial interests of the Consultant in terms of the aforementioned Act.

11.4 Disclosure may be made by the Client of such information relating to the outcome of the procurement process as may be required to be published in the Official Journal of the European Communities or elsewhere in accordance with any EC or UK legislation, statute, order, directive, regulation or Government policy on the disclosure of information regarding government contracts. This disclosure may include the number of tenders received, the identity of the successful tenderer, the winning contract price, the specification of goods or services to be supplied, terms and conditions of contract, quality and performance standards, and subsequent performance against those quality and performance standards.

11.5 The Client may seek and obtain references about the Consultant from banks, existing or past clients, or other referees proposed by the Consultant.

11.6 the use of its information technology by the Consultant The provisions of this Condition 11 shall apply during the continuance of this Contract and after its termination howsoever arising.

**12. TERMINATION**

12.1 The Consultant shall notify the Client in writing immediately upon the occurrence of any of the following events:

(a) where the consultant is an individual and if a petition is presented for the Consultant's bankruptcy or a criminal bankruptcy order is made against the Consultant, or he makes any composition or arrangement with or for the benefit of creditors, or if an administrator is appointed to manage his affairs; or

(b) where the Consultant is not an individual but is a firm; or a number of persons acting together in any capacity, if any event in (a) or (c) of this Condition occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Consultant to be wound up; or

(c) where the Consultant is a company, if the company passes a resolution for winding-up or enters liquidation (otherwise than for the purposes of and followed by a bona fide scheme of solvent amalgamation or reconstruction) or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge;

(d) the Consultant ceases or threatens to cease to carry out the Project;

(e) the Consultant makes default in or commits any breach of its obligations to the Client hereunder;

(f) the Client reasonably apprehend that any of the events contained in Condition 12.1 is about to occur in relation to the Contract and notifies the Consultant accordingly.

12.2 On the occurrence of any of the events described in Condition 12.1, or if the Consultant shall have committed a material breach of this Contract and (if such a breach is capable of remedy) shall have failed to remedy such a breach within thirty days of being required by the Client in writing to do so, or, where the Consultant is an individual, and he has died or been adjudged incapable of managing his affairs within the meaning of Part VII of the **Mental Health Act 1983** the Client shall be entitled to terminate this Contract by notice to the Consultant with immediate effect. Thereafter and without prejudice to any other of his rights, the Client may himself complete the Project or have them completed by a third party, using for the purpose (making a fair and proper allowance therefor in any payment subsequently made to the Consultant) all materials, plant and equipment on the Premises belonging to the Consultant, and the Client shall not be liable to make any further payment to the Consultant until the Project has completed in accordance with the requirements of the Contract, and shall be entitled to deduct from any amount due to the Consultant the costs thereof incurred by the Client (including the Client's own costs). If the total cost to the Client exceeds the amount (if any) due to the Consultant, the difference shall be recoverable by the Client from the Consultant.

12.3 In addition to its rights of termination under Condition 12.1 and 12.2 the Client shall be entitled at all times to terminate this Contract by giving to the Consultant not less than thirty days' notice to that effect.

12.4 Termination under Conditions 12.1, 12.2 or 12.3 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Client and shall not affect the continued operation of Conditions 7 and 11.

**13. RETURN OF DOCUMENTS**

13.1 The Consultant will return to the Client promptly upon the termination of the Contract any document, paper, material or information supplied by or obtained from the Client in connection with the Contract, or extracted from such documents, papers, materials or information.

13.2 Where the Contract has been terminated pursuant to Condition 12.2 the Consultant may retain any documents, papers, materials or information which shall be required under that paragraph. Promptly upon submission of the report to the Client, the Consultant will return any documents, papers, materials or information which he may have retained in terms of this paragraph.

**14. RECOVERY AND SUMS DUE**

Wherever under this Contract any sum of money is recoverable from or payable to the Client by the Consultant, that sum may be deducted from any sum then due, or which at any later time may become due, by the Client to the Consultant under this Contract or under any other agreement or contract between the Client and the Consultant.

**15. ASSIGNATION AND SUB-CONTRACTING**

15.1 The Consultant shall not assign nor sub-contract the whole or any portion of the Contract without the prior written consent of the Client. Sub-contracting any part of the Contract shall not relieve the Consultant of any obligation or duty attributed to him under the Contract of any obligation or duty attributed to him under the Contract or these conditions.

15.2 Where the Client has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Consultant to the Client immediately after it is issued.

**16. NOTICES**

Any notice given under or pursuant to the Contract may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted by facsimile transmission or other means of telecommunication resulting in the receipt of a written communication in permanent form and if so sent or transmitted to the address of the party shown on the Purchase Order, or to such other address as the party may by notice to the other have substituted therefor, shall be deemed to have been delivered on the day it was sent if a business day, or if not a business day, then on the next occurring business day thereafter.

**17. STATUS OF CONTRACT**

Nothing in the Contract shall have the effect of making the Consultant the employee or servant of the Client.

**18. HEADINGS AND MISCELLANEOUS**

19.1 The heading to these Conditions shall not affect their interpretation.

18.2 Each clause of these Conditions and every part hereof shall be separate and severable to the extent that if one clause of part thereof shall be unenforceable the other clauses and other parts of the clause respectively shall be effective.

18.3 No waiver of any of these Conditions by the Client shall be construed as a waiver of any subsequent breach of the same or any other provision.

18.4 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

**19. GOVERNING LAW**

These Conditions shall be governed by and construed in accordance with Scots law and the Consultant hereby irrevocably submits to the exclusive jurisdiction of the Scottish courts. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the client to take proceedings against the Consultant in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.

