

## CONDITIONS OF CONTRACT FOR THE PURCHASE OF GOODS

**These conditions may be varied only by the written agreement of the Purchaser. No terms or conditions put forward at any time by the Supplier shall form any part of the Contract unless specifically agreed in writing by the Purchaser.**

### 1. DEFINITIONS

In these conditions:

'Purchaser' 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;

'Goods' means any such goods as are to be supplied to the Purchaser by the Supplier (or by any of the Supplier's sub contractors) pursuant to or in connection with the Contract;

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

'Premises' means the location where the Goods are to be delivered, as specified in the Contract or Purchase Order;

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

'Conditions' means the terms and conditions of sale or supply 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 Purchaser's requirements for the Contract.

### 2. THE GOODS

2.1 The Supplier shall sell and the Purchaser shall purchase the Goods in accordance with any written quotation of the Supplier which is accepted by the Purchaser, or any written order of the Purchaser which is accepted by the Supplier, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions.

2.2 The Goods shall be to the reasonable satisfaction of the Purchaser and shall conform in all respects with any particulars specified in the Contract and in any variations thereto.

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

2.4 The Goods shall be of at least satisfactory quality and shall fit and sufficient for the purpose for which such goods are ordinarily used for any particular purpose, or for any specific purpose made known to the Supplier by the Purchaser, and in all circumstances the Purchaser relies on the skill and judgement of the Supplier in the supply of the Goods and the execution of the Contract.

### 3. THE PRICE

3.1 The price of the Goods shall be as stated in the Contract and no increase will be accepted by the Purchaser unless agreed in writing by the Purchaser prior to the delivery of the Goods.

3.2 Unless otherwise agreed in writing by the Purchaser, the Supplier shall render a separate invoice in respect of each consignment of Goods delivered under the Contract. Payment shall be due 30 days after receipt of the Goods or the correct invoice therefore, whichever is the later.

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

### 4. DELIVERY

4.1 The Goods shall be delivered to the Premises or such other location as specified by the Purchaser. Any access to the Premises and any labour and equipment that may be provided by the Purchaser in connection with delivery shall be provided without acceptance by the Purchaser of any liability whatsoever and the Supplier shall indemnify the Purchaser in respect of any actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser 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 delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Supplier or any of his employees, servants, agents or sub-contractors.

4.2 Where any access to the Premises is necessary in connection with delivery or installation of the Goods the Supplier and any employees, servants, agents or sub-contractors shall at all times comply with the reasonable requirements of the Purchaser'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.

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

4.4 The Supplier shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.

### 5. PROPERTY AND RISK

Property and risk in the Goods shall without prejudice to any of the rights or remedies of the Purchaser (including the Purchaser's rights and

remedies under condition 7 hereof) pass to the Purchaser at the time of delivery.

### 6. DAMAGE IN TRANSIT

On dispatch of any consignment of the Goods the supplier shall send to the Purchaser at the address for delivery of the Goods an advice note specifying the means of transport, the place and date of dispatch, the date and time of delivery and the number of packages, a description of the Goods and their weight and volume. The Supplier shall free of charge and as quickly as possible either repair or replace (as the Purchaser shall elect) such of the Goods as may either be damaged in transit or having been placed in transit fail to be delivered to the Purchaser provided that:

(a) In the case of damage to such Goods in transit the Purchaser shall within 30 days of delivery give notice to the Supplier that the Goods have been damaged;

(b) In the case of non-delivery the Purchaser shall (provided that the Purchaser has been advised of the dispatch and date of delivery of the Goods) within ten days of the notified date of delivery give notice to the Supplier that the Goods have not been delivered.

### 7. INSPECTION, REJECTION AND GUARANTEE

7.1 The Supplier shall permit the Purchaser or its authorised representatives to conduct any inspections or tests on the Goods that they may reasonably require and the Supplier shall afford all reasonable facilities and assistance free of charge to facilitate such inspections or tests. No failure to make complaint at the time of such inspection or tests and no approval given during or after such tests or inspections shall constitute a waiver by the Purchaser of any rights or remedies in respect of the Goods.

7.2 The Purchaser may by written notice to the Supplier reject any of the Goods which fail to meet the requirements specified in the Contract. Such notice shall be given within a reasonable time after delivery to the Purchaser of Goods concerned. If the Purchaser shall reject any of the Goods pursuant to this Condition the Purchaser shall be entitled (at no cost to the Purchaser and without prejudice to his other rights and remedies) either:

(a) to have the Goods concerned as quickly as possible either repaired by the Supplier or (as the Purchaser shall elect) replaced by the Supplier with Goods which comply in all respects with the requirements specified herein; or

(b) to obtain a refund of the full purchase price from the Supplier in respect of the Goods concerned.

7.3 The guaranteed period applicable to the Goods shall be 12 months from putting into service or 18 months after the date of delivery, whichever shall be the shorter (subject to any alternative guarantee arrangements agreed in writing between the Purchaser and the Supplier). If the Purchaser shall within such guarantee period or within 30 days thereafter give notice in writing to the Supplier of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use the Purchaser shall be entitled (at no cost to the Purchaser and without prejudice to his other rights and remedies) either:

(a) to have the Goods concerned as quickly as possible either repaired by the Supplier or (as the Purchaser shall elect) replaced by the Supplier with Goods which comply in all respects with the requirements specified herein; or

(b) to obtain a refund of the full purchase price from the Supplier in respect of the Goods concerned.

7.4 Any Goods rejected or returned by the Purchaser as described in paragraph 7.2 or 7.3, shall be returned to the Supplier at the Supplier's risk and expense.

## 8 LABELLING AND PACKAGING

8.1 The Goods shall be packed and marked in a proper manner and in accordance with the Purchaser's instructions and any statutory requirements and any requirements of the carriers. In particular the Goods shall be marked with the Purchase Order Number and the net, gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous goods (and all documents relating thereto) shall bear prominent and adequate warnings. The Supplier shall indemnify the Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any breach of this Condition.

8.2 All packaging materials will be considered non-returnable and will be destroyed unless the Supplier's advice note states that such material will be charged for unless returned. The Purchaser accepts no liability in respect of the non-arrival at the Supplier's premises of empty packages returned by the Purchaser unless the Supplier shall within 10 days of receiving notice from the Purchaser that the packages have been dispatched notify the Purchaser of such non-arrival.

## 9 CORRUPT GIFTS OR PAYMENTS

The Supplier shall not offer to give, or agree to give, to any employee or representative of the Purchaser any gift or consideration of any kind as 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 Purchaser 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 Supplier is drawn to the criminal offences created by the **Public Bodies Corrupt Practices Act 1889** and the **Prevention of Corruption Acts 1906 and 1916**.

## 10 PATENTS, INFORMATION AND COPYRIGHT

10.1 It shall be a condition of the Contract that, except to the extent the Goods incorporate designs furnished by the Purchaser, that nothing done by the Supplier in the supply of the Goods

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 Supplier shall indemnify the Purchaser against all actions, claims, demands, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any breach of this Condition.

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

(a) furnished to or made available to the Supplier by the Purchaser shall remain vested in the Purchaser;

(b) prepared by or for the Supplier for use, or intended use, in relation to the performance of this Contract are hereby assigned to and shall vest in the Purchaser and (without prejudice to Condition 14.2) the Supplier shall not (and shall procure that his employees, servants, agents and sub-contractors shall not) (except to the extent necessary for the implementation of this Contract) without the prior written consent of the Purchaser 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 Supplier 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 Supplier shall not refer to the Purchaser of the contract in any advertisement without the Purchaser's prior written consent.

10.3 The provisions of this Condition 10 shall apply during the continuance of this Contract and after its termination howsoever arising.

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

## 11 HEALTH & SAFETY AND ENVIRONMENT

11.1 The Supplier represents and warrants to the Purchaser that the Supplier has satisfied himself that all necessary tests and examinations have been made or will be made prior to delivery of the Goods to ensure that the Goods are designed and constructed so as to be safe and without risk to the health and safety of persons using the same, and that he has made available to the Purchaser adequate information about the use for which the Goods have been designed and have been tested and about any conditions necessary to ensure that when put to use the goods will be safe and without risk to health. The Supplier shall indemnify the Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses which the

Purchaser may suffer or incur as a result of or in connection with any breach of this condition.

## 12 INDEMNITY AND INSURANCE

12.1 Without prejudice to any right or remedies of the Purchaser the Supplier shall indemnify the Purchaser against all actions, liabilities, suits, claims, damages, demands, losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any damage to property or in respect of any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any breach of the Contract by the Supplier, negligent or wilful act or omission of the Supplier or any defect in the Goods.

12.2 Except in the case of loss, damage or personal injury (including death) suffered by an employee of the Supplier (in respect of which the indemnity in Condition 12.1 shall apply whether or not the loss, damage or personal injury was caused by the negligent or wilful act or omission of the Purchaser), the indemnity contained in Condition 12.1 shall not apply to the extent that the loss, damage or injury is caused by the negligent or wilful act or omission of the Purchaser.

12.3 The Supplier shall effect with a reputable insurance company at all times whilst engaged in the delivery of the Goods on the Premises:

(a) employer's liability insurance in accordance with any legal requirements for the time being, and

(b) public liability insurance for not less than £1 million for any one incident and unlimited in total, unless otherwise agreed by the Purchaser in writing, and in such sum and range of cover as the Supplier deems to be appropriate from time to time, but covering at least all the matters which are the subject of indemnities or compensation obligations under these Conditions and shall at the request of the Purchaser produce the relevant policy or policies together with receipts or other evidence of payment of the latest premium due thereunder.

## 13 DISCRIMINATION

13.1 In relation to the Contract, the Supplier 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 Supplier shall take all reasonable steps to secure the observance of these provisions by all servants, employees or agents of the Supplier and all sub-contractors employed in the execution of the Contract.

[13.2 The Supplier acknowledges that it shall be responsible for obtaining a copy of the Purchaser's (i) Code of Respect; and (ii) Dignity at Work Policy and the Supplier shall be responsible for ensuring that it and all servants, employees and agents of the Supplier and all sub-contractors employed in the performance of the Supplier's obligations under the contract to supply the Goods shall comply with the provisions and the spirit of such documents and the Purchaser shall use its reasonable

endeavours to provide the Supplier with copies of such documents.]

#### 14 CONFIDENTIALITY AND ACCESS TO PUBLIC INFORMATION

14.1 The Supplier 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.

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

14.3 The Purchaser may disclose such information related to the Contract as may be required under the **Freedom of Information (Scotland) Act 2002** and the Purchaser 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 Supplier in terms of the aforementioned Act.

14.4 Disclosure may be made by the Purchaser 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.

14.5 The Purchaser may seek and obtain references about the Supplier from banks, existing or past clients, or other referees proposed by the Supplier.

14.6 The provisions of this Condition 14 shall apply during the continuance of this Contract and after its termination howsoever arising.

#### 15 TERMINATION ON SUPPLIER'S INSOLVENCY

15.1 Without prejudice to any other rights or remedies of the Purchaser under the Contract the Purchaser shall have the right forthwith to terminate the Contract without any liability to the Purchaser by written notice to the Supplier or the appropriate trustee in bankruptcy or sequestration, receiver, administrative receiver, liquidator or administrator:

(a) where the Supplier is an individual and the Supplier dies or if a petition is presented for the Supplier's bankruptcy or the sequestration of his estate or a criminal bankruptcy order is made against the Supplier, or he is apparently insolvent, or he makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the

benefit of creditors, or if an administrator or trustee is appointed to manage his affairs: or

(b) where the Supplier 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 the firm or any partner in the firm or any of those persons or a petition is presented for the Supplier to be wound up; or

(c) where the Supplier is a company, if the company passes a resolution for winding-up or dissolution 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 administrator, 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 Supplier ceases or threatens to cease to supply the Goods.

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

(f) the Purchaser reasonably apprehends that any of the events contained in this Condition 15 is about to occur in relation to the Contract and notifies the Supplier accordingly.

15.2 Where the Contract is for more than one delivery of Goods then without prejudice to any other rights or remedies of the Purchaser under the Contract the Purchaser shall have the right to terminate the Contract without any liability to the Supplier on 30 days written notice to the Supplier.

#### 16 RECOVERY OF SUMS DUE

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

#### 17 ASSIGNATION AND SUB-CONTRACTING

17.1 The Supplier shall not without the written consent of the Purchaser assign the benefit or burden of the Contract or any part thereof.

17.2 No sub-contracting by the Supplier shall in any way relieve the Supplier of any of its responsibilities under the Contract.

#### 18 NOTICES

Any notice given under the 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 substituted thereof, and 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 .

#### 19 HEADINGS & MISCELLANEOUS

20.1 The headings to these Conditions shall not affect their interpretation.

19.2 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.

19.3 no waiver of any of these Conditions by the Purchaser shall be construed as a waiver of any subsequent breach of the same or any other provision.

19.4 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.

#### 20 GOVERNING LAW

These Conditions shall be governed by and construed in accordance with Scots law and the Supplier 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 Purchaser to take proceedings against the Supplier 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.
