

CONDITIONS OF CONTRACT FOR THE PURCHASE OF SERVICES

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 Municipal Buildings, Fore St, Port Glasgow, PA14 5EQ.;

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

'Services' means the services to be provided as specified by the Purchaser 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 Services are to be performed, as specified in the Contract or Purchase Order;

'Contract' means the contract between the Purchaser and the Supplier consisting of the 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 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 SERVICES

2.1 The Supplier shall perform and the Purchaser shall accept the Services 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 Supplier shall perform the Services with reasonable skill, care and diligence and 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 Services shall conform in all respects with the requirements of any Statutes, orders, regulations or bye-laws from time to time in force.

2.4 In all circumstances the Purchaser relies on the skill and judgement of the Supplier in the performance of the Services and the execution of the Contract.

3 DELIVERY

3.1 The Services shall be provided at 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 performance of the Services 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 performance of the Services 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.

3.2 Where any access to the Premises is necessary in connection with performance of the Services 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.

3.3 Time of performance of the Services 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 Services and/or cancel all or part of the Contract therefore, in either case without prejudice to his other rights and remedies.

4 CHANGE TO CONTRACT REQUIREMENTS

4.1 The Purchaser may order any variation to any part of the Services that for any other reason shall in its opinion be desirable. Any such variation may include (but shall not be restricted to) additions, omissions, alterations, substitutions to the Services and changes in quality, form, character, kind, timing, method or sequence of the Services.

4.2 Save as otherwise provided herein, no variation of the Services as provided for in Condition 4.1 hereof shall be valid unless given or confirmed in the form of an order given by the Purchaser. All such orders shall be given in writing provided that if for any reason the Purchaser shall find it necessary to give any such order orally in the first instance the Supplier shall comply with such oral order which must be confirmed in writing by the Purchaser within 2 working days of the giving of such oral order by the Purchaser, failing which the variation made by such oral order shall cease to have effect on the expiry of the said 2 working day period.

4.3 Where any such variation of the Services made in accordance with Condition 4.1 and 4.2 has affected or may affect the costs incurred by the Supplier in providing the

Services, the Supplier will notify the Purchaser in writing of the effect which it has had or may have on the said costs and such notification shall be considered by the Purchaser, who shall take all of the facts into account (including such information as may be provided by the Supplier in respect of the effect which such variation has had or may have on the costs incurred by the Supplier in providing the service) and may authorise such alteration to the sums to be paid to the Supplier in accordance with the provisions of the Contract as are in his opinion, appropriate and reasonable in the circumstances.

5 INSPECTION OF PREMISES AND NATURE OF SERVICES

5.1 The Supplier is deemed to have inspected the Premises before tendering so as to have understood the nature and extent of the Services to be carried out and satisfied himself in relation to all matters connected with the Services and Premises.

5.2 The Purchaser shall, at the request of the Supplier, grant such access as may be reasonable for this purpose.

6 SUPPLIERS STATUS

In carrying out the Services the Supplier shall be acting as principal and not as the agent of the Purchaser. Accordingly:

(a) the Supplier shall not (and shall procure that his agents and servants do not) say or do anything that might lead any other person to believe that the Supplier is acting as the agent of the Purchaser and

(b) nothing in this Contract shall impose any liability on the Purchaser in respect of any liability incurred by the Supplier to any other person but this shall not be taken to exclude or limit any liability of the Purchaser to the Supplier that may arise by virtue of either a breach of this Contract or any negligence on the part of the Purchaser, his staff or agents.

7 SUPPLIER'S PERSONNEL

7.1 The Supplier shall take the steps reasonably required by the Purchaser to prevent unauthorised persons being admitted to the Premises. If the Purchaser gives the Supplier 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 performance of the Contract, the Supplier shall take all reasonable steps to comply with such notice and if required by the Purchaser the Supplier shall replace any person removed under this Condition with another suitably qualified person and procure that any pass issued to the person removed is surrendered.

7.2 If and when instructed by the Purchaser, the Supplier shall give to the Purchaser a list of names and addresses of all persons who are or may be at any time concerned with the Services or any part of them, specifying the capacities in which they are so

concerned, and giving such other particulars and evidence of identity and other supporting evidence as the Purchaser may reasonably require.

7.3 The decision of the Purchaser 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 performance of the Contract and as to whether the Supplier has furnished the information or taken the steps required of him by this Condition shall be final and conclusive.

7.4 The Supplier shall bear the cost of any notice, instruction or decision of the Purchaser under this Condition.

8 MANNER OF CARRYING OUT THE SERVICES

8.1 The Supplier shall make no delivery of materials, plant or other things nor commence any work on the Premises without obtaining the Purchaser's prior consent.

8.2 Access to the Premises shall not be exclusive to the Supplier but only such as shall enable him to carry out the Services concurrently with the execution of work by others. The Supplier shall co-operate with such others as the Purchaser may reasonably require.

8.3 The Purchaser shall have the power at any time during the progress of the Services to order in writing:

(a) The removal from the Premises of any materials which in the opinion of the Purchaser are either hazardous, noxious or not in accordance with the Contract, and/or

(b) the substitution of proper and suitable materials, and/or

(c) the removal and proper re-execution notwithstanding any previous test thereof or interim payment thereof of any work which, in respect of material or workmanship is not in the opinion of the Purchaser in accordance with the Contract.

8.4 On completion of the Services the Supplier shall remove his plant, equipment and unused materials and shall clear away from the Premises all rubbish arising out of the Services and leave the Premises in a neat and tidy condition.

9 TIME OF PERFORMANCE

The Supplier shall begin performing the Services on the date stated in the Purchase Order as the start date and shall complete them by the date stated in the Purchase Order as the end date or continue to perform them for the period stated in the Purchase Order (whichever is applicable). Time is of the essence of the Contract. The Purchaser may by written notice require the Supplier to execute the Services in such order as the Purchaser may decide. In the absence of such notice the Supplier shall submit such detailed programmes of work and progress reports as the Purchaser may from time to time require.

10 PAYMENT

10.1 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 before delivery of the Goods.

10.2 Unless otherwise stated in the Contract, payment will be made within 30 days of receipt and agreement of invoices which are to be

submitted monthly in arrears, for work completed to the satisfaction of the Purchaser.

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

11 FREE-ISSUE MATERIALS

Where the Purchaser for the purpose of the Contract issues materials they shall at all times remain the property of the Purchaser. The Supplier shall maintain all such materials in good order and condition and shall use such materials solely in connection with the Contract. The Supplier shall notify the Purchaser of any surplus materials remaining after completion of the Services and shall dispose of them as the Purchaser may direct, complying where applicable, at their own cost with any **waste legislation, order, directive or regulations or policy**. Waste of such materials arising from bad workmanship or negligence of the Supplier or any of his servants, agents or sub-contractors shall be made good at the Supplier's expense. Without prejudice to any other of the rights of the Purchaser, the Supplier shall deliver up such materials whether processed or not to the Purchaser on demand.

12 AUDIT

The Supplier shall keep and maintain until 2 years after the Contract has been completed records to the satisfaction of the Purchaser of all expenditures which are reimbursable by the Purchaser and of the hours worked and costs incurred in connection with any employees of the Supplier paid for by the Purchaser on a time charge basis. The Supplier shall on request afford the Purchaser or his representatives such access to those records as may be required by the Purchaser in connection with the Contract.

13 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 for 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**.

14 PATENTS, INFORMATION AND COPYRIGHT

14.1 It shall be a condition of the Contract that, except to the extent the Services incorporate designs furnished by the Purchaser, that nothing done by the Supplier in the performance of the Services 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.

14.2 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 17.2) the Supplier 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 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.

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

14.4 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.

15 INDEMNITY AND INSURANCE

15.1 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 Services.

15.2 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 15.1 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 15.1 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.

15.3 The Supplier shall have in force and shall require any sub-contractor to have in force at all times whilst engaged in the delivery of the Services 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 matters which are the subject of indemnities or compensation obligations under these Conditions.

15.4 The policy or policies of insurance referred to in Condition 15.3 shall be exhibited to the Purchaser whenever requested, together with satisfactory evidence of payment of premiums.

16 DISCRIMINATION

16.1 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.

16.2 [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 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.]

17 CONFIDENTIALITY AND ACCESS TO PUBLIC INFORMATION

17.1 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.

17.2 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 Act (Scotland) 2002.

17.3 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.

17.4 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.

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

17.6 The provisions of this Condition 17 shall apply during the continuance of this Contract and after its termination howsoever arising.

18 TERMINATION

18.1 The Supplier shall notify the Purchaser in writing immediately upon the occurrence of any of the following events:

(a) where the Supplier is an individual and 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 carry out the Services.

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

(f) the Purchaser reasonably apprehend that any of the events contained in this Condition 18.1 is about to occur in relation to the Contract and notifies the Supplier accordingly.

18.2 On the occurrence of any of the events described in Condition 18.1 or, if the Supplier shall have committed a material breach of this Contract and (if such breach is capable of remedy) shall have failed to remedy such breach within 30 days of being required by the Purchaser in writing to do so or, where the Supplier 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 or of Part V of the **Mental Health (Scotland) Act 1984**, the Purchaser shall be entitled to terminate this Contract by notice to the Supplier with immediate effect. Thereafter and without prejudice to any other of his rights, the Purchaser may himself complete the Services 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 Supplier) all materials, plant and equipment on the Premises belonging to the Supplier, and the Purchaser shall not be liable to make any further payment to the Supplier until the Services have completed in accordance with the requirements of the Contract, and shall be entitled to deduct from any amount due to the Supplier the costs thereof incurred by the Purchaser (including the Purchaser's own costs). If the total cost to the Purchaser exceeds the amount (if any) due to the Supplier, the difference shall be recoverable by the Purchaser from the Supplier.

18.3 In addition to his rights of termination under Condition 18.1 and 18.2, the Purchaser shall be entitled at all times to terminate this Contract by giving to the Supplier not less than 30 days notice to that effect.

18.4 Termination under paragraphs 18.1, 18.2 or 18.3 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Purchaser and shall not affect the continued operation of Conditions 14 and 17.

19 HEALTH & SAFETY AND ENVIRONMENT

19.1 The Supplier shall perform the Services 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 Services are being performed (whether such persons are in the vicinity of the said place at the time when the Services are 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 Purchaser, whether specifically or generally. The Supplier shall indemnify the Purchaser against all liability, actions, 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 breach of this paragraph.

20 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 the Supplier.

21 ASSIGNATION AND SUB-CONTRACTING

21.1 The Supplier shall not assign nor sub-contract the whole or any portion of the Contract without the prior written consent of the Purchaser. Sub-contracting any part of the Contract, shall not relieve the Supplier of any obligation or duty attributable to him under the Contract or these Conditions.

21.2 Where the Purchaser has consented to the placing of sub-contracts, copies of each sub-

contract shall be sent by the Supplier to the Purchaser immediately it is issued.

22 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.

23 HEADINGS & MISCELLANEOUS

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

23.2 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.

23.3 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.

23.4 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.

24 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, whether concurrently or not.