

**CALEDONIAN MARITIME ASSETS LTD PURCHASE  
ORDER/CONTRACT TERMS AND CONDITIONS FOR WORKS**

**1. DEFINITIONS**

**Commencement Date** means such commencement date as is stated in the Contract Order if any or as otherwise formally intimated to the Contractor by CMAL in writing.

**Completion Date** such completion date as is stated in the Contract Order if any or as otherwise formally intimated to the Contractor by CMAL in writing.

**Contract** means these Contract Conditions, the Contract Order if any including the contract documents therein referred and any other documents confirmed by CMAL in CMAL's written acceptance of the Contract.

**Contract Order** means the contract order attached to the front of these Contract Conditions, if any.

**Contract Sum** means the contract sum stated in the Contract Order if any or as otherwise formally intimated to the Contractor by CMAL in writing.

**Site** means the site stated in the Contract Order if any or as otherwise formally intimated to the Contractor by CMAL in writing.

**Works** means the works described in the Contract Order if any or as otherwise formally intimated to the Contractor by CMAL in writing.

**2. CONTRACTOR'S OBLIGATIONS**

2.1 The Contractor shall carry out and complete the Works in a proper and workmanlike manner and in accordance with the Contract and any legislative and statutory requirements. In relation to any design in the Works, the Contractor shall exercise all the reasonable skill, care and diligence to be expected of a properly qualified and competent designer experienced in carrying out works of a similar size, scope and complexity as the Works.

2.2 The Contractor shall obtain all licences and/or permissions necessary to carry out the Works and in the performance of the Works shall co-operate with and not impede CMAL and/or any other contractor or subcontractor working on the Site and shall integrate the Works with any other works being carried out on the Site. The Contractor shall carry out the works in conformity with any directions and requirements of CMAL.

2.3 The Contractor is aware of the port/ferry operations and the scheduled ferry services on or adjacent to the Site and the Contractor will plan and co-ordinate the Works without disruption to the said operations and services and all costs associated with such are included within the Contract Sum unless expressly agreed with CMAL.

**3. MATERIALS, GOODS AND WORKMANSHIP**

The Contractor shall carry out and complete the Works using materials and goods of the kinds and standards described in the Contract or reasonably expected given the size, scope and complexity of the Works. Workmanship of the Works shall be of the standards described in the Contract or reasonably expected given the size, scope and complexity of the Works and to the reasonable satisfaction of CMAL.

**4. COMMENCEMENT AND COMPLETION**

4.1 The Contractor shall proceed with the Works expeditiously and regularly so as to carry out and complete the Works by the Completion Date for the Works (if any) and, in any event, time shall be of the essence.

4.2 When CMAL is of the opinion that the Works are practically complete, it shall notify the Contractor in writing (which includes email) that the Works are practically complete.

4.3 The Contractor shall make good any defects in the Works which CMAL notifies to it within 12 months of completion of the Works in accordance with clause 4.2.

**5. DISCREPANCIES**

Where there is an ambiguity or conflict between the Contract Documents or between the Contract and any direction issued by CMAL under the Contract, the Contractor shall immediately give notice with appropriate details to CMAL, who shall issue instructions in that regard.

**6. CONDITIONS AFFECTING THE WORKS**

6.1 The Contractor accepts that it has had the opportunity to inspect the physical and other conditions of or affecting

the Site and/or the carrying out of the Works and warrants that it has fully satisfied itself that the same is in all respects suitable for the Works. The Contractor shall not be entitled to rely upon any survey, report or other document prepared by or on behalf of CMAL. To the extent that any such survey, report or document is exhibited to the Contractor, CMAL does not make any representation or warranty as to its accuracy or the completeness of same.

**7. INSTRUCTIONS**

The Contractor shall forthwith comply with all instructions issued to him in writing by CMAL.

**8. VARIATIONS**

8.1 **Variation** means the alteration or modification of the design (if any), quality or quantity of the Works at the sole instruction of CMAL including any addition, omission or substitution of any work or alteration of the kind or standard of materials or goods to be used in the Works.

8.2 If a Variation is required, CMAL shall notify the Contractor. On receipt of such notification, CMAL shall provide its proposals to carry out such Variation along with any associated costs valued at fair rates and prices as soon as reasonably practicable and CMAL shall at its absolute discretion either approve or reject such proposal in writing. For the avoidance of doubt, the Contractor shall not commence the performance of any Variation without the prior written approval of CMAL and any payment in relation to any Variation shall be conditional upon the written approval of CMAL to such Variation as well as the Contractor producing to CMAL such substantiation as may be necessary to vouch actual costs incurred for the Variation.

**9. INSURANCE**

9.1 The Contractor shall maintain adequate employer's liability insurance, public liability insurance and, where required under the Contract, professional indemnity insurance, to the satisfaction of CMAL and shall produce evidence of this insurance to CMAL on or before the Works commence.

9.2 Where required by the Contract, the Contractor shall maintain up to and including the date on which the Works are certified as practically complete in accordance with clause 4.2, a joint names policy which includes CMAL and the Contractor as composite insured for all risks insurance for the full reinstatement value of the Works.

**10. PAYMENT**

10.1 The Contractor shall submit to CMAL an application for payment which accurately reflects the sums due to it on the 1st day of the month, or if the 1st falls on a non-business day, on the business day immediately prior to the 1st day of the month, unless the Parties otherwise agree.

10.2 The application for payment must be cumulative and must specify the amount of payment claimed to be due, how that amount is calculated and to what the amount relates. The amount due must identify 'Labour' and 'Materials' separately. Measurements and substantiation should be produced in support of the application for payment.

10.3 The due date for payment shall be the 15th day of the month (the **Due Date**). Not later than 5 days after the Due Date, CMAL shall give a certificate of valuation (a **Payer Notice**) to the Contractor and subject to any Pay Less Notice given by CMAL under clause 10.7, the amount of payment to be made by CMAL on or before the Final Date for Payment shall be the sum stated in the Payer Notice. The Contractor shall issue a valid VAT invoice to CMAL for the sum stated as due in the Payer Notice no later than the last day of the month in which the Contractor's application for payment is received.

10.4 Any Payer Notice under this Contract shall specify the sum that the Party giving the notice considers to be due at the Due Date and the basis on which that sum has been calculated.

10.5 If the Payer Notice is not given in accordance with clause 10.3 and 10.4, the amount of the payment to be made by CMAL shall, subject to any Pay Less Notice under clause 10.7, be the sum stated as due in the Contractor's application for payment and the Contractor shall issue a valid VAT invoice to CMAL on the last day

- of the month in which the Contractor's application for payment is received.
- 10.6 The final date for payment shall be the last day of the month following the month in which the Contractor's application for payment is received by CMAL (the **Final Date for Payment**).
- 10.7 If CMAL intends to pay less than the sum stated as due in the Payer Notice or application for payment, as the case may be, he shall not later than 1 day before the Final Date for Payment give a written notice of that intention to the Contractor and shall specify both the sum that he considers to be due to the Contractor at the date the notice is given and the basis on which that sum has been calculated (a **Pay Less Notice**).
- 10.8 Where a Pay Less Notice is given, the payment to be made on or before the Final Date for Payment shall not be less than the amount stated as due in this notice.
- 10.9 CMAL shall be entitled to deduct from, or set off against, any monies due to the Contractor, any sum or sums which the Contractor is liable to pay to CMAL, whether for damages, or otherwise, and whether under this Contract, recovered as a debt, or otherwise.
11. **TITLE IN MATERIALS**  
Unfixed materials and goods delivered to the Site by the Contractor intended for use in the Works shall become the property of CMAL and the title will transfer to CMAL on their delivery to the Site by the Contractor. Responsibility for any materials and goods delivered to the Site by the Contractor shall remain with the Contractor until the Works are practically complete in accordance with clause 4.2.
12. **COPYRIGHT**  
12.1 All other intellectual property created by the Contractor as a result of the Works will vest in CMAL.  
12.2 The copyright and all other intellectual property rights in all work and materials prepared or compiled by the Contractor prior to or outside the performance of the Contract remains vested in the Contractor. The Contractor hereby grants to CMAL a royalty-free, non-exclusive, irrevocable licence to copy, use and reproduce any such work and materials for any purpose related to the Works.
13. **TERMINATION**  
13.1 If the Contractor suspends the Works without reasonable cause, is "Insolvent" as defined in section 113 of the Housing Grants, Construction and Regeneration Act 1996, as amended or updated from time to time or fails to proceed regularly and diligently with the Works, CMAL may give notice to the Contractor advising that failure to remedy such default(s) within a period of 7 days from receipt of the notice will result in termination of the Contract without further notice, save in relation to where the Contractor is "Insolvent" in which case CMAL can terminate forthwith.  
13.2 In the event that the Contractor is Insolvent, no further sum will become due to the Contractor and CMAL need not pay any sum that has already become due either: a) insofar as CMAL has given or gives a Pay Less Notice under clause 10.7, or b) if the Contractor, after the last date upon which such notice could have been given by CMAL, has become Insolvent.  
13.3 In the event of termination of the Contract under this clause, the Contractor shall immediately and unconditionally deliver to CMAL all documents, drawings, information and materials in the Contractor's possession relating to the Works.  
13.4 The Contractor must not commit any breach of the Employment Relations 1999 Act (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or commit any breach of the Data Protection Act 1998 by unlawfully processing personal data in connection with any blacklisting activities. Breach of this clause is a material defect which shall entitle CMAL to terminate the Contract with immediate effect.
14. **ASSIGNATION**  
The Contractor shall not assign the benefit or in any way transfer or sub-contract or delegate any of its obligations under this Contract without the written consent of CMAL. CMAL may assign the benefit of this Contract to any person without the Contractor's consent.
15. **NOTICES**  
Any notice or other document shall be in writing and shall be deemed to be duly given or served if addressed and given by hand delivery, sent by pre-paid post to the Party to be served at the address stated in this Contract or such other addresses as may from time to time be agreed, or sent by email at the address stated in this Contract or such other addresses as may from time to time be agreed.
16. **INDEMNITY**  
The Contractor shall indemnify and hold harmless CMAL against and from any claim, damage, loss or expense due to or resulting from any negligence, breach of contract or act or omission on the part of the Contractor under this Contract.
17. **SUB-CONTRACTORS**  
17.1 The Contractor shall give CMAL 7 days' notice if it wishes to appoint any sub-contractors in relation to the whole or any part of the Works and shall not without CMAL's consent sub-contract the whole or any part of the Works. Notwithstanding any such sub-contracting, the Contractor shall remain responsible for carrying out and completing the Works in all respects in accordance with the Contract.
18. **GENERAL**  
No terms and conditions submitted by the Contractor in any invoice, acceptance, delivery note or other will form part of this Contract and the Contract Conditions are deemed to be accepted by the Contractor when the Contractor commences the Works on Site.
19. **FREEDOM OF INFORMATION**  
19.1 The Supplier acknowledges that:  
19.1.1 the Buyer is subject to the requirements of FOI Legislation and the Supplier shall assist and cooperate with the Buyer (at the Supplier's expense) to enable the Buyer to comply with these Information disclosure requirements at its sole discretion; and  
19.1.2 all information submitted by the Supplier to the Buyer may need to be disclosed and/or published by the Buyer in order to comply with the requirements of FOI Legislation.  
19.2 The Supplier shall:  
19.2.1 provide all necessary assistance as reasonably requested by the Buyer to enable the Buyer to respond to a Request for Information within the time for compliance set out in FOI Legislation; and  
19.2.2 provide the Buyer with a copy of all Information in its possession or power in the form that the Buyer requires within five (5) Business Days (or such other period as the Buyer may specify) of the Buyer requesting that Information.  
19.3 The Supplier shall ensure that all Information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the Buyer to inspect such records as requested from time to time.  
19.4 All Information related to the Contract which is held by the Supplier on behalf of the Buyer shall be regarded as being held by the Buyer and is subject to the provisions of FOI Legislation and the Buyer's Freedom of Information Policy at <http://www.cmassets.co.uk>.
20. **DISPUTES OR DIFFERENCES AND APPLICABLE LAW**  
20.1 Subject to clause 20.2, if a dispute or difference arises under this Contract, senior representatives of the Contractor and CMAL shall meet in order to mediate a resolution.  
20.2 If a dispute or difference arises under this Contract which either Party wishes to refer to adjudication, the procedure set down by the Scheme for Construction Contracts (Scotland) Regulations 1998 Part 1, Adjudication as amended by the Scheme for Construction Contracts (Scotland) Amendment Regulations 2011 shall apply.  
20.3 This Contract shall be governed by Scots law and, subject to clause 20.1 and 20.2 above, the Scottish Courts shall have jurisdiction over any dispute or difference between the Parties which arises out of or in connection with this Contract.