

# CALEDONIAN MARITIME ASSETS LTD PURCHASE ORDER/CONTRACT TERMS AND CONDITIONS FOR GOODS AND SERVICES

## BETWEEN:

A. **CALEDONIAN MARITIME ASSETS LIMITED** a company incorporated in Scotland under Company Number SC001854 and having its registered office at Municipal Buildings, Fore Street, Port Glasgow PA14 5EQ (the **Buyer**);

and

B. Supplier named in the quotation acceptance or purchase order (the **Supplier**).

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## INTERPRETATION AND DEFINITIONS

**Business Day** means 9.00am to 5.00pm on any day (other than a Saturday or Sunday or a public holiday) on which clearing banks are open for the transaction of normal banking business in Glasgow;

**Commencement Date** is as defined in the request for quotation or as defined by the Buyer;

**Consents** means all approvals, consents, permissions, licences, certificates, accreditations, professional qualifications and authorisations (whether statutory or otherwise) which are required for the provision of the specification in the quotation;

**Contract** means these purchase order terms, any Orders, any quotations and any other relevant documentation;

**FOI Legislation** means the Environmental Information Regulations (Scotland) 2004 and the Freedom of Information (Scotland) Act 2002 and any subordinate legislation made under such acts from time to time together with any guidance and/or codes of practice issued by the Scottish Information Commissioner in relation to such legislation;

**Information** means both (i) information as defined under section 73 of the Freedom of Information (Scotland) Act 2002, and (ii) environmental information as defined under the Environmental Information Regulations (Scotland) 2004;

**Intellectual Property Rights** means patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world;

**Quotation** means the requirement of which these purchase order terms form part;

**Order** means an order given in accordance with Clause [4.1];

**Regulations** means regulation, legislation, practice or concession or official directive, ruling, request, notice, guideline, statement of policy or

practice by any relevant legislative authority, the European Union, governmental, local, international, national or other competent authority or agency, which concerns or may affect the requirement and/or the performance or receipt thereof;

**Requests for Information** shall have the meaning set out in FOI Legislation or any apparent request for information under FOI Legislation;

## 1.1 Interpretation

In the Contract unless otherwise specified:

1.1.1 a reference to a party includes its successors or permitted assigns;

1.1.2 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.1.3 a statute or statutory instrument or any of their provisions is to be construed as a reference to that statute or statutory instrument or such provision as the same may have been or may from time to time hereafter be amended or re-enacted;

1.1.4 words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders;

1.1.5 the words **including**, **include** and **in particular** shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding words; and

1.1.6 in the event of any conflict between this part of the Contract and another part of the Contract, the provisions of this part of the Contract shall prevail.

## 2. GOODS OR SERVICES

2.1 The Supplier shall supply the goods or services detailed in the relevant Order or quotation on the terms set out in the Contract. The Supplier warrants that by entering into the Contract and delivering the Goods or performing the Services it shall not be in breach of any contract or other binding obligation.

2.2 The guarantee period applicable to the Goods shall be twelve (12) months from the putting into service or eighteen (18) months from the date of delivery of the Goods, whichever is the shorter.

2.3 The Supplier shall permit the Buyer to inspect and test the Goods at any time before delivery. If the Buyer considers that the Goods do not conform or are unlikely to comply in all respects with the Contract, the Buyer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

2.4 If any of the Goods are damaged in transit, or fail to be delivered having been placed in transit, the Supplier shall free of charge and as quickly as possible either repair or replace (as the Buyer shall elect) such Goods.

2.5 If, during the transit of the Goods to the specified location, the Goods require to be stored on the Buyer's premises, such storage may, at the Buyer's sole discretion, be provided by the Buyer without acceptance by the Buyer of any liability whatsoever. The Buyer reserves the right to charge the Supplier a fee for such storage.

2.6 If the Buyer acting reasonably is not satisfied with the Goods or Services or believes that their manufacture or processing or provision does not comply in all respects with the Contract, the Supplier shall without extra cost to the Buyer take all steps necessary to ensure prompt and due compliance to the satisfaction of the Buyer.

2.7 All representations, statements or warranties made or given by the Supplier, its employees and agents (whether orally in writing) regarding the quality and fitness for purpose of the Goods or any part of the Goods shall be deemed to be express conditions of the Contract.

2.8 The Buyer may by written notice to the Supplier, within a reasonable time after delivery, reject any Goods which fail to comply with the Contract.

2.9 The time for the supply or provision of the Goods or Services in accordance with the relevant Order or quotation shall be of the essence. If the Supplier fails to deliver or provide the Goods or Services in accordance with the Contract (other than as a result of any acts or events beyond its control) then the Buyer may:

2.9.1 terminate the Contract by written notice with immediate effect, without prejudice to the Buyer's other remedies, including the right to recover from the Supplier all additional costs incurred by the Buyer in having the Goods or Services supplied or provided by a third party;

2.9.2 terminate the Order to which the supply or provision of the Goods or Services relates by written notice with immediate effect, without prejudice to the Buyer's other remedies, including the right to recover from the Supplier all additional costs incurred by the Buyer in having the Goods or Services supplied or provided by a third party; or

2.9.3 require the Supplier to proceed with the fulfilment of the Order (making any such changes as are required for the supply or provision of the Goods or Services as are necessary to comply with the specification in the Contract) within a period approved by the Buyer and the Buyer shall have the right to recover from the Supplier any losses which it may have suffered.

2.10 Title and risk in the Goods shall pass to the Buyer on delivery.

2.11 The Goods shall be packed and marked in a proper manner and in accordance with the Buyer's instructions, any statutory requirements and any requirements of the carriers. In particular the Goods shall be marked with the number of the Order (if any), the net, gross and tare weights and the name of the contents. All containers of hazardous goods (and all documents relating thereto) shall bear prominent and adequate warnings.

2.12 All packaging materials will be considered non-returnable and will be destroyed unless the Supplier's advice note states that such materials will

be charged for unless returned. The Buyer accepts no liability in respect of the non-arrival at the Supplier's premises of empty packages returned by the Buyer.

### 3. DURATION

The supply or provision of the Goods or Services by the Supplier shall be for the period specified in the relevant Order or quotation subject to earlier termination pursuant to Clause [6].

### 4. PURCHASE ORDERS AND PRICES OR FEES

4.1 The Buyer shall be entitled from time to time to request in writing by way of an Order the provision of any or all of the Goods or Services from the Supplier.

4.2 The Supplier shall only accept and act upon an Order given in accordance with Clause 4.1 to buy the Goods or Services. No Order shall be given prior to the Commencement Date. The Buyer shall have no commitment to purchase the Goods or Services without an Order.

4.3 The Supplier shall comply with the relevant Order or quotation in respect of:

4.3.1 the date upon which the supply of Goods or provision of Services require to commence and the duration of the supply or provision thereof;

4.3.2 a description of the Goods or the Services which are to be supplied;

4.3.3 the Price or Fee of the Goods or Services which are to be supplied; and

4.3.4 where the delivery or provision of the Goods or Services is to be made and where invoices are to be sent;

or as may be otherwise agreed in writing with the Supplier.

4.4 Payment shall be due [thirty (30)] Business Days after receipt of the Goods or completion of the Services or the receipt of the correct invoice therefor, whichever is the later. Invoices are to be sent to Caledonian Maritime Assets Limited, Municipal Buildings, Fore Street, Port Glasgow, PA14 5EQ.

4.5 All of the Goods supplied or Services provided by the Supplier shall conform to the requirements set out in the relevant Order or quotation.

4.6 The Buyer shall pay to the Supplier the price or fee at the rate specified in the Contract the **Price** or the **Fee**, which sum is exclusive of VAT.

### 5. DUTIES OF SUPPLIER

5.1 The Supplier shall supply the Goods or provide the Services in accordance with the relevant Order or quotation and the Contract.

5.2 The Supplier shall comply with all:

5.2.1 applicable Consents and Regulations in force from time to time in respect of the performance of the Supplier's obligations under the Contract; and

5.2.2 health and safety rules and Regulations that apply at any of the Buyer's premises.

5.3 The Supplier shall indemnify the Buyer against all actions, suits, claims demands, losses, charges, costs and expenses which the Buyer may suffer or incur as a result of or in connection with any breach of Clause 5.2.2.

5.4 The Supplier shall promptly obtain all necessary export licences, clearances and other Consents necessary for the supply of the Goods.

5.5 The Supplier shall supply the Goods or provide the Services with reasonable skill, care and diligence having regard to industry standards or professional requirements applicable to the Supplier.

5.6 The Supplier shall provide the Services at such location(s) as the Buyer may reasonably require or is appropriate for the provision of the Services.

5.7 The Supplier shall make no delivery of materials, plant or other things nor commence any provision of the Services on the Buyer's premises without obtaining the Buyer's prior consent.

5.8 Should the provision of the Services involve the supply of goods to the Buyer such goods shall be of satisfactory quality and fit for the purpose for which they are to be used by the Buyer having regard to the provisions of the Contract.

5.9 The Supplier warrants that:

5.9.1 it shall deliver the Goods in accordance with the delivery schedule specified by the Buyer. Each separate instalment shall be invoiced and paid for in accordance with the provisions in the relevant Order or quotation;

5.9.2 the Goods shall be of satisfactory quality and fit for the purpose for which they are to be used having regard to the provisions of the Contract;

5.9.3 the Goods will conform with the quality, description and other particulars of the Goods set out in the Contract; and

5.9.4 the Supplier is the sole beneficial owner of the Goods and has the entire right, title and interest in the Goods and has the authority to transfer title in the Goods.

### 6. TERMINATION OF CONTRACT

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

6.1.1 the Supplier commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within one (1) month of receipt of notice in writing of the breach;

6.1.2 the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either

unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

6.1.3 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;

6.1.4 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier (being a company);

6.1.5 any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause [6.1.2] to Clause [6.1.4] (inclusive);

6.1.6 the Supplier suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business;

6.1.7 the Supplier is convicted of any criminal offence (other than an offence under any road traffic legislation in the United Kingdom or elsewhere for which a fine or non-custodial penalty is imposed) or any offence under any regulation or legislation relating to insider dealing; or

6.1.8 the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

6.2 Without limiting its other rights or remedies:

6.2.1 the Buyer may terminate the Contract giving the Supplier not less than one (1) months prior written notice; or

6.2.2 the Supplier may terminate the Contract giving the Buyer not less than three (3) months' prior written notice,

provided always that, subject to any provisions of the Contract to the contrary, the parties shall act in accordance with the terms of any Order outstanding as at the expiration of such period of notice.

6.3 The Supplier 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.

## 7. INSURANCE

7.1 The Supplier shall, and shall procure that any subcontractor shall, maintain:

- 7.1.1 professional indemnity insurance in the amount of not less than the amount required in the quotation for the period commencing on the Commencement Date and expiring on the date occurring twelve (12) years after the termination of the Contract;
- 7.1.2 product liability insurance in the amount required in the quotation for the duration of the Contract;
- 7.1.3 public liability insurance in the amount required in the quotation for the duration of the Contract; and
- 7.1.4 employer's liability insurance in the amount required in the quotation for the duration of the Contract.

7.2 The Supplier shall:

- 7.2.1 ensure that the insurance policies are taken out with reputable insurers;
- 7.2.2 on request, produce documentary evidence which establishes to the Buyer's reasonable satisfaction such insurance referred to in Clause 7.1 are being maintained; and
- 7.2.3 notify the Buyer immediately if for any reason, the Supplier is unable to continue to maintain such insurance.

7.3 On termination of this Contract, howsoever arising, the Supplier shall maintain the insurances referred to in Clauses 7.1.2 – 7.1.4 for the remainder of the term of any Order then in force at the date of such termination.

## 8. LIABILITY

8.1 The Supplier shall keep the Buyer indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Buyer as a result of or in connection with:

- 8.1.1 any claim made against the Buyer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defect in the Goods or Services is attributable to the acts or omissions of the Supplier, its employees, agents or sub-contractors; and
- 8.1.2 any claim made against the Buyer by a third party arising out of, or in connection with, the delivery or provision of the Goods or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or sub-contractors.

## 9. DISPUTE RESOLUTION

9.1 In the event of any dispute or difference in connection with the Contract the parties shall seek to resolve the dispute or difference amicably by further consultation and negotiation in good faith.

9.2 If the dispute or difference is not resolved to the satisfaction of both parties within thirty (30) Business Days after it has arisen or such other period as the parties agree, either party shall be entitled to institute proceedings against the other.

## 10. FREEDOM OF INFORMATION

10.1 The Supplier acknowledges that:

- 10.1.1 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
- 10.1.2 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.

10.2 The Supplier shall:

- 10.2.1 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
- 10.2.2 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.

10.3 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.

10.4 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>.

## 11. INTELLECTUAL PROPERTY RIGHTS

11.1 The Supplier shall fully and continually indemnify the Buyer on demand from and against any and all losses, claims, damages, charges, expenses, liabilities, demands, proceedings and actions (including reasonable legal costs) which the Buyer sustains or incurs or which may be brought or established against the Buyer by any person and which in any case arises out of or in relation to or by reason of any allegation that the Goods or Services provided or made available by the Supplier or its use or possession by the Buyer infringes any Intellectual Property Rights of any third party.

11.2 Any Intellectual Property Rights owned by, vested in or controlled by the Buyer which may be disclosed or made available to the Supplier will remain at all times the property of the Buyer.

11.3 Any specifications, instructions, reports or documentation provided to the Buyer by the Supplier in relation to the supply of the Goods or provision of the Services (including any Confidential Information) shall remain the property of the Buyer at all times and the Supplier will return such items to the Buyer immediately upon request but in any case no later than the termination or the expiry of the Contract.

## 12. CONFIDENTIALITY

12.1 Subject to Clause [10], the Supplier undertakes that it shall not (at any time) disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the Buyer (**Confidential Information**) except as permitted by this Clause [12.1]. The Supplier may disclose the Buyer's Confidential Information:

12.1.1 to its employees, representatives or advisers who need to know such information for the purposes of carrying out the Supplier's obligations under the Contract. The Supplier shall procure that its employees, representatives or advisers to whom it discloses the Buyer's Confidential Information comply with this Clause [12.1]; and

12.1.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12.2 The Supplier shall not use the Buyer's Confidential Information for any purpose other than to perform its obligations under the Contract.

## 13. AUDIT

The Supplier shall provide the Buyer with full and unrestricted access to all places where the Services are performed or Goods are manufactured and shall provide the Buyer with such information related to the supply of the Goods or provision of the Services as it may reasonably require.

## 14. DISCRIMINATION

The Supplier shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation (including but not limited to the Equality Act 2010) relating to discrimination in employment. The Supplier shall take all reasonable steps to ensure the observance of these provisions by all employees and agents of the Supplier and all sub-contractors employed in the execution of the Contract.

## 15. ANTI-CORRUPTION AND ANTI-BRIBERY

15.1 The Supplier shall (and shall procure that any persons associated with it engaged in the performance of the Contract shall):

15.1.1 comply with all applicable laws and codes of practice relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and shall not do or omit to do, any act that will cause or lead the Buyer to be in breach of the Bribery Act 2010;

- 15.1.2 comply with the Buyer's ethics, anti-bribery and anti-corruption policies as notified to the Supplier from time to time and have, maintain in place and enforce throughout the term of the Contract adequate procedures to ensure compliance with Clause [15.1.1]; and
- 15.1.3 promptly report to the Buyer any request or demand for any undue financial or other advantage of any kind received in connection with the performance of the Contract.
- 15.2 Breach of this Clause [15] shall entitle the Buyer to terminate the Contract by written notice with immediate effect.

## 16. ETHICAL AND SOCIAL REQUIREMENTS

- 16.1 The Supplier, its suppliers and any sub-contractor shall comply with any relevant statutory requirements in relation to the terms of employment and working conditions of its employees, workers and any other persons engaged to perform works and/or services on its behalf. This includes complying with:
- 16.1.1 health and safety requirements;
- 16.1.2 national minimum wage requirements; and
- 16.1.3 any relevant social security requirements.
- 16.2 The Supplier, its suppliers and/or any sub-contractor shall not engage in any form of child or forced labour.
- 16.3 In the event that the Supplier, its suppliers and/or any sub-contractor breach the terms of Clauses 16.1 above, the Buyer will be entitled to terminate the Contract immediately on written notice pursuant to Clause 6.1.1.

## 17. GOVERNING LAW AND JURISDICTION

- 17.1 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with Scots law.
- 17.2 The parties irrevocably agree that the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

## 18. MISCELLANEOUS

### 18.1 Access and Security

The Supplier and all of its subcontractors shall comply with all security requirements of the Buyer.

### 18.2 Buyer's Right of Set-Off

The Buyer may set off against any sums due to the Supplier whether under the Contract or otherwise any lawful set-off or counterclaim to which the Buyer may at any time be entitled.

### 18.3 Status of the Parties

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose.

### 18.4 Notices

Any notice or other document to be served under the Contract shall be delivered or sent by first class post or facsimile process to the relevant address shown on the Contract or to such other address as the party may advise in writing. "Writing" shall not include e-mail.

### 18.5 Assignment and Sub-Contracting

The Supplier shall not assign or otherwise transfer or sub-contract or charge the whole or any part of its rights and obligations under the Contract without the prior written consent of the Buyer.

### 18.6 Variation

Any variation of the Contract shall be binding only if it is recorded in a document signed by an authorised signatory of the Supplier and an authorised signatory or a director of the Buyer.

### 18.7 Invalidity

If any provision of the Contract is or becomes invalid or unenforceable, in whole or in part, in any jurisdiction, the validity and enforceability of the other provisions of the Contract and its validity and enforceability in any other jurisdiction shall not be affected and the parties shall enter into good faith discussions to find a suitable replacement provision of equivalent effect.

### 18.8 Costs

Save to the extent otherwise set out in the Contract, the Buyer and the Supplier shall each pay its own costs, charges and expenses in relation to the negotiation, preparation, execution and implementation of the Contract and all other documents in the agreed form referred to in the Contract.

### 18.9 Waiver

A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

### 18.10 Survival of obligations

On termination of this Contract the following clauses shall survive and continue in full force and effect: Clause [7.1.1] (Insurance); Clause [8] (Liability); Clause [9] (Dispute Resolution); Clause [10] (Freedom of Information); Clause [11] (Intellectual Property Rights); Clause [12] (Confidentiality); and Clause [17] (Governing Law and Jurisdiction).