



TERMS AND CONDITIONS OF PURCHASE

1. DEFINITIONS

In these Conditions

- 1.1 "Contract" means the contract between SCT and the Supplier for the supply of Goods and/or Services consisting of the Purchase Order and these Conditions.
- 1.2 "Goods" means all goods supplied by the Supplier to SCT.
- 1.3 "Purchase Order" means SCT's Purchase Order or any other order for Goods or Services issued by SCT to the Supplier together with any other documents (or part thereof) specified in the Purchase Order and any amendments thereto.
- 1.4 "SCT" means Southampton Container Terminals Limited trading as DP World Southampton.
- 1.5 "Services" means all services supplied by the Supplier to SCT.
- 1.6 "Supplier" means the person, firm or company supplying Goods or Services to SCT.

2. GENERAL

- 2.1 Headings are purely for ease of reference and do not form part of or affect the interpretation of these Conditions.
- 2.2 Words importing any gender include every gender and words importing the singular number include the plural number and vice versa.
- 2.3 References to either party herein include references to its successors in title, permitted assignees and novatees.
- 2.4 If any provision of these Conditions is prohibited by law or judged by a court or other competent tribunal to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from these Conditions and rendered ineffective as far as possible without modifying the remaining provisions of these Conditions, and shall not in any way affect any other circumstances of or the validity or enforcement of these Conditions.
- 2.5 No variation or addition to these Conditions or the Purchase Order is effective unless and until SCT so agrees in writing.
- 2.6 The Supplier may not assign, delegate, sub-contract, mortgage, charge or otherwise transfer or encumber any of its rights and obligations under the Contract or these Conditions without the prior written agreement of SCT.

3. APPLICATION

- 3.1 These Conditions shall apply to all Contracts entered into by SCT with the Supplier for the provision of any Goods or Services by the Supplier unless and to the extent agreed otherwise by SCT in writing.
- 3.2 These Conditions shall prevail to the exclusion of any conditions proposed by the Supplier or referred to in any quotation, invoice or other documents or communications by the Supplier.

4. TITLE AND RISK

- 4.1 The Supplier warrants that:
- (a) at the date of delivery the Supplier has full, clear and unencumbered title to all the Goods; and
 - (b) the Supplier has obtained and shall make available to SCT all licences, clearances, consents and authorisations necessary for the provision of the Goods and Services to SCT;
- 4.2 Property in the Goods shall pass to SCT once delivery of the Goods has been safely and properly effected.
- 4.3 The Goods shall remain at the Supplier's risk until delivery has been made. The Supplier shall keep the Goods insured until delivery.

5. DELIVERY

- 5.1 The date for the delivery of the Goods and the provision of the Services shall be as specified in the Purchase Order.
- 5.2 Delivery occurs:-
- (a) upon handing over of Goods by the Supplier to SCT at SCT's premises or such place as specified in the Purchase Order and in accordance with the terms of the Purchase Order; or
 - (b) where an installation certificate or similar document is required, delivery occurs on handing over of the installation certificate or similar document and in accordance with any other terms of the Purchase Order.

6. PRICE

- 6.1 Unless stated otherwise in the Purchase Order the price agreed by the parties for the Goods and Services is a fixed price which includes packing, labelling, carriage, insurance, delivery, installation (if applicable) royalties and licence fees and all other charges, duties and impositions and valued added tax.
- 6.2 Where the Supplier has incurred any liability to SCT, whether under these Conditions or otherwise and howsoever arising, SCT may set off the amount of such liability against any sum that would otherwise be due to the Supplier which sum shall to that extent be abated.

7. IMPORTED/EXPORTED GOODS

- 7.1 Without prejudice to clause 6 hereof, where Goods are supplied across international borders, the Supplier shall:
- (a) promptly complete any declarations and make any applications necessary for the intended supply of the Goods;
 - (b) pay any duty, VAT, customs charges or other taxes or imposts payable upon the supply of the Goods;

- (c) promptly obtain any licences, clearances or other consents that are necessary for the supply of the Goods;
 - (d) arrange and pay for suitable export packing of the Goods; and arrange and pay for the carriage of the Goods so as to ensure delivery in accordance with clause 5 hereof.
- 7.2 If the Supplier is unable to comply with its obligations in clauses 7.1 (a) to (c) it must notify SCT prior to entering into the Contract.

8. PAYMENT

- 8.1 Unless otherwise agreed by the Parties in writing, SCT will pay for the Goods and Services within 30 days following the end of the month of receipt of a correct tax invoice which specifies the correct Purchase Order number. Value added tax (if applicable) is to be shown separately on all invoices as a net extra charge.
- 8.2 Unless otherwise agreed between the parties in writing, SCT will pay all sums in Pounds Sterling.

9. QUALITY AND DEFECTS

- 9.1 All Goods and Services must be supplied in accordance with the Purchase Order or such other requirements as notified by SCT to the supplier.
- 9.2 The Supplier must ensure that all Goods and Services conform to all specifications and samples given by the Supplier or stipulated by SCT and that they are fit for any purpose which SCT has expressly made known to the Supplier or for which they may reasonably be expected to be intended.
- 9.3 All Services must be carried out with proper and reasonable skill and care and despatch.
- 9.4 Where Goods are supplied in breach of these Conditions, SCT has the right at its discretion, to demand that the Supplier shall, as soon as reasonably practicable repair or replace any or all of the Goods. SCT's rights under this Clause shall be without prejudice to SCT's other rights to reject the Goods and claim damages and repayment of the price (or any part thereof) whether under these Conditions or otherwise.
- 9.5 The Supplier shall provide SCT with all documentation which SCT may need to comply with the obligations imposed by COSHH or any similar regulations, rules or requirements. Such documentation shall include, without limitation, material safety data sheets.
- 9.6 Where required by SCT, the Supplier shall provide independent documentary evidence of the quality of the Goods supplied. Such independent documentary evidence may include (but not be limited to) milling certificates, quality certificates or such other documentation as SCT might require.

10. INSPECTION

- 10.1 SCT has the right, but is not obliged, at any time during normal working hours to inspect any Goods or Services which are the subject of the Contract but which have not yet been delivered or completed.
- 10.2 Inspection of the Goods or Services by SCT does not relieve the Supplier of or otherwise reduce any obligation, responsibility or liability under the Contract or otherwise.

- 10.3 SCT may use any reasonable means to satisfy itself that the correct materials, workmanship, skill and care are being or have been used.
- 10.4 If SCT reasonably considers that the Goods or Services are not in accordance with the Purchase Order or otherwise in breach of these Conditions:-
- (a) SCT has the right to instruct alternative suppliers of Goods or Services to complete the work; and
 - (b) any increase in cost to SCT of instructing alternative suppliers shall be borne by the Supplier.

11. WORK ON SCT'S PREMISES

- 11.1 All personnel appointed by the Supplier or the Supplier's subcontractors or agents working within SCT's premises must report to the person designated by SCT in the Purchaser Order prior to commencing work or to such other person as may from time to time be nominated by SCT.
- 11.2 Where any Purchase Order requires the Supplier to carry out work on SCT's premises, the Supplier and its employees, sub-contractors and agents working on the premises must:
- (a) observe all relevant statutory rules, regulations, bye-laws and site regulations.
 - (b) comply with the reasonable instructions of SCT, their employees or appointed agents.
- 11.3 All personnel appointed by the Supplier or the Supplier's subcontractors or agents working on SCT's premises must be competent, appropriately trained, courteous and well presented.
- 11.4 SCT has the right to request the immediate removal from the premises of the Supplier's employees, subcontractors, agents (or the employees of either of them) or anyone under the instruction of the Supplier.
- 11.5 Entry on to SCT's premises will be subject to the Standard Trading Conditions of SCT. A copy is available on request and can be found on SCT's website <http://www.dpworldsouthampton.com/about-us/terms-and-conditions>. The Supplier's attention is drawn to the limits and exclusions of liability therein and the SCT advises the Supplier to arrange insurance accordingly.
- 11.6 The Supplier shall take all reasonable steps to advise any employees, subcontractors, agents (or employees of either of them) or anyone instructed by or on behalf of the Supplier that entry onto SCT's premises is subject to those Standard Trading Conditions and to supply that party with a copy of those conditions. Moreover, the Supplier shall draw the attention of the relevant party to the limits and exclusions of liability in those Standard Trading Conditions.
- 11.7 The Supplier shall ensure that the Supplier and any subcontractor or agent of the Supplier arranges and maintains in full force at all times adequate insurance to cover the Supplier (or the subcontractor or agent, as the case may be) for its liabilities arising from or in relation to any work on SCT's premises whether such liabilities arise under the Contract or otherwise.
- 11.8 The insurance arranged in accordance with clause 11.7 shall be on terms which:
- (a) provide for a waiver of subrogation for any claims against SCT; and
 - (b) cannot be varied or withdrawn except upon written notice to SCT.

11.9 The Supplier shall provide to SCT copies of any insurance policies arranged in accordance with clause 11.7 upon request.

11.10 The Supplier shall not do, cause or suffer to be done anything which might vitiate or otherwise prejudice the terms of such insurance or any claims thereunder

12. REJECTION

12.1 Without prejudice to SCT's rights under clause 8.4 or otherwise under the Contract or these Conditions, SCT shall have the right to reject any Goods or Services which do not conform with the Contract within a reasonable time of delivery or a reasonable time of such non-conformity becoming apparent to SCT whichever is the latest.

12.2 SCT has the right to accept the Goods and Services without prejudice to its right to claim damages for any loss or damage incurred as a result of the Goods not conforming with the Contract or any other breach of these Conditions or the Contract by the Supplier.

12.3 Payment by SCT for Goods will not prejudice any right of rejection or any other remedy afforded by the Contract, these Conditions or otherwise.

12.4 If SCT rejects any Goods, the property and risk in the Goods shall immediately revert to the Supplier. Rejected Goods will be removed by the Supplier at its expense and the Supplier shall reimburse SCT for any storage costs or any other expense or loss of whatever nature incurred by SCT in respect of the rejected Goods.

13. FORCE MAJEURE

13.1 Neither party shall be liable for any delay in performing or failure to perform any of its obligations under the Contract caused by events beyond its reasonable control ("Force Majeure Event"). However, any delay or failure by a sub-contractor, agent or supplier of the Supplier shall not relieve the Supplier from liability for delay or failures except where that delay or failure is also beyond the reasonable control of such sub-contractor, agent or supplier.

13.2 The party claiming the Force Majeure Event shall promptly notify the other in writing of the reasons for the delay or stoppage (and the likely duration) and shall take all reasonable steps to overcome the delay or stoppage.

13.3 If the party claiming the Force Majeure Event has complied with clause 13.2 its performance under the Contract shall be suspended for the period that the Force Majeure Event continues and that party shall have an extension of time for performance which is reasonable. As regards such delay or stoppage:

- (a) any costs arising from the delay or stoppage shall be borne by the party incurring those costs;
- (b) either party may, if the delay or stoppage continues for more than 30 continuous days, terminate the Contract with immediate effect on giving written notice to the other and neither party shall be liable to the other for such termination; and
- (c) the party claiming the Force Majeure Event shall take all necessary steps to bring that event to a close or to find a solution by which the Contract may be performed despite the Force Majeure Event.

13.4 So long as the Force Majeure Event continues, SCT may contract with others for the supply of any Goods and Services which the Supplier fails to supply in accordance with the terms of the Contract.

14. TERMINATION

14.1 Where the Supplier:

- (a) breaches its Contract with SCT and, where the breach is capable of remedy, shall have failed to remedy within seven working days of notice of the breach by SCT; or
- (b) convenes any meeting of creditors or passes a resolution for winding up or suffers a petition for winding up; or
- (c) becomes insolvent, goes into bankruptcy or liquidation either compulsory or voluntary (save for the purposes of bona fide reconstruction or amalgamation), or if a trustee in bankruptcy, an administrator, administrative receiver, receiver or similar person is appointed over the whole or any part of its assets, is the subject of a bankruptcy petition or bankruptcy order, is unable to pay its debts or has no reasonable prospect of doing so or shall enter into an Individual Voluntary Arrangement or any compromise or composition with or for the benefit of its creditors generally or is the subject of any equivalent or analogous insolvency event or procedure in any jurisdiction;

SCT may without prejudice to any of its other rights or remedies under the Contract, these Conditions or otherwise and without being liable to the Supplier for any loss which may be occasioned whatsoever, give written notice terminating any Contract with immediate effect.

14.2 If SCT terminates the Contract in accordance with clauses 13 or 14 and SCT has paid any sums to the Supplier in respect of the Goods or Services to be supplied pursuant to that Contract (whether by way of deposit, advance or any other payment):

- (a) where the Supplier has delivered no Goods or Services to SCT, all and any such sums shall be immediately repayable to SCT in full without deferment, deduction or set off;
- (b) where the Supplier has delivered a part of the Goods or Services to SCT, the Supplier shall be entitled to retain such sums as represent the value to SCT of the part delivered but shall not be entitled to demand any further payment from SCT or any payment in excess of the sums already paid.

14.3 Any failure by the Purchaser to enforce or partially enforce any provision of the Agreement will not be construed as a waiver of its rights under the Agreement.

15. INDEMNITY

15.1 The Supplier shall indemnify and hold SCT harmless from and against any damage, expense, claim or other loss whatsoever arising from or in relation to:

- (a) any act, neglect, default or omission of the Supplier or its employees sub contractors or agents or the employees of either of them;
- (b) any breach of the Supplier's warranties, undertakings or obligations under these Conditions or any Contract between the Supplier and SCT.

15.2 The Supplier shall provide all reasonable assistance in defending any claims made against SCT arising from or in relation to any act, neglect, default or omission of the Supplier or any breach of the Supplier's warranties, undertakings or obligations under these Conditions or any Contract between the Supplier and SCT.

16. NOTICES

- 16.1 Any notice to be given under these Conditions must quote the relevant Purchase Order number, shall be in writing and shall be sent by first class mail, air mail, fax or email.
- 16.2 Notices sent as above shall be deemed to have been received:
- (a) in the case of first class mail, three working days after the date of posting;
 - (b) in the case of air mail, seven working days after the date of posting;
 - (c) in the case of facsimile, on the next working day after the facsimile is sent but only if a transmission report is generated by the sender's facsimile machine recording a message from the recipient's facsimile machine, confirming that the facsimile was sent to the correct number and confirming that all pages were successfully transmitted.
 - (d) in the case of email the next working day after transmission. If an email receives a response from the recipient machine or system or otherwise advising that the email has not been successfully delivered or advising that the recipient is away, such email shall not be considered as sufficient notice.
- 16.3 In proving the giving of a notice it shall be sufficient to prove that the notice was properly addressed and sent or that the applicable method of telecommunication was addressed and despatched and despatch of the transmission was confirmed or acknowledged.

17. CONFIDENTIALITY

- 17.1 The Supplier shall keep all work and services carried out for SCT entirely confidential, and shall keep confidential all information provided by SCT or developed by the Supplier for the purposes of the Contract, the Goods or the Services. The Supplier shall not use, publish, or make known, without SCT's written approval, any information developed by the Supplier or furnished by SCT save to the extent that is necessary for the performance of that party's obligations under the Contract.
- 17.2 Any public representation regarding SCT shall be made by SCT and any requests for information made to the Supplier by the news media, or others, shall be referred to SCT. Additionally, the Supplier shall not reference SCT (or DP World Southampton) nor the work performed for SCT without prior written approval.
- 17.3 Information which the Supplier indicates or marks as proprietary or confidential will be treated by SCT in the same manner as SCT treats its own proprietary or confidential information.
- 17.4 The Supplier further agrees to place under a confidentiality obligation, any subcontractors and consultants with whom the Supplier enters into agreements for the performance of work under or in relation to the Contract, the Goods or the Services. Such confidentiality obligations shall be on terms no less stringent than the Supplier's confidentiality obligations under this clause.

18. LAW AND JURISDICTION

- 18.1 These Conditions and any Contract or other relationship subject thereto shall be governed by English law. Any dispute arising from or in relation to these Conditions or any relationship subject thereto (whether arising in contract or otherwise) shall be subject to English law.

18.2 The High Court of England and Wales shall have exclusive jurisdiction over any dispute arising from or in relation to these Conditions or any relationship (whether arising in contract or otherwise) which is subject to these Conditions.

19 PREVENTION OF CORRUPTION

19.1 The Supplier shall (and procure that its officers, employees and agents shall) conduct its business, and require any sub-contractor to conduct their business, in compliance with all Anti-Corruption Legislation at all times.

19.2 Without prejudice to the Supplier's obligation to comply with the Anti-Corruption Legislation, the Supplier warrants that it has employed and shall maintain its own Adequate Procedures designed to prevent incidences of corruption. Further, if not already in place, the Supplier shall appoint a senior manager or working committee tasked with monitoring the adequacy of, and adherence to, such procedures.

19.3 The Supplier shall ensure that any other person associated with the Supplier who is performing the Services or providing Goods in connection with the Agreement does so only on the basis of a contract which imposes on such person terms equivalent to those imposed on the Supplier in this clause.

19.4 The Supplier shall notify the Purchaser without delay of any breach or potential breach of the Anti-Corruption Legislation that the Supplier becomes aware of, and it shall co-operate with the Purchaser and provide to the Purchaser all information that is reasonably requested by the Purchaser for the purpose of assessing its own potential liability under the Anti-Corruption Legislation arising in connection with any such breach or potential breach.