

## DUBLIN PORT COMPANY - STANDARD TERMS AND CONDITIONS FOR GOODS AND/OR SERVICES

Please note – these Standard Terms and Conditions will not apply where a bespoke form of contract is in place or being put in place by the Parties

### 1 INTERPRETATION

- 1.1 In these Terms and Conditions, the following expressions shall have the following meanings:

**"Agreement"** means together the Purchase Order and these Terms and Conditions between DPC and the Supplier for the supply of Goods and/or Services; **"Confidential Information"** means all information in whatever form (including but without limitation, written, oral, visual and electronic forms) relating to DPC, its subsidiary and associate companies, their business or affairs, including but without limitation, any information relating to the Goods and/or Services and any other information which might reasonably be regarded as confidential in nature to DPC. There shall be excluded from the definition of Confidential Information: (a) any information which at the time it is disclosed to the Supplier, is already in the public domain otherwise than by breach of this Agreement; and (b) any information which the Supplier is legally compelled to disclose or which it is ordered to disclose by the Courts or any other competent authority; **"Data Protection Law"** means the Data Protection Act 2018 and any subsequent data protection and privacy legislation, European Union law including Regulation (EU) 2016/679 (known as the General Data Protection Regulation or GDPR) and any subsequent amendments or replacements; **"DPC"** means Dublin Port Company having its principal office at Port Centre, Alexandra Road, Dublin 1; **"Goods"** means goods (described in the Purchase Order), if any, to be delivered by the Supplier to DPC pursuant to this Agreement; **"Parties"** means DPC and the Supplier and **"Party"** shall be construed accordingly; **"Personnel"** means any employees, agents or servants of the Supplier (including any permitted sub-contractors) who may be involved in the performance of Services and/or the provision of Goods on behalf of the Supplier; **"Purchase Order"** means a document produced by DPC and issued to the Supplier which shall constitute an order for particular Services and/or Goods referred to therein and which refers to these Terms and Conditions; **"Services"** means the services (described in the Purchase Order), if any, to be performed by the Supplier for DPC pursuant to the Agreement; **"Supplier"** means the person, firm or company to whom a Purchase Order is addressed; and **"Terms and Conditions"** means these terms and conditions, as amended from time to time in accordance herewith.

### 2 BASIS OF AGREEMENT

- 2.1 The Supplier has offered to provide the Goods and/or Services specified in the Purchase Order. The Purchase Order constitutes an acceptance by DPC to purchase the Goods and/or Services specified therein from the Supplier, in accordance with the Agreement, when it is issued to the Supplier.

### 3 PROVISION OF GOODS AND/OR SERVICES

- 3.1 The Supplier shall, on a non-exclusive basis, perform the Services and/or deliver the Goods to DPC in accordance with the Agreement following the execution by DPC of the Purchase Order and its issuance to the Supplier. No Services or Goods are to be performed or delivered unless and until the Purchase Order is issued to the Supplier.

- 3.2 It is hereby expressly acknowledged and agreed by the Parties that neither the Supplier nor any of its Personnel are employees of DPC and that the Agreement is a contract for the provision of Goods and/or Services to DPC.

- 3.3 The Supplier shall (and shall ensure that its Personnel shall): (a) provide the Goods and/or Services to DPC at such places and at such times as DPC or its duly authorised agents shall specify in the Purchase Order or otherwise; (b) mark all Goods (and relevant delivery documentation) in accordance with DPC's instructions and any applicable laws or regulations or instructions of the carrier or manufacturer and pack and secure all Goods properly so that they reach their destination in an undamaged condition; (c) ensure that on delivery, Goods are received and signed in by an authorised representative of DPC; (d) co-operate with and comply with all reasonable directions and instructions of DPC, its servants and agents in connection with the provision of the Goods and/or Services; (e) comply with all applicable laws concerning the manufacture, packaging, packing and delivery of the Goods and/or the performance of the Services; (f) comply with all policies, rules, regulations and/or codes of conduct operated by or affecting DPC from time to time and advised to the Supplier by DPC; (g) obtain and comply, at its own cost, with all licences, permits and authorisations necessary for the performance of the Services and/or provision, transport, delivery, labelling and handling of the Goods; and (h) take all necessary precautions to prevent injury or damage to any person or property on DPC's premises and comply strictly with all relevant health and safety laws, regulations and codes of practice.

- 3.4 The Supplier warrants and represents that: (a) all Goods shall be of merchantable quality (within the meaning of the Sale of Goods and Supply of Services Act 1980, as amended) and fit for any purpose held out or made known by DPC to the Supplier before the Purchase Order was issued; (b) all Goods shall be free of defects in design, materials and workmanship; (c) all Goods shall correspond with any relevant samples provided; (d) all Goods supplied to DPC hereunder are supplied free of encumbrance and shall not infringe any patent, trademark or other intellectual property of any third party and the Supplier has good title to the Goods; (e) all Goods and/or Services supplied shall comply with all relevant legal requirements and European or Irish standards and any specifications or requirements of DPC specified to the Supplier in advance; and (f) the Supplier shall provide the Services with all due care, skill and diligence and that all Personnel involved in performing the Services are suitably experienced, qualified and competent to provide the Services.

- 3.5 The Supplier shall assign or procure the benefit of any manufacturers' warranties or guarantees in respect of the Goods to/or for DPC and shall provide all reasonable assistance to DPC in enforcing same.

- 3.6 Risk or damage to or loss of the Goods shall pass to DPC upon delivery in accordance with Clause 3.3(c). Title and property in the Goods shall transfer to DPC at the time of payment.

- 3.7 In the event that Goods and/or Services are delivered to DPC which fail to comply with the provisions of the Agreement and/or any particular requirements, specifications or quantities specified in the Purchase Order, or otherwise agreed by the Parties, DPC may,

- at its sole option, be entitled, without incurring any liability and without prejudice to any other rights or remedies it may have, to either: (a) cancel the relevant Purchase Order (or any part of it) in which case the Supplier shall promptly and at its sole expense cease providing the Goods and/or Services, take away any Goods provided pursuant to the Purchase Order and refund DPC in full any sums paid in respect of same; or (b) require the Supplier to provide the Goods or re-perform the Services in compliance with the Agreement and all particular requirements or specifications specified in the relevant Purchase Order or otherwise agreed by the Parties, which the Supplier shall do promptly and at no additional cost or expense to DPC.
- 3.8 DPC shall be under no obligation to accept delivery of Goods or performance of Services in advance of any time and date specified for such delivery or performance in a Purchase Order or at a place other than that specified in the Purchase Order. DPC personnel may sign delivery dockets to indicate receipt of Goods from the Supplier, however this shall not indicate that DPC accepts that the Goods (or the delivery thereof) comply with the Terms and Conditions or the Purchase Order.
- 3.9 The Supplier shall permit authorised representatives of DPC (including external auditors) to visit its premises or any other location from which the Goods and/or Services may be provided at reasonable times in order to inspect relevant facilities and records relating to the provisions of the Goods and/or Services and ensure that the Supplier is discharging its duties and obligations to DPC's reasonable satisfaction. Nothing herein shall in any way relieve the Supplier from performing its duties and obligations in accordance with the Agreement.
- 3.10 If requested by DPC the Supplier shall be required to remove all packaging from DPC's premises at its own expense, however should DPC wish to accept some packaging then it shall be treated as non-returnable and DPC shall not be required to make any payment for it.
- 3.11 If notified promptly in writing of any action brought against DPC based upon a claim that the Goods or Services provided by the Supplier infringe any patent, trade mark, copyright or other intellectual property right, the Supplier will defend such action at its sole expense and pay any costs and damages awarded and indemnify and hold harmless DPC in respect of any claims, demands, proceedings, costs or expenses (including legal and other expert fees) associated therewith. The Supplier shall have sole control of the defence of any such action and all negotiations for its settlement or compromise. If as a result of such claim DPC is prohibited from using or otherwise unable to use the Goods or Services or if such claim is likely to be made, the Supplier will either procure for DPC the right to continue using the Goods or Services so that they become non-infringing or procure alternative Goods or Services which are non-infringing.
- 3.12 The Supplier shall supply and fit free of charge within any applicable warranty period any spare parts for the Goods. The Supplier shall also ensure that new and compatible electronic or mechanical spare parts are available for a period of at least five (5) years from the date of delivery of the Goods.
- 3.13 DPC shall provide the Supplier with reasonable access at reasonable times to DPC's premises for the purpose of providing the Goods and/or Services. The Supplier shall comply with all policies and procedures of DPC when present on DPC's premises.

#### **4 PERSONNEL**

- 4.1 DPC reserves the right to refuse to admit to, or remove from, any premises occupied by or on behalf of it, any Personnel whose admission or presence would, in the reasonable opinion of DPC, be undesirable. The reasonable exclusion of any such individual from the premises of DPC shall not relieve the Supplier from the performance of its obligations under the Agreement.
- 4.2 The Supplier shall ensure that Personnel are fully trained, qualified and competent to provide the Goods and/or Services and shall use its best endeavours to ensure that the Personnel are made aware of and comply with all relevant terms and conditions of the Agreement and all policies, rules, regulations and/or codes of conduct operated by or affecting DPC from time to time. The Supplier shall be liable for all damage caused to persons or property or any other losses caused by the default of its Personnel.
- 4.3 The Supplier shall be solely responsible for (i) paying all salaries, wages, benefits and other compensation that the Personnel may be entitled to receive in connection with the provision of the Goods and/or performance of the Services; (ii) paying and reimbursing all Personnel for all related travel, housing and other expenses which such Personnel may be entitled to receive in connection with providing the Goods and/or performing the Services; and (iii) withholding and paying applicable Irish and foreign payroll taxes and contributions, including, but not limited to, Irish state and local income taxes, unemployment tax, worker's compensation insurance and disability tax, social insurance, pension contributions, or any other similar obligation.

#### **5 PRICES AND EXPENSES**

- 5.1 In consideration for the Supplier's provision of the Goods and/or Services in accordance with the provisions of the Agreement, DPC shall pay the Supplier such prices as are set out or referred to in the relevant Purchase Order (which shall be deemed to include all applicable taxes (and shall show prices inclusive and exclusive of VAT), duties and levies and all packing, carriage, freight, shipping, insurance and delivery costs) and in accordance with any payment terms set out therein. Following receipt of a DPC Purchase Order, the Supplier shall send an invoice to [accountspayable@dublinport.ie](mailto:accountspayable@dublinport.ie) (indicating the relevant Purchase Order number) together with all other relevant supporting documentation as may be required by DPC. Payment shall be made within 30 days of receipt of a correct, complete and appropriately vouched invoice at DPC, provided there is no dispute in relation to the provision of the relevant Goods and/or Services. In the event of any such dispute, payment may be withheld in respect of any disputed amount until the dispute is resolved.
- 5.2 The Supplier shall not be reimbursed any costs or expenses incurred by it or its Personnel in the course of providing the Goods and/or Services unless these are agreed in advance and in writing by DPC or expressly provided for in the Purchase Order. Any permitted expenses which are claimed must be properly vouched and supporting documentation shall be provided as a condition of payment.
- 5.3 DPC shall pay the Supplier any applicable Value Added Tax (VAT) at the rate and in the manner prescribed by law from time to time, provided VAT is shown separately on the relevant invoice. The Supplier shall upon request, provide such information as may be reasonably required by DPC regarding the amount of Value Added Tax charged on invoices submitted.
- 5.4 Professional Services Withholding Tax, if applicable, shall be deducted at the standard rate from any

payments made by DPC for Services pursuant to the Purchase Order.

- 5.5 The Supplier shall provide DPC with a current e-tax clearance certificate (or equivalent document) promptly upon request.

## 6 PERSONAL DATA

For the purposes of the Agreement, the terms **Controller, Processor, Personal Data, Processing**, shall have the meanings given to them in Data Protection Law and "**Process**" shall be construed accordingly.

Both Parties agree to comply with their own obligations under Data Protection Law.

To the extent that the Supplier in the performance of its obligations under the Agreement acts as Processor in respect of Personal Data where DPC is the Controller of that Personal Data, the Parties shall enter into a supplemental agreement to ensure their compliance with Data Protection Law.

## 7 CONFIDENTIALITY

The Supplier hereby agrees and undertakes that at any time during the provision of the Goods and/or Services or after the termination or expiry of the Agreement: (a) it shall not disclose or allow to be disclosed any Confidential Information to any third party whatsoever without the express prior written consent of DPC; (b) it shall not use or attempt to use any Confidential Information for any purpose other than that for which it was generated or disclosed or in any manner which may or may be likely to injure or cause loss (either directly or indirectly) to DPC or to assist any third party to gain any commercial advantage over or knowledge in relation to DPC; (c) it shall use best endeavours to ensure that Confidential Information is protected against theft, loss or unauthorised access by third parties and shall only be disclosed to Personnel who need to know such information in order that the Goods and/or Services may be provided; and (d) it shall ensure that its Personnel are fully aware of and comply with these confidentiality provisions.

## 8 TERMINATION

- 8.1 Unless otherwise expressly agreed in writing and without prejudice to any other provision in the Agreement, DPC may at any time during the currency of the Agreement on giving the Supplier 30 days' notice terminate the Agreement for any reason whatsoever without liability or compensation to the Supplier, save that it is hereby expressly agreed that the Supplier shall be entitled to payment in respect of Goods and/or Services ordered prior to the date of termination only (provided they are subsequently delivered in accordance with the agreed terms) and the Supplier shall not have any other claim or demand for payment against DPC.
- 8.2 DPC may terminate the Agreement with immediate effect, by giving notice in writing to the Supplier, if the Supplier (or its Personnel) shall at any time: (a) commit any serious or persistent breach or non-observance of the terms or provisions of the Agreement which either cannot be remedied or, if capable of remedy, has not been remedied by the Supplier within such period as DPC may specify; or (b) be guilty of any fraud or serious misconduct or neglect in the discharge of its duties hereunder or be convicted of any criminal offence or commit any act of

dishonesty; or (c) have a receiver, manager or examiner appointed over it or over any part of its undertaking or assets, or shall pass a resolution for winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or have a petition presented for its winding up or for the appointment of an examiner to it or shall enter into any composition or arrangement with its creditors or cease or threaten to cease to carry on its business.

- 8.3 The termination of the Agreement shall not prejudice or affect any right of action, remedy or liability which shall have accrued or shall thereafter accrue to the Parties; neither shall it affect the coming into force or the continuance in force of any provision of the Agreement or the Purchase Order which is expressly or by implication intended to come into or continue in force on or after such expiry or termination, including for the avoidance of doubt Clauses 3.4, 3.5, 3.11, 6, 7, 8, 9.1, 9.5, 9.6, 9.11, 9.13 and 9.15.

## 9 GENERAL

- 9.1 The Supplier is engaged for its ability to provide the Goods and/or Services with expertise and DPC shall rely on such expertise. In the event that DPC suffers any loss or damage arising out of any act or omission or breach of the Agreement or of any warranty or of any statutory duty by the Supplier or its Personnel, the Supplier shall indemnify DPC against any claims, proceedings or actions and any losses, costs, expenses or damages incurred by it (including as a result of such losses, costs, expenses or damages being incurred by a third party).
- 9.2 The Supplier shall take out and maintain in force at all times adequate policies of insurance covering all usual risks which may arise pursuant to the Agreement (which shall be sufficient to cover the replacement value of any goods or property which may be damaged) and upon request shall produce to DPC copies of relevant policies and evidence that premiums have been paid.
- 9.3 Neither Party shall be in breach of the Agreement nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure results from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for 60 days, the non-affected Party may terminate the Agreement by giving 7 days' written notice to the affected Party.
- 9.4 The Agreement shall be assignable in whole or in part by DPC but shall not be assignable by the Supplier without the prior written consent of DPC. The Supplier shall not sub-contract any aspect of the provision of Goods or Services to any third party without the prior written consent of DPC. In the event that DPC does consent to a sub-contractor, the Supplier shall remain fully responsible for the provision of the Goods or Services and the acts and omissions of that sub-contractor as if they were its own. The Supplier shall also maintain during the currency of the Agreement and for six years thereafter records and documentation relating to the sub-contractor and the Goods or Services provided by it and shall make the same available to DPC upon request.
- 9.5 If any sum of money shall become due from the Supplier to DPC, the same may be deducted from any sum then due or which at any time thereafter may become due to the Supplier under the Agreement or any other agreement with DPC.
- 9.6 DPC's aggregate liability to the Supplier under the Agreement shall not exceed the balance of any sums which remain unpaid under the Purchase Order.

- 9.7 If there is any inconsistency or conflict between these Terms and Conditions and any terms or conditions stated on the face of the Purchase Order, the latter shall take precedence.
- 9.8 The Supplier shall act at all times as an independent entity. Nothing contained in the Agreement and no action by the Parties pursuant to the Agreement, shall constitute or be deemed to constitute or imply a joint venture, partnership, association or principal-agent relationship between the Parties; and neither Party by virtue of the Agreement shall have the right, power or authority to act or create any obligation, express or implied, on behalf of the other Party.
- 9.9 These Terms and Conditions may only be amended by written agreement of the agreed authorised representatives of the Parties or by the express terms of a Purchase Order which is accepted by the Supplier.
- 9.10 The rights of DPC shall not be prejudiced or restricted by any indulgence or forbearance extended to the Supplier and no waiver by DPC in respect of any breach will operate as a waiver in respect of any subsequent breach. No failure or delay by DPC in exercising any rights or remedy will operate as a waiver thereof, nor will any single or partial exercise or waiver of any right or remedy by DPC prejudice its further exercise or the exercise of any other right or remedy by DPC. The rights and remedies of the Parties under this Agreement are cumulative and without prejudice and in addition to any rights or remedies which a Party may have at law or in equity. No exercise by a Party of any one right or remedy under this Agreement or at law or in equity shall (save to the extent, if any, provided expressly in this Agreement, or at law or in equity) operate so as to hinder or prevent the exercise by it by any other such right or remedy.
- 9.11 Each of the provisions in the Agreement are distinct and severable, and if any provision, or part of a provision is held unenforceable, illegal or void in whole or in part by any court, regulatory authority or other competent authority, it shall to that extent be deemed not to be part of the Agreement and the enforceability, legality and validity of the remainder of the Agreement will not be affected.
- 9.12 These Terms and Conditions (and any Purchase Order issued pursuant to these Terms and Conditions and any documents referred to specifically therein) supersede all prior representations, arrangements, understanding and agreements between the Parties hereto relating to the subject matter hereof and set forth the entire, complete and exclusive agreement and understanding between the Parties relating to the subject matter hereof. It is hereby expressly agreed, without prejudice to the foregoing, that any standard terms or conditions of sale or supply of the Supplier (including those which appear on any invoice furnished by the Supplier in the course of providing the Goods and/or Services) shall not be applicable.
- 9.13 Any notice or other communication required to be given under the Agreement shall be in writing and addressed to the relevant party at the address set out on the Purchase Order, and may be sent by prepaid registered post or delivered by hand. Any such notice or other communication will be deemed to have been duly served or given at the time it is handed to the other Party or, where provided by prepaid post, on the fourth day after same was so posted (or in the case of airmail or overseas post, on the sixth day after same was so posted) and proof that the notice or information was properly addressed and sent by prepaid post and that it has not been so returned to the sender, shall be sufficient evidence that such notice of information has been duly given.
- 9.14 The Supplier shall not offer any gift or consideration of any kind as an inducement or reward in relation to the obtaining or execution of any Purchase Order with DPC. Any breach of this provision will render the Supplier liable to the cancellation of such Purchase Order or any other Purchase Order and entitle DPC to recover from the Supplier any loss resulting from such cancellation.
- 9.15 The Agreement shall in all respects be construed in accordance with Irish law, and the Parties hereto submit to the exclusive jurisdiction of the Irish Courts.