

# PORTLAND PORT GROUP

## CONDITIONS OF PURCHASE

These Conditions may only be varied with the express written agreement of the Purchaser. No terms or conditions put forward at any time by the Supplier shall form any part of the Contract.

### 1 DEFINITIONS

In these Conditions "the Purchaser" means the Portland Port Group of Companies, "the Supplier" means the supplier named overleaf and "the Articles" means any such articles or services as are to be supplied to the Purchaser by the Supplier (or by any of the Supplier's sub-contractors) pursuant to or in connection with this order ("the Order").

### 2 THE ARTICLES

- 2.1 The Articles shall be to the reasonable satisfaction of the Purchaser and shall conform in all respect with any particulars specified in this Order and in any variations thereto.
- 2.2 The Articles shall conform in all respects with the requirements of any statutes, orders, regulations or bye-laws from time to time in force, including but not limited to the Portland Harbour Revision Order 1997 and Portland Port Limited's Standard Terms and Conditions of Trade.
- 2.3 The Articles shall be fit and sufficient for the purpose for which such articles are ordinarily used and for any particular purpose made known to the Supplier by the Purchaser and the Purchaser relies on the skill and judgement of the Supplier in the supply of the Articles and the execution of the Order.

### 3 PRICE

- 3.1 The price of the Articles shall be as stated overleaf and no increase will be accepted by the Purchaser unless agreed by him expressly in writing before the execution of the order.
- 3.2 Unless otherwise agreed in writing by the Purchaser, the Supplier shall render a separate invoice in respect of each consignment delivered under this Order. Payments shall be due 45 days after receipt of the Articles or the correct invoice therefore, whichever is the later.

### 4 DELIVERY

- 4.1 The Articles shall be delivered to the place named overleaf. Any access to premises and any labour and equipment that may be provided by the Purchaser in connection with delivery 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 delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Supplier or any of his sub-contractors.
- 4.2 Where any access to the purchaser's premises is necessary in connection with delivery or installation the Supplier and his sub-contractors shall at all times comply with any security or operational regulations currently in force.
- 4.3 The time of delivery shall be of the essence and failure to deliver within the time promised or specified shall enable the Purchaser (at his option) to release himself from any obligation to accept and pay for the Articles and/or to cancel all or part of the order therefore, in either case without prejudice to his other rights and remedies.

### 5 PROPERTY AND RISK

Property and risk in the Articles shall without prejudice to any of the rights or remedies of the Purchaser (including the Purchaser's rights and remedies under condition 7 hereof) pass to the Purchaser at the time of delivery.

### 6 DAMAGE IN TRANSIT

On dispatch of any consignment of the Articles the Supplier shall send to the Purchaser at the address for delivery of the Articles an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. The Supplier shall free of charge and as quickly as possible either repair or replace (as the Purchaser shall elect) such of the Articles as may either be damaged in transit or having been placed in transit fail to be delivered to the Purchaser provided that:

- (a) in the case of damage to such Articles in transit the Purchaser shall within thirty days of delivery give notice to the Supplier that the Articles have been damaged.
- (b) in the case of non-delivery the Purchaser shall (provided that the Purchaser has been advised of the dispatch of the Articles) within ten days of the notified date of delivery give notice to the Supplier that the Articles have not been delivered.

### 7 INSPECTION, REJECTION AND GUARANTEE

- 7.1 The Supplier shall permit the Purchaser or his authorised representatives to make any inspections or tests he may reasonably require. No failure to make complaint at the time of such inspection or tests and no approval given during or after such tests or inspections shall constitute a waiver by the Purchaser of any rights or remedies in respect of the Articles.
- 7.2 The Purchaser may by written notice to the Supplier reject any of the Articles which fail to meet the requirements specified herein. Such notice shall be given within a reasonable time after delivery to the Purchaser of the Articles concerned. If the Purchaser shall reject any of the Articles pursuant to this Condition the Purchaser shall be entitled (without prejudice to his other rights and remedies) either:
  - (a) to have the Articles concerned as quickly as possible either repaired by the Supplier or (as the Purchaser shall elect) replaced by the Supplier with Articles which comply in all respects with the requirements specified herein, or
  - (b) to obtain a refund from the Supplier in respect of the Articles concerned.
- 7.3 The guarantee period applicable to the articles shall be 12 months from putting into service (subject to any alternative guarantee arrangements agreed in writing between the Purchaser and the Supplier). If the purchaser shall within such guarantee period or within 30 days thereafter give notice in writing to the Supplier of any defect in any of the Articles as may have arisen during such guarantee period under proper and normal use the Supplier shall (without prejudice to any other rights and remedies which the Purchaser may have) as quickly as possible remedy such defects (whether by repair or replacement as the Purchaser shall elect) without cost to the Purchaser.
- 7.4 Any Articles rejected or returned by the Purchaser as described in paragraphs 7.2 or 7.3 shall be returned to the Supplier at the Supplier's risk and expense.

### 8 LABELLING AND PACKING

- 8.1 The Articles shall be packed and marked in a proper manner and in accordance with the Purchaser's instructions and any statutory requirements and any requirements of the carriers. In particular the Articles shall be marked with the Order Number, the net, gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous articles (and all documents relating thereto) shall bear prominent and adequate warnings. The Supplier shall indemnify the Purchaser against all 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 breach of this Condition.
- 8.2 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 Purchaser accepts no liability in respect of the non-arrival at the Suppliers premises of empty packages returned by the Purchaser unless the Supplier shall within ten days of receiving

notice from the Purchaser that the packages have been dispatched notify the Purchaser of such non-arrival.

### 9 PATENTS AND INFORMATION

- 9.1 It shall be a condition of this Order that none of the Articles will infringe any patent, trade mark, registered design, copyright or other right in the nature of intellectual property of any third party and the Supplier shall indemnify the Purchaser against all 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 breach of this Condition.
- 9.2 All rights (including ownership and copyright) in any specifications, instructions, plans, drawings, patterns, models, designs or other material or information furnished to or made available to the Supplier by the Purchaser pursuant to this Order shall remain vested solely in the Purchaser and the Supplier shall not (except to the extent necessary for the implementation of this Order) without prior written consent of the purchaser use or disclose any such specifications, plans, drawings, patterns, models or designs or any information (whether or not relevant to this Order) which the Supplier may obtain pursuant to this Order and in particular (but without prejudice to the generality of the foregoing) the Supplier shall not refer to the Purchaser or the Order in any advertisement without the Purchaser's prior written agreement.

### 10 HEALTH AND SAFETY

The Supplier represents and warrants to the Purchaser that the Supplier has satisfied himself that all necessary tests and examinations have been made or will be made prior to delivery of the Articles to ensure that the Articles are designed and constructed so as to be safe and without risk to the health or safety of persons using the same, and that he has made available to the Purchaser adequate information about the use for which the Articles have been designed and have been tested and about any conditions necessary to ensure that when put to use the Articles will be safe and without risk to health. The Supplier shall indemnify the purchaser against all 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 breach of this Condition.

### 11 INDEMNITY AND INSURANCE

- 11.1 Without prejudice to any rights or remedies of the Purchaser (including the Purchaser's rights and remedies under Condition 7 hereof) the Supplier shall indemnify the Purchaser against all 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 to property or in respect of any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any defect in the Articles or the negligent or wrongful act or omission of the Supplier.
- 11.2 The Supplier shall effect with a reputable insurance company a policy or policies of insurance covering all the matters which are the subject of indemnities under these Conditions and shall at the request of the Purchaser produce the relevant policy or policies together with receipts or other evidence of payment of the latest premium due thereunder.

### 12 RACIAL DISCRIMINATION

The Supplier shall not unlawfully discriminate within the meaning and scope of the provision of the Race Relations Act 1976 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 Order.

### 13 COMMERCIAL AND CONFIDENTIALITY

The Supplier undertakes that it will not make use of, divulge or communicate to any person, company, trade association, the media, the press, or any third party, (other than with proper authority) any commercially or operationally sensitive information, trade secrets or other confidential information of or relating to Portland Port Group, or its successors in title ("the Company") (including, but not limited to details of incidents, accidents, customers, consultants, suppliers, and potential suppliers, prices, discount, existing trade arrangements of terms of business) which it has received or become aware of as a result of being a Supplier to the Company or any subsidiary company or any associated companies.

### 14 TERMINATION ON SUPPLIER'S INSOLVENCY

Without prejudice to any other rights or remedies of the Purchaser under this Order the Purchaser shall have the right forthwith to terminate this Order by written notice to the Supplier or his trustee in bankruptcy or receiver or (if a company) liquidator or administrator if the Supplier shall have a receiver appointed over all or a substantial part of his or its assets or (if an individual) be declared bankrupt or (if a company) shall go into liquidation or have an administrator appointed to manage its affairs.

### 15 RECOVERY OF SUMS DUE

Wherever under this Order 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, to the Supplier under this Order or under any other agreement or contract with the Purchaser.

### 16 ASSIGNMENT AND SUB-CONTRACTING

- 16.1 The Supplier shall not without the written consent of the Purchaser assign the benefit or burden of this Order or any part thereof.
- 16.2 No sub-contracting by the supplier shall in any way relieve the Supplier of any of his responsibilities under this Order.

### 17 NOTICES

Any notices given under or pursuant to the Order may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted by telex, telemessage, facsimile transmission or other means of telecommunications 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 face hereof, or to such other address as the party may by notice to the other have substituted therefore, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

### 18 HEADINGS

The headings to Conditions shall not affect their interpretation.

### 19 GOVERNING LAW

These Conditions shall be governed by and construed in accordance with English Law and the Supplier hereby irrevocably submits to the jurisdiction of the English 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.