

**1. DEFINITIONS AND INTERPRETATION**

**Claim:** includes any claim for death, personal injury, damage to property, financial loss, actual or alleged infringement of intellectual property rights arising out of, or in connection with, the manufacture, sale, delivery or use of the Goods, or the supply or receipt of the Services (including any claims by a third party).

**Commencement Date:** the date of the Supplier's written acceptance of the Order or any act by the Supplier consistent with performance or fulfilment of the Order which is treated by MHPA as acceptance of the Order including acknowledgment of the Order (on any terms).

**Conditions:** these terms and conditions as amended from time to time.

**Contract:** the contract between MHPA and the Supplier for the supply of Goods and/or Services in accordance with these Conditions, comprised of the Order and these Conditions.

**Customer Materials:** materials, equipment, tools, drawings, specifications and data supplied by MHPA.

**Deliverables:** all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including applications, drawings, maps, plans, diagrams, designs, pictures, computer programs, data, software, specifications and reports (including drafts).

**Goods:** the goods (or any part) set out in the Order, including unless otherwise stated all associated legal rights and the supply of documentation, certification and any necessary commissioning, and sufficient high quality training and user manuals to enable MHPA to use or operate the goods for their intended purpose.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, design rights, trademarks, business names and domain names, goodwill, the right to sue for passing off or unfair competition, rights in computer software, database rights, rights to use and protect the confidentiality of confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist now or in the future in any part of the world.

**MHPA:** Port Authority of Milford Haven and its subsidiaries.

**Policies:** MHPA's business policies and codes including those in relation to contractors, anti-bribery and corruption, corporate and social responsibility, data protection and privacy, ethics, sanctions and slavery.

**Order:** MHPA's order for the supply of Goods and/or Services, as set out in MHPA's purchase order form.

**Services:** the services (or any part of them), including any Deliverables and any associated rights, to be provided by the Supplier as set out in the Specification, along with any instruction, explanation, certification or licence necessary and sufficient high quality training and user manuals to enable MHPA fully to use and benefit from those services.

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**Specification:** the description or specification for Goods and/or Services agreed in writing by MHPA and the Supplier, including any related plans or drawings.

**Supplier:** the person or firm from whom MHPA purchases the Goods and/or Services.

A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality). A reference to a party includes its successors and permitted assigns. A reference to a statute or statutory provision is a reference to it as amended or re-enacted, and includes all subordinate legislation made under that statute or statutory provision. Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms. A reference to **writing** or **written** includes fax and email.

### 2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the MHPA to purchase Goods and/or Services from the Supplier in accordance with these Conditions. The Order shall be deemed to be accepted and the Contract shall thereby come into existence on the Commencement Date.

2.2 These Conditions shall apply to the Contract to the exclusion of all other terms that the Supplier seeks to impose or incorporate or which are implied by trade, custom, practice or course of dealing. MHPA's acceptance of goods or services shall not constitute acceptance of any terms which the Supplier seeks to impose or incorporate and the Supplier waives any and all rights it may otherwise have to rely on such terms.

### 3. SUPPLY OF GOODS

3.1 In addition to all warranties conditions and other terms implied by statute or common law in favour of MHPA, the Supplier shall ensure that the Goods shall:

- (a) correspond fully as regards quality, quantity, description and specification with their description, the Order and any Specification, samples or drawings;
- (b) be of satisfactory quality and fit for any purpose held out by the Supplier or made known by MHPA, expressly or by implication, and in this respect MHPA relies on the Supplier's skill and judgement;
- (c) be free from defects in design, materials, installation and workmanship and remain so for not less than 12 months after delivery;
- (d) comply with all applicable statutory and regulatory requirements and all normally applicable quality standards relating to the origin, manufacture, labelling, packaging, storage, handling, and delivery, sale, supply or use of the Goods;
- (e) all claims made by it about any Goods or Deliverables, and in any advertising or promotional material, are correct and can be relied upon; and

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- (f) where the Goods comprise, contain, incorporate, have installed on or are required to be used with any hardware, software, applications or other computer program that the same be compatible with MHPA's IT systems (including back-up systems), current and free from viruses, worms, timelocks, malware or anything else which might affect performance of the same or compromise the integrity of the Goods or MHPA's IT systems.
- 3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract and warrants that nothing in the sale, supply, receipt or use of the Goods will breach any property or intellectual property rights. The Supplier hereby assigns to MHPA any legal rights necessary to use the Goods for the purpose referred to in clause 3.1(b).
- 3.3 MHPA may inspect and test the Goods (or parts thereof) at any time and place before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing which shall not reduce or otherwise affect the Supplier's obligations under the Contract. If following such inspection or testing MHPA considers that the Goods do not comply or are unlikely to comply with the Supplier's undertakings at clause 3.1, MHPA shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance. MHPA may conduct further inspections and tests after the Supplier has carried out its remedial actions.

### 4. DELIVERY OF GOODS

- 4.1 The Supplier shall ensure that:
  - (a) the Goods are properly packed, packaged, secured, stored and carried in such manner as to enable them to be delivered and installed in good, sound and undamaged condition;
  - (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type, number of packages and quantity of the Goods, any code number, special storage instructions or requirements for return of packaging material, and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 4.2 The Supplier shall deliver the Goods during usual business hours at the address and on the date specified in the Order or, if no such date is specified then within 14 days of the date of the Order.
- 4.3 Delivery shall occur on the completion of unloading or (if required) installation of the Goods at the agreed location. MHPA may indicate acceptance in writing at any time after delivery but shall not be deemed to have accepted any Goods until 60 days after delivery.
- 4.4 The Supplier shall not deliver the Goods in instalments without MHPA's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for

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separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the MHPA to the remedies set out in clause 6.1.

- 4.5 Title and risk in the Goods shall pass to MHPA on delivery, save that where MHPA has paid in whole or in part in advance title will pass as soon as the Goods (or any components thereof) have been appropriated to the Contract.

### 5. SUPPLY OF SERVICES

- 5.1 From the Commencement Date and for the duration of the Contract the Supplier shall supply the Services in accordance with the terms of the Contract.

- 5.2 Completion of the Services will take place when the Services have been carried out and completed fully in accordance with the Contract and all rights fully provided or transferred to MHPA.

- 5.3 In providing the Services, time of performance is of the essence, and, in addition to all warranties conditions and other terms implied by statute or common law in favour of MHPA, the Supplier shall:

- (a) meet any performance dates for the Services specified in the Order or Specification or that MHPA notifies to the Supplier;
- (b) cooperate with MHPA and comply with its instructions in all matters relating to the Services;
- (c) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- (d) use sufficient personnel who are suitably skilled and experienced to perform tasks assigned to them to ensure that the Supplier's obligations to MHPA are fulfilled in accordance with the Contract;
- (e) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Specification, and that the Deliverables shall be fit for any purpose that the MHPA expressly or impliedly makes known to the Supplier;
- (f) provide all equipment, tools and vehicles and such other items as are required to perform the Services;
- (g) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to MHPA, will be free from defects in workmanship, installation and design;
- (h) obtain and at all times maintain all licences, authorisations, permissions, consents or permits which may be required for the provision of the Deliverables or the Services;

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- (i) comply with all applicable laws, regulations, regulatory policies, guidelines, industry codes, licences, permissions, authorisations, consents or permits which may apply to the provision of the Deliverables or the Services, and with the Policies;
- (j) observe all health and safety rules and regulations and any other security requirements that apply at any of MHPA's premises;
- (k) hold the Customer Materials in safe custody at its own risk, maintain the Customer Materials in good condition until returned to MHPA and not dispose of or use the Customer Materials other than in accordance with MHPA's written instructions; and
- (l) not do or omit to do anything which may cause the MHPA to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that MHPA may rely or act on the Services.

5.4 The Supplier hereby assigns to MHPA any legal rights necessary to use the Services.

### 6. REMEDIES

6.1 Without limiting or affecting any or all of MHPA's other rights and remedies, if the Supplier fails to deliver the Goods and/or perform the Services by the applicable date, MHPA shall have one or more of the following rights:

- (a) to suspend performance of, or terminate, or suspend and then at any subsequent time terminate, the Contract with immediate effect and without liability to the Supplier by giving written notice to the Supplier;
- (b) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
- (c) to recover from the Supplier any costs incurred by MHPA or on its behalf in obtaining substitute goods and/or services from a third party;
- (d) to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided and/or Goods or Deliverables that it has not delivered; and
- (e) to damages and an indemnity in respect of all additional costs, loss or expenses incurred by MHPA which are in any way attributable to the Supplier's failure(s);

6.2 In addition, if Goods or Services are not delivered by the applicable date, MHPA may, at its option, claim or deduct 3% of the Contract price for each week's delay in delivery.

6.3 Without limiting or affecting any or all of MHPA's other rights or remedies, if the Supplier has delivered Goods that do not comply with clause 3.1 MHPA shall have one or more of the following rights, whether or not it has accepted the Goods:

- (a) to suspend performance of or terminate, or suspend and then at any subsequent time terminate, the Contract with immediate effect by giving written notice to the Supplier;

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- (b) to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
- (c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid)];
- (d) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- (e) to recover from the Supplier any expenditure incurred by MHPA in obtaining substitute goods from a third party; and
- (f) to claim damages for any additional costs, loss or expenses incurred by the Customer arising from the Supplier's failure to supply Goods in accordance with clause 3.1.

6.4 These Conditions and MHPA's rights shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier. MHPA's rights under the Contract are in addition to any rights and remedies available under statute and/or common law.

### **7. CHARGES AND PAYMENT**

7.1 The price for the Goods shall be the price set out in the Order, or if no price is quoted, the price set out in the Supplier's published price list in force at the Commencement Date, subject to any discounts for prompt payment, bulk purchase or the like available to the Supplier's customers. The price shall be inclusive of the costs of and of materials for wrapping, packing, packaging, shipping, carriage, insurance, delivery, installation and commissioning at the delivery location, any return of packaging material to the Supplier, and of all duties, levies or taxes other than VAT. Any extra charges shall be payable only if and to the extent agreed in writing and signed by MHPA.

7.2 The charges for the Services shall be set out in the Order, and shall be the full, fixed and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by MHPA, the charges shall include every cost and expense of the Supplier directly or indirectly incurred or to be incurred in connection with the performance of the Services.

7.3 All sums shall be payable in GB Pounds Sterling. The Supplier shall invoice MHPA (a) on or within 7 days after delivery of the Goods or (b) on completion of the Services. Each invoice shall quote the relevant purchase order number and include any other information required by MHPA. No sum may be invoiced more than 6 months late. MHPA shall pay invoiced amounts within 30 days from the end of the month in which a correctly rendered invoice is received.

7.4 All amounts payable by MHPA are exclusive of value added tax as chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract, MHPA shall pay such amounts as may properly be chargeable on receipt of a valid VAT invoice from the Supplier.

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- 7.5 If MHPA fails to make a payment due to the Supplier under the Contract by the due date, then MHPA shall pay simple interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment, at 2% a year above the Bank of England's base rate from time to time, and the Supplier hereby waives all other remedies.
- 7.6 The Supplier shall maintain during the Contract and for not less than 7 years after its termination or fulfilment complete and accurate records of the time spent and materials used in providing the Goods and/or Services, and the Supplier shall allow MHPA to inspect such records at all reasonable times on request.
- 7.7 MHPA may at any time, without notice to the Supplier, set off any liability of the Supplier to MHPA against any liability of MHPA to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. MHPA's exercise of rights under this clause shall not limit or affect any other rights or remedies available to it.

### **8. INTELLECTUAL PROPERTY RIGHTS AND DATA OWNERSHIP**

- 8.1 The Supplier grants or shall procure the direct grant to MHPA of a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables (excluding Customer Materials) for the purpose of receiving and using the Services and the Deliverables. MHPA grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence for the term of the Contract to copy any materials provided to the Supplier by MHPA for the purpose of providing the Services.
- 8.2 All Customer Materials including Intellectual Property Rights therein are the exclusive property of MHPA. MHPA shall own and retain all Intellectual Property Rights in any Specification and in or generated by development work in connection with the Contract, and the Supplier will do anything reasonably required by MHPA to perfect any registration, authentication, transfer or licence of such rights to MHPA.
- 8.3 MHPA shall own all data generated in the course of or in connection with performance of the Contract, whether held or stored by the Supplier or MHPA. The Supplier will at no cost to MHPA deliver up such data to MHPA on request and irrevocably consents to the transfer by MHPA of such data to any third party.

### **9. INDEMNITY**

- 9.1 The Supplier shall keep MHPA fully indemnified against all claims, costs, loss, damage, liability, costs and expenses, (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of goodwill, loss of reputation and all interest, fines, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by MHPA arising out of or in connection with any Claim, act or omission of the Supplier, its employees agents or sub-contractors in performance of the Services or in supplying, installing

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and delivering the Goods, and for any matter for which the Supplier is responsible under the Contract.

### **10. INSURANCE**

10.1 During the term of the Contract and for a period of not less than 6 years thereafter the Supplier shall maintain in force, with a reputable insurance company, employer's liability insurance, professional indemnity insurance, product liability insurance and public liability insurance in each case of not less than GBP 10 million to fully cover the liabilities that may arise under or in connection with the Contract, and shall, on MHPA's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

### **11. CONFIDENTIALITY**

11.1 The Supplier shall not at any time during the Contract and for a period of five years after expiry of it disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of MHPA, except as permitted by clause 11.2.

11.2 Each party may disclose the other party's confidential information to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract, or as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority. Neither party shall use the other party's confidential information for any purpose other than to perform in good faith its obligations under the Contract.

11.3 The Supplier shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses MHPA's confidential information comply with this clause 11.

### **12. TERMINATION**

12.1 Without affecting any other right or remedy available to it, in any jurisdiction, MHPA may terminate the Contract with immediate effect and without further obligation on MHPA by giving written notice to the Supplier if:

- (a) the Supplier commits a material breach of any term of the Contract or where the breach is remediable fails to remedy that breach within any period notified to it by MHPA;
- (b) there is a change of Control as defined in section 1124 of the Corporation Tax Act 2010 of the Supplier;
- (c) the Supplier takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed



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to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

- (d) the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business;
- (e) the Supplier's financial position deteriorates to such an extent that in MHPA's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

12.2 If any of the Goods have been offered by the Supplier as, or if they are standard stock items, MHPA can by notice at any time prior to delivery cancel its commitment to buy those goods without further obligation on the part of MHPA. MHPA may terminate the Contract for convenience by giving the Supplier 1 months' written notice.

12.3 On termination of the Contract, the Supplier shall immediately deliver to MHPA all Deliverables whether or not then complete, and return all Customer Materials. If the Supplier fails to do so, then MHPA may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

12.4 Termination or expiry of the Contract shall not affect the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

### 13. FORCE MAJEURE

Neither party shall be in breach of the Contract 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 26 weeks the party not affected may terminate this agreement by giving 28 days' written notice to the affected party.

### 14. FOLLOW ON GOODS AND SERVICES

14.1 If to benefit fully from the Goods or Services, MHPA will be reliant on the Supplier for any supplies of maintenance, further training, spare parts, consumables or other goods rights or services, which are not included in the Contract, the Supplier will provide the same or procure their provision at fair and reasonable prices which take no advantage of MHPA's dependence on the Supplier for their supply for at least 36 months following delivery of the Goods or completion of the Services.

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### 15. GENERAL

- 15.1 MHPA contracts for itself and for the benefit of all its directors, officers, employees, associated companies, agents, sub-contractors, each of whom shall be entitled to enforce its terms.
- 15.2 MHPA may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights and obligations under the Contract. The Supplier shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of MHPA and notwithstanding such consent will remain fully liable for performance of the Contract.
- 15.3 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case) or sent by fax to its main fax number or sent by email to any address specified by that party for this purpose.
- 15.4 Receipt of any notice or communication given in accordance with clause 15.3 shall be deemed to take place as follows: where delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; by pre-paid first-class post or other next working day delivery service, at 9.30 am on the second business day after posting; by fax or email at 9.30 am on the next business day after transmission. Clause 15.3 does not apply to the service of any proceedings or other documents in any legal action or in any other method of dispute resolution.
- 15.5 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 15.6 A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 15.7 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

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- 15.8 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. MHPA shall have no liability to any third party for any consequence of reliance on any term or statement, understanding or representation, whether set out in this Contract or otherwise.
- 15.9 Unless expressly stated otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 15.10 No variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by a director or other officer of MHPA.
- 15.11 The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.