

## **ASSOCIATED BRITISH PORTS**

### **TERMS FOR THE PURCHASE OF GOODS, SERVICES AND SMALL WORKS**

#### **IMPORTANT ADVICE**

**THE SUPPLIER'S ATTENTION IS DRAWN TO SPECIFIC TERMS WHICH EXCLUDE OR LIMIT THE LIABILITY OF ABP (INCLUDING CLAUSE 8) OR WHICH REQUIRE THE SUPPLIER TO INDEMNIFY OR REIMBURSE ABP (INCLUDING CLAUSES 5.5, 9, 10.4 AND 10.5).**

**THE SUPPLIER'S ATTENTION IS DRAWN TO SPECIFIC TERMS UNDER WHICH IT IS REQUIRED TO EFFECT INSURANCE (INCLUDING CLAUSE 11).**

#### **1. Definitions and Interpretation**

1.1. Unless the context otherwise requires, the following terms shall have the following meanings when used in these Terms:

**"ABP"** means Associated British Ports, whose principal office is at 25 Bedford Street, London, WC2E 9ES;

**"ABP Customer"** means the member of the ABP Group that issues a Purchase Order to the Supplier;

**"ABP Group"** means ABP together with each of its subsidiary undertakings and parent undertakings and subsidiary undertakings of such parent undertakings;

**"ABP Facility"** means any ABP Port, the Hams Hall rail terminal and any other location or facility under the ownership or control of a member of the ABP Group at which the Supplier is performing Services and/or Works, and the words "ABP Facility" shall be construed as if they were immediately followed by the words "or any part of it" ("**ABP Facilities**" shall be construed accordingly);

**"ABP Port"** means any of ABP's ports of Immingham, Grimsby, Hull, Goole, Southampton, Newport, Port Talbot, Cardiff, Barry, Swansea, Ipswich, Lowestoft, King's Lynn, Teignmouth, Plymouth, Garston, Fleetwood, Barrow, Silloth, Troon and Ayr;

**"ABP Property"** means any raw materials, goods, plant or equipment under the ownership or control of any member of the ABP Group;

**"ABP Regulations"** means all port rules, codes of practice or other directions or regulations issued from time to time by ABP in connection with the ABP Facilities;

**"Applicable Laws"** means applicable law and legislation of any jurisdiction including all or any statutes, rules, regulations, statutory guidance, treaties, directives, decisions, directions, recommendations, codes of practice, guidance notes, circulars, bylaws, orders, notices, demands, regulations or official guidance issued by any Competent Authority which are applicable to the Supplier, the ABP Facilities and/or any aspect of the performance of the Contract as the same may be amended or modified from time to time;

**"Business Day"** means: (i) where the Goods and/or Services and/or Works are to be supplied in England or Wales, any day on which banks are open for business in London, England; or (ii) where the Goods and/or Services and/or Works are to be supplied in Scotland, any day on which banks are open for business in Edinburgh, Scotland;

**"CDM Regulations"** means the Construction (Design and Management) Regulations 2015 (SI 2015/51);

**"Charges"** means the charges due for the Goods and/or Services and/or Works supplied or performed by the Supplier, as set out in the Purchase Order;

**"Commencement Date"** means the date on which the Contract is formed between the ABP Customer and the Supplier in accordance with Clause 2.2;

**"Competent Authority"** means any supranational, national, regional, local or municipal government or regulatory authority, body, agency, court, ministry, inspectorate or department, or any official, public or statutory person or body, police, customs or port authority, in each case acting in accordance with its or their statutory or legal authority in any jurisdiction having authority over the Parties or having responsibility for the regulation or governance of any aspect of the performance of the Contract and/or any ABP Facility;

**"Completion Date"** means the date specified in the Purchase Order and/or Specification for completion of the Works (or, in the absence of such a date, the date specified by the ABP Customer acting reasonably);

**"Contract"** means the contract formed in accordance with Clause 2.2 below between the ABP Customer and the Supplier for the supply of Goods and/or Services and/or Works;

**"Defects Correction Period"** means the period specified as such in the Purchase Order and/or Specification or, in the absence of a specified

period, a period of six months following completion of the Works;

**“Deliverables”** means all original work and concepts produced by the Supplier, and by any person working for or with the Supplier, produced as part of or in connection with the Services and/or Works or their supply;

**“Delivery”** means the unloading of the Goods at the Delivery Location (and **“Deliver”** shall be construed accordingly);

**“Delivery Date”** means the date specified in the Purchase Order for Delivery of the Goods;

**“Delivery Location”** means the location specified in the Purchase Order for Delivery of the Goods;

**“Environment”** includes the following (whether alone or in combination):

- (a) ecological systems and living organisms (including humans);
- (b) air (including air within buildings or other structures and whether below or above ground);
- (c) land and soil (including buildings and any other structures in, on or under land and soil, anything below the surface of the land and land covered with water); and
- (d) water (including water under or within land or within pipe or sewage systems);

**“Good Industry Practice”** means the exercise of that degree of skill, care and diligence which would ordinarily be expected of a highly skilled and experienced person carrying out the same type of activity under the same conditions;

**“Goods”** means the goods and/or equipment and/or materials specified in the Purchase Order;

**“Hazardous Materials”** means any substance in whatever form whether alone or in combination with any other substance known or reasonably believed to be harmful to human health or the Environment, whether or not for that reason it is subject to statutory controls on production, use, storage or disposal;

**“Insolvency Event”** means the occurrence of any of the following events in relation to either Party: (a) an order is made or a resolution is passed for the winding up of that Party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of that Party; or (b) an order is made for the appointment of an administrator to manage the affairs, business and property of that Party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of that Party, or notice of intention to appoint an administrator is given by that Party or its directors or by a qualifying

floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or (c) a receiver is appointed of any of that Party’s assets or undertaking, or (d) circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of that Party or if any other person takes possession of or sells that Party’s assets; or (e) that Party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or (f) that Party ceases, or threatens to cease, to trade or suspends all or substantially all of its operations or suspends payments of its debts or becomes unable to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or (g) that Party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt;

**“Intellectual Property Rights”** means patents (including rights in, and/or to, inventions); trade marks, service marks, trade names and business names (in each case including rights in goodwill attached thereto); design rights; rights in and/or to internet domain names and website addresses; semi-conductor topography rights; copyright (including future copyright); database rights; rights in and to confidential information (including know how and trade secrets); and all other intellectual property rights, in each case subsisting at any time in any part of the world (whether registered or unregistered) and (i) any pending applications or rights to apply for registrations of any of these rights that are capable of registration in any country or jurisdiction and (ii) any similar or analogous rights to any of these rights, whether arising or granted under the laws of England and Wales or in any other jurisdiction;

**“Losses”** means any loss, damage, liability, demand, claim, recovery, judgement, execution, penalty, charge and any other cost and expense of any nature or kind whatsoever (including any legal costs and expense and costs of recovery on a full indemnity basis);

**“Operative”** means any person employed or engaged by the Supplier in its provision of Services and/or Works;

**“Parties”** means the ABP Customer and the Supplier (and **“Party”** shall mean either of them);

**“Pollution Incident”** means a discharge of any Hazardous Material to the Environment in breach of any Applicable Laws;

**“Purchase Order”** means the ABP purchase order form used by the ABP Customer to order Goods and/or Services and/or Works from the Supplier and which incorporates these Terms;

**“Reportable Injuries or Occurrences”** means any injuries or dangerous occurrences reportable under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995;

“**Services**” means the services (including any Deliverables) specified in the Purchase Order;

“**Specification**” means the specifications, descriptions, maps, drawings, samples, patterns, service levels and/or any other requirements or stipulations of the ABP Customer (if any) referred to, described in or attached to the Purchase Order or which are otherwise agreed between the ABP Customer and the Supplier (together with any modifications to them that may be agreed);

“**Terms**” means these ABP Terms for the Purchase of Goods, Services and Small Works;

“**Warranty Period**” means, unless otherwise agreed in writing by the ABP Customer, a period of twelve (12) months from the date on which the Goods are delivered to the ABP Customer (provided that where Goods to be supplied under a Contract are supplied in separate instalments, the Warranty Period shall commence in respect of all Goods on the date of Delivery of the final instalment); and

“**Works**” means the works to be performed by the Supplier as specified in the Purchase Order.

- 1.2. References to a statute or statutory provision include that provision as from time to time modified or re-enacted or consolidated whether before or after the date of formation of the Contract and any subordinate legislation made under it.
- 1.3. The expressions “subsidiary undertaking” and “parent undertaking” shall have the meanings given to them in section 1162 of the Companies Act 2006.
- 1.4. Any reference to a “person” includes a natural person, incorporated or unincorporated body (whether or not having a separate legal personality).
- 1.5. The words “include”, “including”, and “includes” are to be construed as if they were immediately followed by the words “without limitation”.
- 1.6. In the event of any conflict or inconsistency between the terms set out in a Purchase Order and these Terms, the terms set out in the Purchase Order shall take precedence but only to the extent required to remedy such conflict or inconsistency.

## **2. Formation of Contract**

- 2.1. Unless otherwise agreed by the ABP Customer in writing, the issue of a Purchase Order constitutes an offer by the ABP Customer to the Supplier to purchase the Goods and/or Services and/or Works specified in the Purchase Order on and subject to these Terms.
- 2.2. The Purchase Order will be deemed to have been accepted by the Supplier upon the earlier of:

- (a) the Supplier issuing a written acceptance of the Purchase Order to the ABP Customer; or

- (b) the Supplier delivering the Goods (or any part of them) to the ABP Customer and/or commencing performance of the Services and/or Works (or any part of them),

at which point a contract will be formed between the ABP Customer and the Supplier for the supply of the Goods and/or Services and/or Works described in the Purchase Order on and subject to these Terms (the “**Contract**”). Subject to Clause 14, the Contract will continue until each of the Parties has discharged its obligations to the other Party under the Contract.

- 2.3. Unless otherwise agreed by the ABP Customer in writing, these Terms shall apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate (including the Supplier’s own standard terms of business) or any other terms implied by trade, custom, practice or course of dealing.
- 2.4. Subject to Clause 2.5 below, neither the ABP Customer nor the Supplier shall be bound by any variation to the Contract unless it is in writing and signed by both Parties.
- 2.5. The ABP Customer may instruct the Supplier to vary the scope of the Works (whether by addition to or omission from the Works) without complying with Clause 2.4 above. The ABP Customer and the Supplier shall endeavour to agree a fixed price for any variation but if they are unable to do so, the Supplier shall be entitled to a fair and reasonable adjustment to the Charges to reflect the variation in question.

## **3. Supply of Goods**

3.1. The Supplier shall ensure that:

- (a) the Goods comply in all respects with the Specification (if any) and all Applicable Laws;
- (b) the Goods are of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the ABP Customer, expressly or by implication; and
- (c) the Goods are free from damage on Delivery (and, where the Supplier is responsible for unpacking, free from damage after unpacking);
- (d) the Goods are free from defects in design, materials and workmanship and remain so for the duration of the Warranty Period.

3.2. The Supplier warrants to the Customer that it has full, clear and unencumbered title in the Goods.

3.3. The ABP Customer shall have the right to inspect the Supplier's quality systems and production methods and to inspect, examine and test the Goods (and/or any component materials) at any time before delivery and the Supplier shall give any person(s) nominated by the ABP Customer access at all reasonable times to its premises for such purpose. If following such inspection or testing the ABP Customer considers that the Goods do not comply or are unlikely to comply with the Supplier's undertakings in Clause 3.1 above, the ABP Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance (at the Supplier's own cost but subject to the ABP Customer's approval).

3.4. The Supplier shall not dispose of any Goods marked to denote that they are the property of the ABP Customer but which are not delivered to the ABP Customer (or, if delivered, which are subsequently rejected by the ABP Customer) to any other person without the prior written consent of the ABP Customer, unless such markings are first completely removed.

#### **4. Delivery of Goods**

4.1. The Supplier shall Deliver the Goods:

- (a) on the Delivery Date or, in the absence of a specified date, within 10 Business Days of the Commencement Date;
- (b) to the Delivery Location; and
- (c) during the ABP Customer's normal working hours on a Business Day, or as otherwise specified by the ABP Customer.

4.2. The Supplier shall ensure that:

- (a) all Goods are properly packed and secured in such a way to prevent any loss or damage to the Goods during transit, Delivery or unpacking; and
- (b) each delivery of Goods is accompanied by a delivery note which displays the number of the related Purchase Order and the type and quantity of the Goods being delivered.

4.3. Unless otherwise agreed in writing by the ABP Customer, the ABP Customer will not be liable to the Supplier for any delivery or packing costs.

4.4. Title and risk in the Goods shall pass to the ABP Customer on completion of Delivery.

4.5. The Supplier shall not deliver the Goods in instalments without the ABP Customer's prior written consent. Where the Supplier is permitted to deliver Goods in instalments in accordance with this Clause, any failure by the

Supplier to deliver one instalment on time or at all or any defect or damage to any Goods in one instalment shall (without prejudice to any other rights or remedies available to the ABP Customer) entitle the ABP Customer to exercise any of its rights or remedies under Clause 6.

#### **5. Performance of Services and Works**

5.1. The Supplier shall, with effect from the Commencement Date (or such other date specified in the Purchase Order and/or Specification) and for the duration of the Contract, perform the Services in accordance with:

- (a) the terms of the Contract;
- (b) the Specification (if any); and
- (c) Good Industry Practice.

5.2. The Supplier shall with effect from the Commencement Date (or such other date specified in the Purchase Order and/or the Specification) carry out the Works in accordance with:

- (a) the terms of the Contract; and
- (b) the Specification.

The Supplier shall complete the Works on or prior to the Completion Date. Where the Supplier is unable to complete the Works by the Completion Date as a result of any act or omission of the ABP Customer, the ABP Customer and the Supplier will discuss in good faith and agree a revised date for completion of the Works. In the absence of such agreement, the Supplier undertakes to complete the Works within a period determined by the ABP Customer (acting reasonably).

5.3. Where the Supplier is performing Works or Services at an ABP Facility, the Supplier will conduct its activities at all times in such a way as to minimise any nuisance or disturbance to the ABP Customer, any other person at the ABP Facility, any other transport using the ABP Facility and the owners and occupiers of other land within or adjacent to the ABP Facility.

5.4. Where the Supplier is undertaking Works, the Supplier undertakes to the ABP Customer that it will use only good quality materials which are free from defects in design, materials and workmanship and which are fit for any purpose held out by the Supplier or made known to the Supplier by the ABP Customer, expressly or impliedly.

5.5. Where the ABP Customer provides the Supplier with any ABP Property for the

Supplier's performance of the Services and/or the Works, the Supplier agrees to handle the ABP Property with due skill, care and attention and agrees to indemnify the ABP Customer (and all other members of the ABP Group), and to keep them so indemnified, against any Losses sustained by the ABP Customer (and/or any other member of the ABP Group) arising out of or in connection with any loss or damage to such ABP Property.

5.6. Where the CDM Regulations apply to any Works that the Supplier is performing, the Parties acknowledge and agree that the "principal contractor" and "principal designer" for such Works will be as set out in the Purchase Order or Specification. Where the Purchase Order and Specification do not specify the Party performing a role, the ABP Customer will be the "principal designer" for the Works and the Supplier will be the "principal contractor" for the Works. Each Party agrees to comply with its obligations under the CDM Regulations in accordance with this Clause 5.6.

5.7. Where the Supplier is providing Services, the Supplier warrants and represents to the ABP Customer that it has the right to perform the Services and that its provision of the Services (including any Deliverables) will not infringe the Intellectual Property Rights of any third party.

5.8. The Parties acknowledge and agree that all Intellectual Property Rights in the Deliverables shall belong to the ABP Customer. The Supplier hereby assigns to the ABP Customer (by way of present and future assignment of rights) all Intellectual Property Rights in the Deliverables. For the purpose of giving effect to this Clause 5.8, the Supplier shall (at the ABP Customer's request) promptly (and in any event within 5 Business Days of the ABP Customer's request) execute all documents and do all such acts and things that are necessary in order for the ABP Customer to acquire, enforce or deal with any or all of the Intellectual Property Rights in the Deliverables.

## **6. ABP Customer Remedies**

6.1. If the Supplier:

- (a) fails to deliver Goods by the Delivery Date (or at all) or to perform the Services or Works in accordance with the Contract; or
- (b) has delivered Goods or performed Services or Works that do not comply with the undertakings set out in Clauses 3.1, 5.1 or 5.2 of these Terms, then without prejudice to any other rights or remedies available to it under the Contract or at law, the ABP Customer may:

- (i) refuse to accept any subsequent delivery of Goods and/or subsequent performance of the Services and/or the Works;

- (ii) where the ABP Customer has paid in advance for any Services and/or Works that have not been provided by the Supplier and/or any Goods which have not been delivered by the Supplier or which have been rejected by the ABP Customer, demand immediate repayment of any amounts paid in advance;

- (iii) recover and/or claim damages from the Supplier for any Losses incurred by the ABP Customer or any other member of the ABP Group which arise out of or in connection with the Supplier's breach of the Contract (including any costs incurred by the ABP Customer in procuring substitute goods and/or services and/or procuring an alternative contractor to provide works equivalent to those being supplied under the Contract);

- (iv) reject the Goods (in whole or in part) whether before or after Delivery and return them to the Supplier at the Supplier's own risk and expense; and/or

- (v) require the Supplier, at the ABP Customer's option but at the Supplier's sole expense, to repair or replace any defective Goods.

6.2. Time shall be of the essence in the Supplier's performance of its duties and obligations under the Contract.

6.3. The ABP Customer shall not be deemed to have accepted any Goods until it has had a reasonable time to inspect them following Delivery or, in the case of a latent defect in the Goods, until a reasonable time after the latent defect has become apparent.

6.4. Where the Supplier provides any repaired or replacement Goods to the ABP Customer under Clause 6.1(b), these Terms (including the undertakings set out in Clause 3.1 and the rights and remedies set out in Clause 6.1) shall apply equally to the repaired or replacement Goods as they apply to the original Goods, provided that the Warranty Period shall commence in respect of the repaired or replacement Goods on the date of their Delivery).

6.5. Without prejudice to its other rights and remedies under the Contract, where the ABP Customer identifies any defect(s) in any Works performed by the Supplier (including, without limitation, where the Works do not comply with the Specification in any respect), the Supplier will remedy such defect(s) promptly and to the reasonable satisfaction of the ABP Customer provided that the

Supplier notifies the Supplier of such defect(s) within the Defects Correction Period.

## **7. Charges and Payment**

- 7.1. The ABP Customer shall pay the Charges to the Supplier in consideration for (and conditional upon) the Supplier's Delivery of the Goods and/or performance of the Services and/or Works (as the case may be). Unless otherwise agreed by the ABP Customer in writing, the Charges shall constitute the ABP Customer's entire payment liability to the Supplier under the Contract.
- 7.2. In respect of Goods, the Supplier shall submit an invoice to the ABP Customer within 30 days after Delivery of all the Goods. In respect of Services or Works, the Supplier shall submit an invoice to the ABP Customer within 30 days after completion of the Services or Works. All sums payable under the Contract are stated to be exclusive of value added tax, which if payable shall be paid against receipt of a valid VAT invoice.
- 7.3. All invoices submitted by the Supplier to the ABP Customer must quote the reference number of the related Purchase Order. The ABP Customer will not accept invoices which contain a reference to more than one Purchase Order. The Supplier must submit each invoice in separate PDF form to [supplierinvoices@abports.co.uk](mailto:supplierinvoices@abports.co.uk). Where the Supplier is required to send a credit note to the ABP Customer, it should send such documents to [supplierinvoices@abports.co.uk](mailto:supplierinvoices@abports.co.uk). Where the Supplier is required to send a statement to the ABP Customer, it should send such documents to [accountspayable@abports.co.uk](mailto:accountspayable@abports.co.uk).
- 7.4. The ABP Customer shall pay all undisputed amounts within 30 days of receipt of a correctly rendered invoice from the Supplier to a bank account nominated in writing by the Supplier.
- 7.5. If the Supplier does not receive any amounts which are properly due and chargeable under the Contract by the due date for payment, the Supplier shall be entitled to charge interest on the overdue amount at a rate of two percent (2%) per annum above the Bank of England base rate, accruing on a daily basis from the due date until the date of actual payment (whether before or after judgment) (and which the Parties acknowledge and agree constitutes a substantial remedy for the Supplier in respect of late payment of sums due under the Contract). This Clause shall not apply to any amount that the ABP Customer disputes in good faith.
- 7.6. The Supplier shall keep and maintain accurate and up-to-date records of the time spent and materials used by the Supplier in providing the Services and/or Works, and the Supplier shall permit the ABP Customer to inspect such records at all reasonable times on request.
- 7.7. Where the Construction Industry Scheme applies to any Works carried on under the Contract, the

Supplier will provide the ABP Customer will all information required by the ABP Customer in order for the ABP Customer to apply the Construction Industry Scheme in accordance with Applicable Laws.

## **8. Limitations of Liability**

- 8.1. The ABP Customer will not be liable to the Supplier for:
    - (a) any loss of profit (direct or indirect);
    - (b) loss of business, contracts, anticipated savings or depletion of goodwill; any indirect or consequential loss or damages, costs, expenses or other claims for consequential compensation or indirect economic loss (whether in contract, tort (including negligence), restitution, breach of statutory duty or otherwise) which arises out of or in connection with the Contract; or
    - (c) for any liability incurred by the Supplier to any other person for any economic loss, claim for damages or awards howsoever arising from the Contract or otherwise.
  - 8.2. The ABP Customer's total aggregate liability arising out of or in connection with the Contract (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) will be limited to an amount equal to the Charges due under the Contract.
  - 8.3. No term of the Contract excludes or limits the liability of either Party for death or personal injury caused by that Party's negligence, or for fraud or fraudulent misrepresentation.
- ## **9. Indemnity**
- 9.1. The Supplier shall indemnify and keep indemnified the ABP Customer in full and on demand against all Losses incurred by the ABP Customer arising out of or in connection with:
    - (a) any claim made against the ABP Customer by a third party for death, personal injury or damage to property arising out of or in connection with the Services or Works, or defects in Goods, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
    - (b) any claim made against the ABP Customer by a third party arising out of or in connection with the supply of the Goods and/or Services and/or Works, to the extent that the claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and/or
    - (c) any breach by the Supplier of Clause 3.2, 5.8 or 10.

## 10. **Compliance**

- 10.1 Each Party will at all times keep itself informed of and comply with all Applicable Laws relevant to its performance of the Contract.
- 10.2 The Supplier will at all times keep itself informed of and comply with all ABP Regulations relevant to the Supplier's use of and activities at any ABP Facility.
- 10.3 Without prejudice to Clause 10.2, where the Supplier is performing Services and/or Works at an ABP Facility, it will at all times conduct its activities in such a way as to:
- (a) prevent the escape of any substance or matter (in whatever form and whether alone or in combination with any other substance) within the possession or control of the Supplier or its Operatives into or onto any part of the ABP Facility;
  - (b) ensure that no Hazardous Materials or substance or matter of which the discharge passage or escape would be contrary to the Environmental Permitting (England and Wales) Regulations 2016 (SI 1154) or any substance or material which may cause an obstruction or damage or pollution or contamination to pass or escape into any sewer drain or watercourse serving an ABP Facility or into the sea or into or onto any part of the ABP Facility.
- 10.4 If a Pollution Incident should occur as a result of the activities of the Supplier at an ABP Facility, including the escape of any substance or matter which might cause damage to the Environment or discharge of any Hazardous Materials or other substance or matter referred to in Clause 10.3(b) in breach of that Clause 10.3(b), the Supplier shall, upon becoming aware of the Pollution Incident:
- (a) immediately take all steps necessary to prevent further pollution occurring as a result of the Pollution Incident;
  - (b) notify the ABP Customer as soon as reasonably practicable and provide the ABP Customer with a copy of any notice that has been given to any Competent Authority in connection with the incident;
  - (c) as soon as reasonably practicable remediate the consequences of the Pollution Incident to the reasonable satisfaction of the ABP Customer and any Competent Authority,
- provided that notwithstanding Clause 10.4(c) and without prejudice to any of its other rights or remedies the ABP Customer reserves the right to elect to remediate the consequences of the Pollution Incident itself where it is reasonable in the circumstances for the ABP Customer to do so and the Supplier shall reimburse the ABP Customer in full and on demand for all costs or expenses incurred by the ABP Customer (and/or any other member of the ABP Group) as a result of undertaking such remediation.
- 10.5 The Supplier agrees to indemnify the ABP Customer (and all other members of the ABP Group), and to keep them so indemnified, from and against any Losses incurred by the ABP Customer (and/or any other member of the ABP Group) as a result of the Supplier's breach of Clause 10.3 or 10.4.
- 10.6 Where the Supplier is performing Services and/or Works at an ABP Port, it will at all times conduct its activities in accordance with the International Ships and Port Facility Security Code and any amendments or additions to it (the "ISPS Code").
- 10.7 The Supplier will assist the ABP Customer with security requirements in connection with its activities at any ABP Facility in accordance with the ISPS Code, the Port Security Regulations 2009 and any requirements of the United Kingdom Department for Transport or other Competent Authority.
- 10.8 The Parties shall not, and shall procure that their directors, employees, agents, representatives, suppliers and subcontractors shall not, engage in any activity, practice or conduct which would constitute an offence under any applicable:
- (a) anti-bribery and/or anti-corruption laws, regulations and codes, including the Bribery Act 2010;
  - (b) anti-slavery and human trafficking laws, regulations and codes, including the Modern Slavery Act 2015;
  - (c) tax evasion facilitation laws, regulations and codes, including the Criminal Finances Act 2017.
- 10.9 The Parties shall:
- (a) each have in place adequate procedures designed to prevent any person working for or engaged by them or any third party in any way connected to the Contract, from engaging in any activity, practice or conduct which would infringe any anti-bribery and/or anti-corruption laws, regulations and codes including ABP's anti-corruption and anti-bribery policy which is available on ABP's website <http://www.abports.co.uk>; and
  - (b) not engage in any activity, practice or conduct that would constitute an offence

under sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;

- (c) each have in place and maintain such policies and procedures as are both reasonable to prevent the facilitation of tax evasion by another person (including without limitation employees of the Supplier) and for the purposes of this Clause 10.9(c) the extent to which any prevention procedures are deemed reasonable shall be determined in accordance with any guidance issued under section 47 of the Criminal Finances Act 2017.

10.10 Without prejudice to the generality of the obligations set out in this Clause 10, the Supplier must promptly report to the ABP Customer:

- (a) any request or demand for any undue financial or other advantage of any kind which it receives in connection with the performance of any obligations under any agreement with any member of the ABP Group;
- (b) any actual or suspected slavery or human trafficking in a supply chain which has a connection with Supplier's provision of the Goods, Services or Works, the Contract or any other agreement with a member of the ABP Group; or
- (c) any request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017 in connection with the performance of the Contract.

## 11. **Insurance**

The Supplier will throughout the term of the Contract have and maintain the following insurances with insurers of repute:

- (a) fully comprehensive employer's liability insurance for unlimited amounts against risks of death, injury or disease to the Supplier's employees, subcontractors and agents in respect of all operations carried out by the Supplier pursuant to the Contract for a minimum of £10,000,000 (ten million pounds) per event;
- (b) public liability insurance (including product liability) for a minimum of £10,000,000 (ten million pounds) for each occurrence, which insurance shall include coverage for:
  - (i) damage or loss to any ABP Property arising out of the Supplier's operations; and

- (ii) all claims, whether directly or indirectly, of whatever nature arising out of the Supplier's operations;

- (c) where the Supplier is carrying out Works, all risks insurance and professional indemnity insurance with the limits specified in the Purchase Order and/or Specification; and

- (d) such other insurances as the Supplier reasonably deems appropriate in order to meet its obligations and liabilities under the Contract or as are required by Applicable Law.

## 12. **Health and Safety**

12.1. Without prejudice to any other term of the Contract, where the Supplier is performing Services and/or Works at any ABP Facility, it will at all times and at its own expense keep itself informed of, observe and comply with all Applicable Laws and ABP Regulations (including all relevant ABP policies and procedures) relating to health and safety affecting its use of and activities at the ABP Facilities.

12.2. The Supplier shall ensure that all Operatives are properly and adequately supervised by the Supplier at all times during the performance of any Services and/or Works. Unless otherwise agreed in advance in writing by the ABP Customer, the Supplier shall be fully responsible for the supervision and conduct of any activities carried out at the ABP Facilities pursuant to the Contract, including in circumstances where the ABP Customer has any representative(s) present during any part of the Services and/or the Works.

12.3. The Supplier shall ensure that:

- (a) all Operatives engaged by the Supplier in the provision of Services and/or Works are appropriately trained and qualified for the work in which they are engaged, in accordance with Good Industry Practice, including (where Services and/or Works are being performed at an ABP Port) any guidance published from time to time by the UK Industry Standards body Port Skills and Safety, including (without limitation) specific training applicable to the particular work being carried out by each Operative; and
- (b) without prejudice to the generality of the above, that under no circumstances shall any Operative operate any vehicle or mechanical cargo handling equipment at any time unless and until such Operative has been properly trained and is properly qualified to operate such vehicle or equipment.

12.4. The Supplier shall maintain accurate and up to date training records for all Operatives and will promptly provide copies of such records to the ABP Customer on request.

- 12.5. Without limitation to the other terms of the Contract, the Supplier shall:
- (a) carry out risk assessments of its activities at the ABP Facilities;
  - (b) devise safe systems of work; and
  - (c) deliver toolbox talks,
- in relation to environmental protection and health and safety.
- 12.6. Where the Supplier is performing Services and/or Works in an ABP Facility, it shall have in place and shall comply with a drugs and alcohol policy (the “**D&A Policy**”) of equivalent effect to the ABP Drug and Alcohol Policy and which includes provision for “random” and “for cause” testing of workers. The Supplier shall apply its D&A Policy to all its Operatives and any Operatives who test positive for drugs or alcohol or who refuse to co-operate with the D&A Policy will be dealt with in accordance with the provisions of the D&A Policy.
- 12.7. The Supplier shall ensure that appropriate action is promptly taken on the basis of its risk assessments so as to comply at all times with Good Industry Practice and Applicable Law.
- 12.8. The Supplier shall plan and execute the Services and/or Works in such a manner as to ensure that so far as is reasonably practicable no person is exposed to danger.
- 12.9. The Supplier shall, and shall ensure that its Operatives shall, immediately inform a representative of the ABP Customer in the event that it becomes aware of any occurrence, incident, circumstance or unsafe practice which may affect the safe or efficient operation of the ABP Facilities or which may present a danger or give rise to a risk to health, security, order, safety, property or the environment at the ABP Facilities.
- 12.10. The Supplier shall submit to the ABP Customer the details of any Reportable Injuries or Occurrences which have occurred in any ABP Facility as soon as reasonably possible after each such occurrence.
- 12.11. The Supplier shall inform the ABP Customer in writing of the name and contact details of its appointed competent person for health and safety matters and shall promptly notify the ABP Customer of any updated details in the event of any changes.

### **13. Confidentiality**

- 13.1. The Parties will keep and procure to be kept secret and confidential all confidential information belonging to the other party disclosed or obtained as a result of the relationship of the parties under the Contract and will not use or disclose the same save: (a) for the purposes of the proper performance of the Contract; (b) with the prior written consent

of the other Party or of a Party's professional advisors or; (c) as may be required in connection with any financing arrangements.

- 13.2. Where a Party discloses confidential information to its employees, consultants, sub-contractors, professional advisors or agents pursuant to Clause 13.1, such disclosure shall be subject to obligations equivalent to those set out in this Clause 13 and the disclosing Party will use its best endeavours to procure that any such employee, consultant, sub-contractor, professional advisor or agent complies with such obligations. Each Party will be responsible to the other Party in respect of any disclosure or use of any such confidential information by a person to whom disclosure is made.
- 13.3. The obligation of confidentiality under Clause 13.1 will not apply to any confidential information which: (a) is in or enters (otherwise than as a result of an unlawful disclosure by the Party receiving such information), the public domain; (b) the Party receiving such information can demonstrate was already lawfully in its possession at the time of disclosure; (c) is disclosed to the Party receiving such information by a third party otherwise than in breach of any confidentiality obligation owed to the Party whose confidential information it is; or (d) is required to be disclosed pursuant to any Applicable Law, Court or arbitral order or by any supervisory or regulatory body to whose rules a Party is subject or with whose rules it is necessary for that Party to comply.

### **14. Termination**

- 14.1. Without prejudice to any other rights or remedies it may have against the Supplier or to any other term of the Contract, the ABP Customer may terminate the Contract immediately on written notice to the Supplier if:
- (a) the Supplier undergoes an Insolvency Event;
  - (b) the Supplier breaches any of the undertakings set out in Clauses 3.1, 5.1 or 5.2 of these Terms;
  - (c) the Supplier breaches Clause 10.8, 10.9 and/or 10.10 of these Terms;
  - (d) the Supplier commits a material breach of any of its obligations under the Contract which is incapable of remedy;
  - (e) the Supplier fails, within a reasonable period of being requested to do so and in any event within twenty-eight (28) days, to remedy a material breach of its obligations under the Contract which is capable of remedy;

- (f) the Supplier commits a breach of the Contract more than three (3) times in any period of two months;
- (g) any of the policies of insurance referred to in Clause 11 becomes void or unenforceable through any act or omission of the Supplier; or
- (h) there is a change of control of the Supplier (within the meaning of section 1124 of the Corporation Tax Act 2010) which has not been approved by the ABP Customer in writing in advance.
- 14.2. Without prejudice to any other rights or remedies it may have against the ABP Customer or to any other term of the Contract, the Supplier may terminate the Contract immediately on written notice to the ABP Customer if:
- (a) the ABP Customer undergoes an Insolvency Event;
- (b) the ABP Customer commits a material breach of its obligations under the Contract which is incapable of remedy; or
- (c) the ABP Customer fails, within a reasonable period of being requested to do so and in any event within twenty-eight (28) days, to remedy a material breach of its obligations under the Contract which is capable of remedy.
- 14.3. Termination of the Contract shall be without prejudice to any rights, claims, duties or obligations of either Party which have accrued prior to termination.
- 15. General**
- 15.1 The ABP Customer may assign, transfer, charge, sub-contract or otherwise deal with any of its rights or obligations under the Contract at any time by giving at least seven (7) days' prior written notice to the Supplier. The Supplier agrees to execute any documents and to do all such other acts and things as are required to give effect to this Clause 15.1.
- 15.2 The Supplier cannot assign, transfer, charge, sub-contract or otherwise deal with any of its rights or obligations under the Contract without the prior written consent of the ABP Customer.
- 15.3 Any notice or other communication to be given under the Contract shall be in writing and shall be delivered by hand, pre-paid first-class post or electronic mail. Communications delivered by hand or electronic mail shall be deemed received at the time of delivery (if prior to 4pm on a Business Day) or otherwise at 9am on the next Business Day; communications delivered by pre-paid first-class post shall be deemed received two (2) Business Days after posting.
- 15.4 No failure of either Party to exercise, and no delay by it in exercising any right, power or remedy in connection with the Contract (each a "Right"), will operate as a waiver thereof, nor will any single or partial exercise of any Right preclude any other or further exercise of such Right or the exercise of any other Right. Any express waiver of any breach of the Contract may only be given in writing by the waiving Party and will not be deemed to be a waiver of any subsequent breach.
- 15.5 The ABP Customer may at any time set-off any liability of the Supplier to the ABP Customer against any liability of the ABP Customer to the Supplier (regardless of how the liability has arisen and whether or not the liability is present or future, liquidated or unliquidated). Any exercise by the ABP Customer of its rights arising out of or in connection with this Clause will be without prejudice to any other rights or remedies available to the ABP Customer arising out of or in connection with the Contract or otherwise. No security interest is created by this Clause.
- 15.6 If any term of the Contract or any document referred to in it or to be entered into pursuant to or in connection with it is held to be illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such term or part will to that extent be deemed not to form part of the Contract but the legality, validity and enforceability of the remainder of the Contract or the term will not be affected.
- 15.7 Both Parties' rights under the Contract are cumulative and without prejudice to any rights or remedies which are available to them under common law or statute.
- 15.8 Any member of the ABP Group shall have the right to enforce Clauses 5.5, 6.1(iii) and 10.5 of these Terms (as incorporated into the Contract) in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999. Except as stated in this Clause 15.8, a person who is not a Party to the Contract shall have no right to enforce any of its terms pursuant to the Contracts (Rights of Third Parties) Act 1999. The Contract may be rescinded or terminated and a term may be amended or waived at any time without the permission of any third party even if that takes away a right which any third party would otherwise have.
- 15.9 The Contract (including any non-contractual obligations arising out of or in connection with it) shall be governed by and construed in accordance with the laws of England and Wales. The Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales to settle any dispute, claim or matter of difference arising out of or in connection with the Contract.