

PORT OF BLYTH STANDARD TERMS AND CONDITIONS OF SALE

1. DEFINITIONS

- 1.1. **'Customer'** the party which procures or hires, or intends to procure or hire, Equipment, Personnel and/or Services from the Port.
- 1.2. **'Contract'** the quotation or separate agreement between the Port and the Customer for the provision by the Port of Equipment, Personnel and/or Services, together with all schedules and/or amendments and/or additions thereto.
- 1.3. **'Equipment'** the equipment and/or materials which the Port provides and/or will provide under the Contract.
- 1.4. **'Personnel'** the employees, subordinates and auxiliary persons whom the Port provides and/or will provide under the Contract.
- 1.5. **'Services'** the services which the Port provides and/or will provide under the Contract.
- 1.6. **'Hire'** the hiring of the Equipment and/or Personnel under the Contract.
- 1.7. **'Documentation'** the drawings, (technical) specifications, designs, calculations, models, prototypes and other documents provided or yet to be provided by anyone in relation to and/or in connection with the Contract.
- 1.8. **'Contract Price'** the price for the Services as agreed under the Contract.
- 1.9. **'Party'** the Port or the Customer.
- 1.10. **'Parties'** the Port and the Customer jointly.
- 1.11. **'The Port'** means Blyth Harbour Commission, trading as 'The Port of Blyth', South Harbour, Blyth, Northumberland, NE24 3PB and any authorised representative.

2. APPLICABILITY

- 2.1. The Port of Blyth Standard Terms and Conditions of Sale shall form an integral part of each Contract between the Port and the Customer and shall apply to all subsequent contracts resulting from or relating to a Contract, and to all quotations, offers, letters of intent, orders, order confirmations and other documents and acts made and/or done in preparation for and/or prior to and/or in connection with a Contract.
- 2.2. Any other terms and conditions, of whatever nature and howsoever called or described, which the Customer applies and/or to which the Customer refers are not applicable and are hereby expressly rejected by the Port.
- 2.3. Nothing overrides or supersedes the Port's rights and powers as a Statutory Harbour Authority including associated Acts of Parliament, Harbour Bylaws and General Trading Conditions.
- 2.4. In the event of a conflict between the Port of Blyth Standard Terms and Conditions of Sale and the provisions of the Contract, the provisions of the Contract will prevail.
- 2.5. The most recent version of the Port of Blyth Terms and Conditions of Sale is applicable, and can be found on the Port of Blyth website: www.portofblyth.co.uk If the Customer is in any doubt over the validity of any version the most recent version is available on request.

3. OFFER AND ACCEPTANCE

- 3.1. All quotations and offers issued or made by the Port, including the provision of supporting documentation such as brochures, price lists and/or other documents, does not create an obligation on the Port to agree to the provision of Services, and the Port reserves the right in its absolute discretion, to withdraw an offer or quotation without incurring any liability to the Customer as it sees fit.
- 3.2. Except as expressly stated otherwise, each quotation and/or offer is based on performance by the Port in normal circumstances and during normal working hours as defined in the Contract.
- 3.3. Each quotation and/or offer issued or made by the Port relates exclusively to the Services, and the scope thereof, as specified in the

quotation and/or the offer. Except as expressly stated otherwise, quotations and offers are exclusive of any charge for additional work.

- 3.4. A Contract will be concluded only when it is confirmed in writing by the Port or by the performance of the Services and/or Hire.
- 3.5. No amendment and/or addition to a Contract or to the Port of Blyth Standard Terms and Conditions of Sale will take effect unless it has been agreed and confirmed in writing by the Port.
- 3.6. Commencement of the Services and/or Hire is deemed as acceptance of the Port of Blyth Terms and Conditions of Sale and any rates and charges specified in the Contract.

4. CONTRACT PRICE

- 4.1. Unless expressly included, the consideration for any Services, Personnel or Equipment provided under these Port of Blyth Standard Terms and Conditions of Sale does not include VAT.
- 4.2. The Contract Price excludes any other services not specifically indicated in the Contract.
- 4.3. If the cost price of one or more elements of the Contract Price over which the Port has no influence rises substantially after the date of conclusion of the Contract, the Port will be entitled to increase the Contract Price accordingly. Under such circumstances it is acknowledged that the Customer has the right to cancel the Contract.
- 4.4. The Port reserve the right to raise additional charges should the cargo or operation prove to be of an exceptional nature e.g. requiring specialist lifting equipment or additional labour, being poorly presented, lacking adequate lifting points, markings etc.
- 4.5. The Port reserve the right to raise additional charges should the vessel prove to be unsuitable for efficient discharge/loading.
- 4.6. The Port reserve the right to raise additional charges should the operation be held up or delayed by the vessel or Customer.

5. PAYMENT

- 5.1. Payment must be made by the Customer within the payment period specified in the Contract or, if no payment period is specified in the Contract, within 30 (thirty) days of the date of the invoice.
- 5.2. If the Customer has not issued the Port with a PO prior to the Services commencing then the Port reserves the right to invoice the Customer for the Services without a PO from the Customer.
- 5.3. Except as otherwise agreed between the Parties, payment must be made into a bank account specified by Port, without any deduction, set-off or withholding of any kind.
- 5.4. Payments by the Customer to the Port may never be dependent upon receipt by Customer of payments from third parties, including the Customer's own customer.
- 5.5. If the Customer has not made payment by the due date at the latest, the Customer will be in default without any notice of default being required, and will owe the Port default interest equal to 10% (ten percent) per year on the overdue amounts. Such default interest will accrue from the relevant due date. The Port also reserves the right to apply any of its rights and powers as a Statutory Harbour Authority including associated Acts of Parliament, Harbour Bylaws and General Trading Conditions.
- 5.6. In the event of payment default by the Customer, all costs and expenditure (including all costs of legal assistance, both in and out of court) incurred by the Port in collecting the amount due will be payable by the Customer.

6. DOCUMENTATION AND INFORMATION

- 6.1. All Documentation is and will remain the property of the Party that has supplied it to the other Party and all intellectual property rights therein are and will remain vested in the Party that has supplied the Documentation to the other Party.
- 6.2. Each Party is liable and responsible to the other Party for the accuracy, correctness and completeness of the Documentation and

information supplied by it or on its behalf. Each Party may rely fully on the accuracy, correctness and completeness of the Documentation and information supplied to it by or on behalf of the other Party. Each Party indemnifies the other Party against all consequences of any inaccuracy, incorrectness and incompleteness of the Documentation and information supplied by it or on its behalf to the other Party

7. EQUIPMENT

- 7.1. The Equipment may only be used at the Port of Blyth and only in accordance with the specifications and within the Equipment's capacity limits. No other use is permitted.
- 7.2. The Customer acknowledges that the Equipment is and will at all times remain the property of the Port and/or the Port's subcontractor(s).
- 7.3. Except as provided otherwise in the Contract, the Equipment will be mobilised and demobilised by the Port at the Customer's expense.
- 7.4. When it is delivered, the Equipment will function properly, be well maintained, in good working order and free from defects.
- 7.5. The Customer is obliged to inspect the state and condition of the Equipment upon delivery. If the Equipment does not meet the requirements set out in paragraph 7.4, the Customer must inform the Port accordingly in writing immediately upon receipt of the Equipment, failing which the Customer will be deemed to have received the Equipment in the state and condition described in paragraph 7.4.
- 7.6. The Customer may not hire out or sublet the Equipment and/or grant any rights of any nature in respect of the Equipment to any party.
- 7.7. The Customer must take good care of the Equipment and use the Equipment with due care. The Customer is responsible and liable to the Port for all defects and/or damage caused to the Equipment during the Hire.
- 7.8. The Port reserves the right to replace the Equipment with equivalent Equipment.
- 7.9. The Port will take care of repairs and maintenance of the Equipment where necessary during the Contract. The Customer is not permitted to carry out repairs and/or maintenance itself without the Port's express written consent. If repairs and/or maintenance are necessitated by acts, omissions or improper use by or on behalf of the Customer, the costs associated with such repairs and/or maintenance, including (without limitation) the costs of labour, materials, transport and travelling expenses, will be payable by the Customer. If these costs and expenses come under the cover of the insurance as provided in Article 14.3 of the Port of Blyth Standard Terms and Conditions of Sale, the Customer's liability per occurrence is limited to the excess under the insurance policy in question.
- 7.10. The Equipment must be returned clean, undamaged and in the same state and condition as it was when received.

8. PERSONNEL

- 8.1. The Customer will be fully responsible and liable for and fully indemnifies the Port against any consequences, loss, costs and damage arising from any act or omission on the part of the Personnel, except in the case of intentional acts by Personnel designed to cause the damage, costs and/or loss.
- 8.2. Unless expressly agreed in the contract the Personnel will perform the work under the supervision, on the instructions and under the control of the Customer.
- 8.3. The Customer will be fully responsible for and provide a safe working environment for the Personnel and ensure that (health and safety at work) legislation is complied with during the Contract and/or Hire. The Customer will indemnify, defend and hold harmless the Port against and in respect of all claims, demands, actions and proceedings which are made and/or instituted against the Port and/or Personnel and/or the Port's subcontractors in respect of any occurrence, loss, costs, penalties or damage for which the Customer is liable under this Article.
- 8.4. The Customer will comply with all rules, schemes, regulations and measures relating to health, safety, the environment and working conditions.

9. CUSTOMER'S GOODS

- 9.1. Notwithstanding the provisions of clause 13.2 hereof if the Port shall entrust goods to any Agent or to any other firm or company for the purpose of the handling, warehousing or carriage of such goods the contract between Port and the Customer shall be deemed to confer on such Customer the like rights in respect of loss of or damage to such goods as such Customer would have been entitled to if they had contracted direct with such Agent firm or company.
- 9.2. Goods of a dangerous or explosive character are not accepted except by special agreement. Any person who otherwise that in pursuance of such an agreement causes or attempts to cause the Port to accept any such goods will be held accountable for all damage arising therefrom whether to the property of the Port or any other goods in the possession of the Port or to any other property or to any person.
- 9.3. All goods received by the Port or its agents shall be held by them subject to a general lien and right of detention for money due to the Port whether in respect of these or other goods or for other charges or costs payable by the owner of the goods; and, if the general lien is not satisfied within a reasonable time from the day when the goods are first received, the goods will be sold by auction or otherwise and the proceeds of sale applied to the satisfaction of the lien and expenses. The Port will also have this lien if the Customer is dissolved, or enters into liquidation, administration, administrative receivership, receivership, a voluntary arrangement, or a scheme of arrangement with its creditors.
- 9.4. As the Port do not insure Customer's goods, Customers are advised to see that their insurance policies cover all risks arising under their trading arrangements with the Port which are subject to the Port of Blyth Terms and Conditions of Sale.

10. RIGHT TO SUBCONTRACT

- 10.1. The Port may at any time arrange for all or part of the Services and/or the Hire to be performed by third parties.
- 10.2. If the said third parties are ever held liable for an issue or matter relating to their provision of the Services which they are undertaking on behalf of the Port, then the relevant third party will be entitled to rely upon the provisions of the Port of Blyth Standard Terms and Conditions of Sale relating to the exclusion or limitation of liability, and governing law and jurisdiction.
- 10.3. Unless expressly agreed otherwise in the Contract, all times, time schedules and/or periods for performance by the Port specified in the Contract or otherwise agreed between the Parties will merely be an estimate and will not be binding on the Port.
- 10.4. Hire of third party plant and equipment (cranes, SPMT's etc.) subject to availability and rates are indicative until booked. Minimum advanced booking notifications may apply. Minimum cancellation notifications may apply and no refund can be given for cancellation outside the cancellation notification period or for shorter hire periods. Hire costs associated with third party plant and equipment (cranes, SPMT's etc.) will also still apply where such plant and equipment is unable to operate due to factors outside the control of the Port of Blyth (e.g. adverse weather conditions such as high wind speeds etc. or the late arrival of vessel or cargo).
- 10.5. Any mobile plant or equipment (e.g. forklift, cranes etc.) not sourced through the Port will be subject to an access charge to pass over and use the Port's quays, roads and storage areas. Charges provided on application.

11. SITE RESPONSIBILITIES, REGULATIONS AND SAFETY

- 11.1. The Customer shall at all times whilst on the Port's premises comply with and ensure that the Customer's Personnel and subcontractors comply with all health and safety legislation and with all security and safety regulations and rules of those premises.
- 11.2. The Port shall afford access to so much of its premises as is necessary for the performance of the Services.
- 11.3. The Port operates a Permit to Work scheme for all Customers working within the Port premises. The Port shall issue a Permit to Work, prior to any work commencing, detailing the works to be carried out and the duration of which they are to be on site. The Customer must have this on site at all times. The Customer shall ensure all staff working under the Contract receive a Port Safety Induction.

- 11.4. The Customer is responsible for submitting copies of risk assessments, method statements, and insurance certificates and where required licences and training certificates for the Services to be provided, prior to any work being undertaken.
- 11.5. The Customer shall be responsible for the suitability and safety of any plant and equipment or temporary works used. No plant / equipment or temporary works shall be used which may be unsuitable, unsafe or liable to cause damage or injury.
- 11.6. Upon Completion the Customer shall remove from the site all plant / equipment, accommodation, rubbish and temporary works.

12. GENERAL OBLIGATIONS OF THE PARTIES

- 12.1. The Parties must comply with all laws, rules, regulations, decisions, orders and/or other requirements and instructions of government and/or other authorities.

13. LIABILITY

- 13.1. The Port accepts no liability or responsibility in relation to any Services provided except in the case of proven negligence.
- 13.2. The Port shall not be liable for damage to or loss of goods or consequential damage or loss arising therefrom whilst such goods are in their custody or that of their employees or agents except upon proof that such damage or loss arises from negligence on the part of Port of Blyth, their employees or agents.
- 13.3. Under no circumstances will the Port be liable for any loss, costs or damage suffered as a consequence of delay in performance by the Port.
- 13.4. The Customer will be liable for any costs, claims, damages etc. that may arise in relation to any operations to be fully managed by the Port where incomplete or inaccurate information is supplied relating to the proposed operation or due to a failure or inadequacy of the Customer's own vessel or equipment involved in the proposed operation.
- 13.5. The Customer will indemnify, defend and hold harmless the Port and its Personnel and subcontractors against and in respect of all claims, demands, actions and proceedings which are made and/or instituted against the Port and/or its Personnel and/or the Port's subcontractors in respect of any occurrence, loss, costs, penalties or damage for which the Customer is liable under the Port of Blyth Standard Terms and Conditions of Sale and the Contract.
- 13.6. The Port will indemnify, defend and hold harmless the Customer against and in respect of all claims, demands, actions and proceedings which are made and/or instituted against the Customer in respect of any occurrence, loss, costs, penalties or damage for which the Port is liable under the Port of Blyth Standard Terms and Conditions of Sale and the Contract.
- 13.7. The Port accept no liability for demurrage or other costs arising from a vessel's charter party unless expressly confirmed in writing prior to fixing of vessel.
- 13.8. Nothing shall limit or exclude either Party's liability for death or personal injury caused by the Party's negligence or the negligence of its employees, or fraud or fraudulent misrepresentation, or for any matter for which it would be unlawful to exclude liability.

14. INSURANCE

- 14.1. The Customer will take out and maintain all insurances sufficient to cover its liabilities and obligations under the Contract.
- 14.2. The Parties must also take out all compulsory insurance as required by the relevant local law requirements.
- 14.3. Unless it is expressly agreed that Services supplied are part of operations fully managed by the Port, any Personnel and or Equipment provided under the Contract are under the Customer's responsibility and instruction. Under such circumstances the hirer must hold adequate insurance to cover the Services and satisfy themselves that any Equipment hired is suitable for their requirements.
- 14.4. Each Party will, on request, supply the other Party with a certificate and/or proper proof of the existence of the insurance policy or policies in accordance with the provisions of this article 14.

- 14.5. Customers are advised to see that their insurance policies cover all risks arising under their trading arrangements with the Port which are subject to the Port of Blyth Standard Terms and Conditions of Sale.

15. FORCE MAJEURE

- 15.1. Force majeure means any circumstances, conditions and/or occurrences which are beyond the control of either Party, are not attributable to the fault or negligence of either Party and cannot be avoided or prevented by taking reasonable measures, and which temporarily or permanently prevent the performance of any obligation (with the exception of payment obligations) under the Contract, such as trade union strikes, mutiny, quarantine, epidemics, war (whether declared or undeclared), acts of terrorism, blockades, embargos, riots, demonstrations, civil commotion or disorder, fire, storm and/or other extreme weather conditions and/or other acts of nature, provided that neither Party has caused or contributed to such occurrences.
- 15.2. If the performance of obligations under the Contract is temporarily prevented by force majeure, the performance of those obligations (with the exception of payment obligations) will be suspended from the time that the force majeure prevents the performance of those obligations until such time as those obligations are no longer affected by the Force majeure, and the Party affected by the force majeure will have no liability to the other Party during that period to the extent that the failure to perform such obligations is caused by the force majeure event.

16. CANCELLATION AND TERMINATION

- 16.1. Cancellation or delay to hire of the Services provided by the Port will be chargeable in full unless the Customer notifies the Port by 15:00 hrs on the previous working day. Longer notice periods may apply for the cancellation of 3rd party hire.
- 16.2. Each Party will be entitled to cancel and/or terminate the Contract with immediate effect, without recourse to the courts or arbitrators and without being obliged to pay any compensation to the other Party if the other Party has been dissolved or entered into liquidation, administration, administrative receivership, receivership, a voluntary arrangement, a scheme of arrangement with creditors, any analogous or similar procedure in any jurisdiction or any other form of procedure relating to insolvency, reorganisation or dissolution in any jurisdiction.

17. WARRANTY

- 17.1. The Port will comply with all rules, schemes, regulations and measures relating to health, safety, the environment and working conditions.
- 17.2. Unless expressly agreed otherwise in writing in the Contract, no warranty period will apply to the Services after their performance.

18. GOVERNING LAW AND JURISDICTION

- 18.1. The Courts of England and Wales shall have exclusive jurisdiction to hear and determine any suit, action or proceeding, in relation to any disputes which may arise out of or in connection with these Port of Blyth Standard Terms and Conditions of Sale and, for such purposes the Parties shall submit to the jurisdiction of such courts.

19. THIRD PARTY RIGHTS

- 19.1. With the exception of the Port, the Customer (which includes its own customer, the enterprises associated with the Customer and/or its own customer and their contractors and subcontractors, customers, directors and members of staff) and third party subcontractors appointed in accordance with clause 10.1, a person who is not party to these Port of Blyth Standard Terms and Conditions of Sale has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

20. MISCELLANEOUS

- 20.1. Except as expressly agreed otherwise in writing or provided in these Port of Blyth Standard Terms and Conditions of Sale, the Parties are not entitled to assign one or more of their rights and/or obligations under the Contract to a third party.
- 20.2. Both the Port of Blyth Standard Terms and Conditions of Sale and the Contract constitutes together the entire agreement and understanding of the Parties in respect of the subject matter of the Port of Blyth Standard Terms and Conditions of Sale and supersedes all prior and written agreements, understandings and arrangements between the Parties relating to this subject matter.