

## FOYLE ENGINEERING - TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS & SERVICES

### 1. INTERPRETATION

#### 1.1 In these Conditions, the following definitions apply:

**Charges** means the charges, agreed in advance between the parties, which are payable by the Customer for the supply of the Goods and/or Services in accordance with clause 6;

**Conditions** means these terms and conditions as amended from time to time in accordance with clause 11.3;

**Contract** means the contract between the Supplier and the Customer for the supply of the Goods and/or Services in accordance with these Conditions;

**Customer** means the person, agent or firm who purchases Goods and/or Services from the Supplier;

**Customer Default** means any act or omission by the Customer or failure by the Customer to perform any relevant obligation;

**Force Majeure Event** means any event beyond the Supplier's reasonable control, including industrial disputes, act of God, war, act of terrorism, compliance with any law or governmental direction, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors;

**Goods** means the goods (or any part of them) set out in the Order;

**Order** means the Customer's order for Goods and/or Services as set out in the Order Form, or in the Customer's written acceptance of a quotation by the Supplier, or by the Customer requesting provision of the Goods and/or Services either verbally or in writing, as the case may be;

**Services** means the services (or any part of them) set out in the Order;

**Specification** means any specification for the Goods and/or Services, including any relevant plans or drawings, that is agreed verbally or in writing by the Supplier (which may be amended by the Supplier if required by any law);

**Supplier** means Londonderry Port and Harbour Commissioners trading as Foyle Engineering.

### 2. BASIS OF CONTRACT

#### 2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions which shall apply to the exclusion of all other terms not specifically referenced herein.

#### 2.2 The Order shall only be deemed to be accepted on the earlier of the Supplier: (i) issuing written acceptance of the Order; or (ii) starting to provide the Goods and/or Services to the Customer, at which point and on which date the Contract shall come into existence.

#### 2.3 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 10 business days from its date of issue (unless otherwise agreed by the Supplier).

### 3. GOODS

#### 3.1 The Supplier shall supply the Goods which shall comply in all material respects with the relevant Specification.

#### 3.2 Unless agreed otherwise by the Supplier, the Supplier shall deliver the Goods, on an Ex-Works (Incoterms 2010) basis, to the delivery location agreed between the parties (**Delivery Location**), either in total or in instalments (each instalment constituting a separate contract), at any time after the Supplier notifies the Customer that the Goods are ready.

#### 3.3 Delivery of the Goods shall be completed on delivery of the Goods to the Delivery Location.

#### 3.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence.

#### 3.5 The Supplier warrants that on delivery of the Goods shall: (a) conform in all material respects with their description and the relevant Specification; and (b) be free from material defects in design, material and workmanship.

#### 3.6 Subject to clause 3.7, if the Goods fail to comply with the warranty in clause 3.5 the Customer's sole remedy is that the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods.

#### 3.7 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 3.5 if the defect arises due to the Supplier following any drawing, design or relevant Specification supplied by the Customer.

#### 3.8 The risk in the Goods shall pass to the Customer on delivery.

#### 3.9 Title to the Goods shall not pass to the Customer until: (a) the Supplier receives payment in full for the Goods, in which case title to the Goods shall pass at the time of payment of all such sums; or (b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer immediately before the time at which resale occurs.

#### 3.10 If the Customer resells the Goods before payment is received by the Supplier, it does so as principal and not as the Supplier's agent.

#### 3.11 If, before title to the Goods passes to the Customer, the Customer becomes subject to any event listed in clause 10.2, then, without limiting any other right or remedy the Supplier may have: (a) the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and (b) the Supplier may at any time: (i) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

### 4. SUPPLY OF SERVICES

#### 4.1 The Supplier shall supply the Services in all material respects in accordance with the relevant Specification, using reasonable skill and care.

#### 4.2 The Supplier shall use all reasonable endeavours to provide the requested Services on times or dates requested by the Customer but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

### 5. CUSTOMER'S OBLIGATIONS

The Customer shall: (a) co-operate with the Supplier in all matters relating to the Goods and/or Services; (b) provide the Supplier with such access, facilities, information and materials as the Supplier may reasonably require in accurate in all material respects; and (c) obtain all necessary licences or permissions required to receive the Goods and/or Services.

### 6. CHARGES AND PAYMENT

#### 6.1 The Charges are exclusive of all costs and charges of packaging, insurance and transport in respect of the Goods. Unless otherwise agreed by the

Supplier, the Charges are exclusive of all overtime rates, contractors' rates and all other expenses chargeable to the Customer in respect of the Services.

#### 6.2 In respect of Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Customer on completion of the Services.

#### 6.3 The Customer shall pay each invoice within 28 days of the date of the invoice in full and in cleared funds to a bank account nominated by the Supplier, and time for payment shall be of the essence of the Contract.

#### 6.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being.

#### 6.5 Without limiting any other right or remedy of the Supplier, if the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (**Due Date**), the Supplier shall have the right to charge interest on the overdue amount at the rate of 4% per annum above the then current Ulster Bank Limited's base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.

### 7. INTELLECTUAL PROPERTY RIGHTS

All intellectual property rights in or arising out of or in connection with the Goods and/or Services shall be owned by the Supplier.

### 8. INDEMNITY

The Customer shall indemnify the Supplier from and against all losses, expenses, claims or proceedings which may be sustained by, or brought against, the Supplier in respect of any third party's claim of infringement of its intellectual property rights, any damage done to any property or any injury caused to any person and any other damage or injury whatsoever where such loss or expense, proceeding or claim in any way arises out of or is any way either directly or indirectly arising from any negligence of the Customer, the Supplier's use of the relevant Specification or any breach of the Customer's duties and obligations under the Contract except insofar as such loss, expense, proceeding or claim is wholly attributable to the act or default of the Supplier.

### 9. LIMITATION OF LIABILITY

#### 9.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for: (a) death or personal injury caused by its negligence; (b) fraud or fraudulent misrepresentation; or (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982.

#### 9.2 Subject to clause 9.1: (a) the Supplier shall under no circumstances whatever be liable to the Customer, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, shall in no circumstances exceed an amount equal to the total Charges paid by the Customer under the Contract in the previous 12 months.

#### 9.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

#### 9.4 The Supplier shall have no liability to the Customer under the Contract if it is prevented from, or delayed in, performing its obligations under the Contract by a Force Majeure Event or a Customer Default.

### 10. TERMINATION

#### 10.1 Either party may terminate the Contract without liability to the other, if the other party commits a material breach of any of these Conditions and (if such breach is remediable) fails to remedy that breach within 30 days of receiving notification of the breach.

#### 10.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract immediately if the Customer becomes subject to any of the following events: an order is made or a resolution is passed for the winding up of the Customer; an order is made for the appointment of an administrator to manage the affairs, business and property of the Customer or if such an administrator is appointed or if documents are filed with the court for the appointment of an administrator; notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying charge holder; a receiver is appointed of any of the Customer's assets or undertakings or if circumstances arise which entitle the court or a creditor to appoint a receiver or manager or which entitle the court to make a winding-up order; the Customer takes or suffers any similar or analogous action in consequence of debt; or the Customer ceases, or threatens to cease, to trade.

#### 10.3 On termination of the Contract for any reason: (a) the Customer shall immediately pay all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods and/or Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable immediately on receipt; (b) the accrued rights, remedies, obligations and liabilities of the parties as at termination shall not be affected; and (c) clauses 1, 7, 8, 9, 10 and 11 shall survive termination.

### 11. GENERAL

#### 11.1 The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights and obligations under the Contract. The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

#### 11.2 A person who is not a party to the Contract shall not have any rights under or in connection with it.

#### 11.3 Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when in writing and signed by the Supplier.

#### 11.4 This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the laws of Northern Ireland and the parties irrevocably submit to the exclusive jurisdiction of the courts of Northern Ireland.