



## A&P Group Conditions of Purchase

### 1 GENERAL

(a) These Conditions shall be incorporated in the Contract however constituted. The acceptance of an Order from the Company by the Supplier shall constitute acceptance of these Conditions which shall govern all work done, materials supplied or services rendered by the Supplier, and shall override and exclude any other terms stipulated or referred to by the Supplier. For this purpose 'acceptance' shall include any acknowledgement by the Supplier or the absence of any written objection or refusal of the Order. No variation to these Conditions shall be binding unless agreed in writing between the Company and the Supplier.

(b) The Contract shall be carried out and completed by the Supplier to the satisfaction of the Company and shall in all respects comply with the Purchase Order and any Information referred to in the Purchase Order or issued to the Supplier.

(c) Materials and workmanship incorporated in the Contract shall be in accordance with the best engineering practice and shall comply with the appropriate Recognised Standard specifications and codes of practice, including Classification Society Rules and Regulations. All materials supplied by the Supplier in relation to the Contract shall be new.

### 2 DEFINITIONS

The following definitions shall apply to these Conditions of Purchase:

- (a) "Company" shall mean the Purchaser
- (b) "Contract" shall mean and include the Purchase Order, any Information and any mutually agreed written addition or variation thereto.
- (c) "Contract Manager" shall mean the Company's representative or his designated deputy
- (d) "Endemic Defect" means a defect in the design of the Goods
- (e) "Epidemic Defect" means a defect which occurs more than 12 times in any one 12 month period in the Goods
- (f) "Goods" shall mean the goods, materials or services described in the Purchase Order and in the event of such being required any documentation to be provided under the Contract.
- (g) "Information" shall mean drawings, patterns, specifications, contract information, plans, or any other documentation relating to the Contract.
- (h) "Notifiable Waste" shall mean waste requiring Environment Agency notification for disposal.
- (i) "Owner" shall mean the Company's principle customer for the Contract - Goods.
- (j) "Price" shall mean the sum specified in the Purchase Order as payable to the Supplier for the performance of the work or services defined in the Contract or such other sum as may become payable under the Contract.
- (k) "Purchase Order" or "Order" shall mean the formal numbered purchase order, together with any accompanying Information, issued by the Company to the Supplier.
- (l) "Purchaser" shall mean the A&P Group or any subsidiary thereof, as detailed on the Purchase Order
- (m) "Recognised Standard" shall be the standard for the country where the Contract is executed. In the UK these standards are ISO 9000, ISO 14000 and ISO 18000. In addition the Recognised Standard shall include any Classification Society rules or regulations.
- (n) "Supplier" shall mean the supplier or seller or service provider stated in the Purchase Order and shall include all its subcontractors, agents and their personnel.
- (o) "Stage Payments" shall mean payments for goods, materials or services, made by the Company to the Supplier, against agreed criteria or milestones.
- (p) "Third Party" shall mean any person, company or entity other than the Company and the

Supplier

(q) "Vessel" shall mean the ship, rig, other vessel, machinery or structure for which the Goods are intended.

### **3 ASSIGNMENT**

(a) The Supplier shall not assign the whole or any part of the Contract without the prior written consent of the Company.

### **4 ITEMS SUPPLIED, E.G. DRAWINGS, PATTERNS AND INFORMATION**

(a) All written Information, including but not limited to instructions, specifications and other technical information, drawings, patterns or tooling of any nature, supplied by the Company or produced by the Supplier in connection with or for the purpose of performing the Contract shall be, and remain, the property of the Company and if required by the Company shall be returned to it after the completion of the Contract. The Supplier shall be responsible for the safe custody of all such items supplied or produced.

### **5 PATENTS ETC.**

(a) The Supplier is responsible for the procurement of any and all approvals, licenses, agreements and any other relevant documentation in relation to the Goods.

(b) The Supplier shall indemnify the Company against all claims, costs, expenses and liabilities made against the Company in respect of any claim made by any Third Party for an infringement of patent, registered design trade mark, copyright, know-how, licence or any similar rights in relation to the manufacture, sale and/or use of the Goods. The Supplier warrants there is no infringement of any such rights and that all licences or other permits necessary for the performance of the Contract have been granted.

### **6 CONFIDENTIAL INFORMATION**

(a) Any Information, either written or oral, passed between the parties shall be regarded as confidential and shall not be published or disclosed to any Third Party or be used by the Supplier or the Company otherwise than for the Contract unless there is a specific agreement in writing from the Company or the Supplier.

### **7 PACKING, CONTAINERS AND SUBSEQUENT DISPOSAL**

(a) All goods and materials must be properly and securely packed, in a manner suitable for multiple handling at the Suppliers expense prior to delivery and must be clearly marked with the Company's Purchase Order number. The Supplier will be responsible for any/all damage arising as a result of improper packing. If requested in writing prior to delivery, the Company will use its best endeavours to preserve returnable packaging materials or containers for collection by and at the Suppliers expense, which must be effected promptly after notification by the Company.

(b) In accordance with the Landfill Regulations 2002 and any subsequent amendments/additions to same, producers of waste are to demonstrate such waste has gone through a pre-treatment process, in readiness for disposal. The Supplier is to remove any packaging and/or waste generated when it supplies Goods for the Contract, in accordance with the above regulations. The Supplier is not permitted to use any waste disposal facilities, including but not limited to skips, tidy bins etc., supplied by the Company and/or the Owner.

### **8 MATERIALS, GOODS OR SERVICES, INCLUDING HAZARDOUS GOODS**

(a) All Goods must be supplied with certification and test certificates where applicable. Any Goods which are hazardous shall be supplied in accordance with the COSHH regulations for the time being in force and be marked with the appropriate international danger symbols and the name of the goods or materials in English. Where appropriate, Safety Data Sheets and/or Product Data Sheets must accompany the Goods. The Supplier shall observe all the United Kingdom and International agreements relating to the packing, labelling and carriage of hazardous goods.

### **9 TIME AND DELIVERY**

(a) The Supplier shall complete the Contract and/or supply the Goods in accordance with the delivery or completion dates/times agreed with the Company.

Where applicable these will be in accordance with the project plan in section (b) of this clause, as may be agreed from time to time with the Contract Manager.

(b) Where requested by the Company the Supplier is required to produce and keep up to date an itemised project

plan for the work being undertaken on the Contract which must clearly show the critical path items. It must be updated, on a timeframe agreed with the Contract Manager, and clearly show the percentage of work complete on the Contract, measured against the planned status. The planned completion date of the Contract must be indicated on every report. Where requested by the Company, the Supplier is required to attend project progress meetings where the plan will be discussed.

(c) Any threats and/or potential threats to the programme must be notified to the Contract Manager immediately, and a corrective action plan produced by the Supplier within 24 hours of this notification detailing the planned strategy for overcoming the problems and recovering the original planned completion dates.

(d) The Supplier should expect a reasonable level of downtime during the performance of the work which can include, but is not limited to craneage availability, interference with other works, etc. All sign off reports must be approved by the Contract Manager on completion of the work and the Supplier must submit these, together with condition reports for the work carried out, to the Contract Manager before leaving site and attach a copy of these reports, signed by the Contract Manager, to their invoice.

(e) In the event of non-compliance with the agreed delivery or completion dates/times, the Company shall have the right to cancel the Order or any part thereof. Where the Company is hindered or prevented from adhering to its contractual commitments with the Owner the Supplier shall, in addition to any other liabilities arising under the Contract, be liable for any evidenced costs or loss suffered or incurred by the Company by reason of non-delivery or non-completion by the agreed date/s.

(f) The Supplier shall not be under any liability for failure to perform its obligations under the Contract to the extent that its performance is prevented, frustrated, hindered or delayed by the following force majeure events:

- (i) Government action or trade embargo;
- (ii) war or hostilities;
- (iii) riot or civil commotion;
- (iv) epidemic;
- (v) earthquake, flood fire or other natural physical disaster;
- (vi) industrial dispute, other than one solely confined to the Supplier or their employees
- (vii) any breach of Contract on the part of the Company.

The mere shortage of labour or materials or utilities shall not constitute force majeure unless caused by circumstances which are themselves force majeure.

Notice of any claim which the Supplier considers arises from the force majeure event as defined above must be given in writing to the Company within 3 calendar days of the Supplier becoming aware of the same together with the Supplier's proposals for limiting any delay. Upon receipt of the said notification the Company shall in its absolute discretion decide the extent to which the Contract has been prevented or delayed and shall as soon as reasonably possible notify the Supplier of its decision together with any appropriate extension of time.

In the event that the Company considers that the Supplier will not be able to overcome the delay within a time that enables the Company to meet its contractual commitments to the Owner:-

- (i) the Company shall have the right to cancel the Contract forthwith without compensation to the Supplier and thereupon all goods or materials loaned or supplied to the Supplier in connection with the Contract (whether worked or not) shall be returned to the Company.
- (ii) the Company shall have the right to subcontract any uncompleted works, in whole or part, in order to meet its obligations to the Owner.

The exercise of this right of cancellation shall be in addition to any other right of action or remedy of the Company.

## **10 PRICE**

(a) The Price for the Goods shall be agreed between the Supplier and the Company and is to be based on the price or rates set out or referred to in the Order or where appropriate the current applicable agreed rates for materials or services and/or other charges, as agreed between the Supplier and the Company from time to time.

## **11 ADDITIONS AND VARIATIONS**

(a) The Company shall not be liable to pay for or be responsible for any additions or variations to the Purchase Order, unless the Company confirms the same in writing.

(b) The Supplier must obtain written approval from the Contract Manager before making any variations in the Contract of whatsoever nature and extent whether by way of addition, modification or omission.

(c) Written approval must be obtained from the Contract Manager prior to undertaking work or supplying items specified in the Contract as being 'allowed for'.

(d) In the event that any variation ordered by the Company causes a delay to the progress or completion date the Supplier must immediately advise the Company of any such delay. The Company in its absolute discretion may award an extension to the completion date as may be appropriate in all circumstances. In the event that the Supplier cannot complete any variation within a time that enables the Company to meet its contractual commitments to the Owner:-

- (i) the Company shall have the right to cancel any variation without compensation to the Supplier, provided the Supplier has not incurred any costs associated with the variation.
- (ii) the Company shall have the right to subcontract any variation, in whole or part, in order to meet its obligations to the Owner.

(e) The value of all ordered variations shall be ascertained by the Company, following consultation with the Supplier,

by reference to the rates and prices for the Contract and/or stated in the Purchase Order, insofar as the same may be applicable. If such rates and prices are not so stated or are not applicable, then the Company shall ascertain a fair and reasonable value by reference to the general rates and prices available taking into account all the circumstances. The value shall be added to or deducted from the agreed Price.

(f) The Supplier shall provide to the Company such fully detailed information at such times as may be required to enable the Company to ascertain the value of the variations in accordance with this and the INSPECTION AND RIGHT OF ACCESS clause of these conditions.

## **12 PAYMENT TERMS**

(a) Goods provided under this Purchase Order will be subject to monthly submitted account payment terms, paid 60

days following the end of the month in which the correctly submitted invoice is approved by the Company, unless otherwise agreed in writing.

(b) Where the Contract allows Stage Payments the final account resolution, on completion of the Contract works, shall

be made against the total account, for the Goods and not against individual elements.



### **13 GUARANTEE, DEFECTS AND NON COMPLIANCE LIABILITY**

**(a)** Notwithstanding anything done or omitted to be done on the part of the Company which would otherwise constitute or be deemed to constitute acceptance of the Goods and without prejudice to any other right of the Company, if any fault of design, materials or workmanship shall occur within a period of 12 months after the Goods have been brought into service or the date upon which the Vessel, has been delivered by the Company (whichever is the later) due to the design, goods, materials, work or services not being in accordance with the Contract, the defective Goods shall, at the option of the Company, either be replaced or the defective workmanship or services made good at the expense of the Supplier at any place directed by the Company. Any goods or materials replaced, or any defective workmanship or services made good shall be guaranteed for a further period of 12 months.

**(b)** The Supplier will warrant the Goods for any Endemic Defects in the Goods for the life of the Vessel and any Epidemic Defects in such Goods for a period of 7 (seven) years from the date the Defect is first identified.

The Supplier will use its best endeavours to remedy such Endemic and/or Epidemic Defects in the Goods, at the Supplier's cost, in order to meet the requirements of the Company and/or the Owner.

**(c)** If the Supplier fails to comply with their obligations in respect of defects or non-compliance in the Contract within a reasonable time, then the Company may themselves rectify such defects or make good such non-compliance. If the Company suffers or incurs expense and/or loss in consequence of a defect in or non-compliance with the Contract, or otherwise out of any act default or omission on the part of the Supplier, then the amount of such loss and/or expense shall be paid to the Company by the Supplier and/or recoverable as a debt.

### **14 MINISTRY OF DEFENCE CONTRACTS**

**(a)** When the Contract requires that the Goods are to be supplied, or the work is to be carried out for the Ministry of Defence (MOD) additional conditions are to apply and these will be in accordance with the MOD Terms and Conditions for the time being in force. The Company will specify in the Purchase Order which MOD conditions for the time being in force are applicable to the Contract and make these available to the Supplier.

### **15 QUALITY ASSURANCE AND DOCUMENTATION**

**(a)** Where specified in the Purchase Order the Contract may be subject to quality assurance activity by the

Company's Q.A. Department and/or Owners authorised representatives. The Company or Owner or their authorised representatives shall be afforded the right to verify at source or upon receipt that the Goods conform to specified requirements. Verification by the Company and/or Owner shall not absolve the Supplier of his responsibility under the Contract nor shall it preclude subsequent rejection.

**(b)** As required by the Contract, should a quality plan be required for the work undertaken by the Supplier, it is to be completed in accordance with the Recognised Standards.

**(c)** On completion of the Contract the Supplier shall provide to the Company three copies of the final QA documentation. This documentation shall include, but not be limited to, Test Certificates and/or Certificates of Conformity and/or Condition Reports together with Certificates of Calibration for measuring instruments, where applicable. Such documentation shall state the technical standards to which they relate and advise criteria of acceptance/rejection.

**(d)** The Goods shall not be considered complete and payment made until all required documentation has been presented to the Company by the Supplier and accepted by the Company.

### **16 INSPECTION AND RIGHT OF ACCESS**

**(a)** The Company, the Owner and/or their authorised representatives or Classification Society Representatives shall be entitled to a right of access to the Suppliers premises at all reasonable times for the purpose of checking progress and carrying out or witnessing tests and/or procedures and for checking documentation.

**(b)** The Company and Owner shall also be entitled to a right of access to the Suppliers premises at all reasonable times for the purpose of reviewing and verifying the costs of cost reimbursable items and the quantities both of these and of items chargeable by specified rates or for any other reasonable purpose. Both the Company and Owner or their authorised representatives, shall have access at all reasonable times, to all personnel, books, records (including data stored on computers), correspondence, instructions, plans, drawings, receipts, vouchers and memoranda of the Supplier pertaining to the Contract. Both the Company and Owner or their authorised representatives shall have the right to reproduce and retain copies of any of the aforesaid documents.

**(c)** The Supplier shall provide at no additional cost to the Company or the Owner such reasonable accommodation, facilities and assistance as the Company or the Owner may require. Such accommodation shall be adequately furnished, lighted, heated and ventilated and shall include suitable cloakroom and telephone facilities.

**(d)** The above audit rights of both the Company and Owner shall continue after the end of the Contract work and guarantee period as defined in the GUARANTEE, DEFECTS AND NON COMPLIANCE LIABILITY clause of these conditions and the Supplier shall preserve all documents relating to the Contract for the statutory periods, but in any event no less than 2 years.

### **17 BUSINESS ETHICS**

**(a)** The Company shall be entitled to terminate the Contract and to recover from the Supplier the amount of any loss or damage resulting from such termination if the Supplier or their respective officers, employees or agents shall in relation to the Contract, have committed any act, whether before, on or after the date of the Contract which is an offence under the Prevention of Corruption Acts 1889-1916 or any statutory amendment, modification or re-enactment thereof.

(b) The Supplier shall be responsible for the observance of all employment and/or industrial relations legislation for the time being in force and must also certify any goods or materials supplied as being "child labour free".

## **18 WORKING CONDITIONS, RULES AND STATUTORY OBLIGATIONS AT THE COMPANY'S PREMISES OR ELSEWHERE**

(a) The Supplier and all employees or such persons whilst engaged upon work at the premises of the Company or any other premises so named by the Company and/or any Vessel, shall at all times observe and be bound by the rules, regulations and procedures for the time being applicable to the employees of the Company at those premises and shall in all respects fully, comply with and observe all statutory obligations, orders, bye-laws and other requirements applicable to those premises. These are available from the Company on request. It is the Suppliers responsibility to ensure that all its employees fully understand all statutory instruments, orders and regulations relating to the work upon which they are engaged.

(b) In particular, statutory obligations arising under the Health and Safety legislation shall be complied with in the performance of this Contract and the Supplier shall indemnify and hold harmless the Company in respect of any costs, losses or damages incurred as a result of any non-compliance by the Supplier and employees with the provisions of this clause. The Supplier must provide details of any HSE Improvement Notices, Prohibition Notices or Prosecutions within the last 5 years.

(c) The Supplier's representative must report to the Contract Manager (or other nominated person) before commencement of any work and again on completion of the work. The Supplier is required to provide a list of the names of the persons attending prior to commencement of the Contract and amend the list when changes occur in the persons attending. The Company will issue all personnel of the Supplier with a security pass which must be shown on entry and departure from the site or as requested.

(d) All personnel of the Supplier will be required to undertake a HSE induction prior to commencement of work. It is

the Supplier's responsibility to ensure that all personnel attending the Vessel are equipped with Personal Protective Equipment as required by legislation, required by the Company and any particular requirements related to the Owners requirements. The supply of which is to be at the Suppliers expense.

(e) The Company reserves the right to search all personnel and vehicles, and the Supplier is required to secure the

extension of this right to its subcontractor and agents.

(f) The Supplier must provide relevant method statements and risk assessments specific to the work it is undertaking

before starting work. The Supplier shall ensure that all its employees and sub-contractors fully understand all statutory instruments, orders and regulations relating to the work upon which they are engaged. The Supplier must ensure that its employees who use equipment, for which there is a requirement for formal training, have experience and in date certification, copies of which must be provided at the HSE induction.

(g) Any requests for assistance, materials or services to be provided by the Company must be arranged with the Contract Manager prior to the commencement of the work. The Supplier shall be liable for all costs and expenses incurred by the Company, including but not limited to, first aid treatment, hospital costs and transport.

(h) Hot work items and transportation of equipment or materials on and off a Vessel or into and out of dry-dock must be carried out by or under the supervision of the Company's personnel.

(i) The Company operate a No Smoking policy and all personnel are not permitted to smoke at any time during working hours anywhere on the Company's premises or on board the Vessel. Smoking is only permitted in designated areas at times published at the Companies premises.

(j) The Company operate a strict Drugs and Alcohol policy, see Addendum 1 to these conditions. The Supplier must adhere to this policy at all times.

(k) Conduct of the Supplier's personnel must be of a professional nature at all times. If any Supplier's personnel's conduct is found to be unsatisfactory the Company in its absolute discretion reserves the right to have the offender/s removed from site.

## **19 OWNERSHIP OF MATERIALS AND WORK IN PROGRESS**

(a) All materials, equipment or work in progress shall be at the Suppliers risk until delivered to the Company's premises, or to such other specified place of delivery, and/or in the case of supply and fit, completed and handed over to the Company in accordance with the Contract, where risk would then pass to the Company. Title in the Goods shall pass to the Company on delivery to the Company's premises, or to such other specified place of delivery, and/or in the case of supply and fit, completed and handed over to the Company in accordance with the Contract.

## **20 COMPANY AND OWNER SUPPLIED MATERIAL**

(a) Where the Company, and/or the Owner or its agent issues goods, equipment or materials free of charge to the Supplier, such goods, equipment or materials shall be and remains the property of the Company and/or the Owner and shall be maintained by the Supplier in good order and condition. The risk in such goods, equipment and materials shall be the Suppliers and shall be insured accordingly. Where there are surplus goods or materials these are to be either handed back or disposed of in accordance with the written instructions of the Company and/or the Owner.

## **21 PLANT, EQUIPMENT AND DELIVERIES**

(a) The Supplier shall indemnify the Company for all loss or damage, claims, demands or liability and all costs and expenses incurred in connection therewith arising from any act, neglect, default or breach of statutory or other duty on the part of the Company or any servant or agent of the Company in the course of lending or providing use or

assistance of any loaned plant or labour at the request (express or implied) of the Supplier or any employee of any of them.

**(b)** The Supplier shall be responsible for the insurance preservation and safe custody of his own plant, equipment and stores at all times. Furthermore the Supplier shall be responsible for the proper stowage of all materials or equipment belonging to or in his use. The Company accepts no responsibility whatsoever for any loss or damage to plant, materials, equipment or belongings of the Supplier or their personnel howsoever caused.

**(c)** It is the responsibility of the Supplier to ensure all plant, equipment and stores required to carry out the work detailed in the Contract are transported to and from the vessel, site or location specified in the Contract. All associated charges will be the Suppliers responsibility.

**(d)** Where the Company accepts receipt of consignments on behalf of other parties, no liability will be accepted for damaged, correctness to specification, suitability or security.

**(e)** The Company reserves the right to recover all costs from the Supplier attributable to repair or replacement of

Company and/or Owners plant or equipment wilfully damaged, stolen or destroyed by the Suppliers personnel.

## **22 CLEANING AND SUBSEQUENT RUBBISH DISPOSAL**

**(a)** All cleaning required as a consequence of the Supplier's work is to be carried out by the Supplier. All rubbish and empty containers are to be cleared away and removed from site promptly, to the satisfaction of the Company in accordance with clause 12 and in accordance with the legislation for the time being in force in respect of controlled and hazardous waste and demonstrate that all waste has been disposed of in the correct manner. The Supplier must liaise with the Company before removing Notifiable Waste.

**(b)** The Supplier must comply with any legislation for the time being in force in respect of airborne and waterborne pollution.

**(c)** Not more than 2 days supply of combustible materials should be stored by the Supplier on board any Vessel. Any such materials are to be carefully stowed away each night and in accordance with any legislation for the time being in force.

**(d)** Failure to comply with any element of this clause, within a reasonable time, will result in others completing and reasonable associated costs being issued to the Supplier. The Company reserves the right to offset any associated costs against monies owed to the Supplier under the Contract.

## **23 INSURANCE**

**(a)** The Supplier shall maintain:-

(i) Such insurances as are necessary to cover the liability of the Supplier in respect of personal injuries or death arising out of or in the course of or caused by the carrying out of the Contract; and

(ii) Such insurances as are necessary to cover the liability of the Supplier in respect of personal injury or damage to property real or personal arising out of or in the course of or by reason of the carrying out the Contract and caused by any negligence, omission or default of the Supplier, his servants or agents (provided that the Company may without prejudice to the generality of the foregoing require by written notice not later than the date of commencement of the Contract, the Supplier to effect and keep in force such insurance at no additional charge to the Company).

(iii) In relation to the above the Company requires the Supplier to be covered by the following minimum insurance cover, £5 million Employers Liability and £2 million Public & Product Liability.

**(b)** As and when reasonably required to do so, and as a minimum requirement yearly on the anniversary or renewal

date of such insurance, the Supplier shall produce for inspection by the Company documentary evidence that the insurance required or referred to above are properly effected and maintained with Insurance Companies of repute, and provide to the Company copies of the policy or policies and premium receipts in question.

**(c)** The Supplier shall indemnify the Company in respect of:-

(i) any and all loss, damage or expense suffered by the Company in consequence of any negligence or breach of statutory or other duty on the part of the Supplier or any servant of any of them in any way arising out of or connected with the performance of the Contract or any defect in or incorrect assembly of any goods or works supplied or executed under or for the purpose of performing the Contract notwithstanding the same may have been inspected and/or accepted by the Company.

(ii) all claims made against the Company by any third party including any servant or the personal representative or dependants of any servant of the Company for any such negligence or breach of duty or defect or incorrectness as aforesaid.

(iii) all claims made against the Company by any servant or agent of the Supplier or by any servant or agent of any subcontractor or by the personal representatives or dependants of any such servant or agent for or in respect of the death of or of any damage, loss or personal injury incurred or suffered by such servant or agent arising from any cause whatever including fault, negligence or breach of duty on the part of the Company or of any agent or servant of the Company.

(iv) all legal and other direct, indirect or associated costs howsoever incurred by the Company in connection with any such loss, damage or claim as aforesaid.

## **24 BANKRUPTCY, RECEIVERSHIP, ADMINISTRATION AND LIQUIDATION**

**(a)** If a receiving order is made against the Supplier or if the Supplier shall enter into an arrangement or

composition

with its creditors or if the Supplier shall go into liquidation voluntary or otherwise (except for purposes of amalgamation or reconstruction) or if a receiver or administrator or manager of the Supplier shall be appointed then:-

- (i) the Company shall have the right to cancel the Contract forthwith without compensation to the Supplier and thereupon all goods or materials loaned or supplied to the Supplier in connection with the Contract (whether worked or not) shall be returned to the Company.
- (ii) the Company shall have the right to off-set all costs associated with the failure to complete all described obligations and recover any deficit from work completed, goods, equipment or materials loaned or supplied to the Company.

The exercise of this right of cancellation shall be in addition to any other right of action or remedy of the Company.

## **25 APPLICABLE LAW AND ARBITRATION**

**(a)** The Contract shall in all respects be construed and operate as a Contract made in England and shall be subject to English law and jurisdiction.

**(b)** If any dispute or difference under this Contract shall be referred to a single arbitrator where the parties can agree upon one within 14 days of notification of the dispute or difference or otherwise to three arbitrators, one to be appointed by each party and the other by the two so chosen.

**(c)** Notwithstanding the above, the parties may agree at any time to a short claims resolution procedure being:-

In the first instance, any dispute or claim shall be referred to the authorised Senior Commercial representatives of the parties.

If any such dispute or claim is not settled within thirty (30) days of referral to the Senior Commercial representatives, it may be referred by either party to the Managing Director of each party.

Where the dispute or claim cannot be resolved within fourteen (14) days after the referral, either party may refer the dispute or claim to arbitration in accordance with this clause.



## **Addendum 1 to CONDITIONS OF PURCHASE**

### **COMPANY POLICY & PROCEDURE FOR ALCOHOL & DRUGS/SUBSTANCES**

#### **1. INTRODUCTION**

- 1.1 In compliance with the Health and Safety at Work Act 1974 (Section 2) the Company are committed to providing a safe working environment, this includes, as far as is reasonably practicable, promoting the good health and well being of all our employees.
- 1.2 Employees of the Company. also have a duty under the Health and Safety at Work Act 1974 (Section 7a) of this Act to care not only for their own health and safety but the health and safety of others who might be affected by their acts or omissions.

#### **2. OBJECTIVE**

- 2.1 The purpose of this policy is to:-
- 2.2 Ensure that employees' use of alcohol or drugs/substances does not affect the health and safety of themselves, fellow workers or others with whom they come into contact with during the course of their work.
- 2.3 Ensure that employees' use of alcohol and drugs/substances does not affect the efficiency of the individuals' performance or the Company's operation.
- 2.4 Set out the Company's rules and arrangements for dealing with alcohol and drug/substance misuse.
- 2.5 Provide guidance to employees who have a problem of alcohol or drug/substance misuse.

#### **3. PERSONS COVERED BY THE POLICY**

- 3.1 The policy is in line with the policy of the A&P Group of companies and applies to all employees of the Company, even when working away from the yard premises on Company business. It will also extend to others outside of the Company's employment but who are on the Company premises and whose actions may affect the health and safety of the Company's employees.

#### **4. DEFINITIONS OF TERMS USED IN THIS POLICY**

- 4.1 Substances – includes but is not limited to alcohol, drugs and solvents
- 4.2 Alcohol – includes, but is not limited to distilled spirits, liquor, beer, wine, malt liquor or any other intoxicants used for beverage purposes.
- 4.3 Drugs – any psychoactive substances (those drugs that affect mood, thought process or perception), available both legally and illegally and used in an unsanctioned way. A non-exhaustive list would include all those drugs covered by the Misuse of Drugs Act (1971) and The Medicines Act (1968).
- 4.4 Illegal Drugs – all those drugs covered by the Misuse of Drugs Act (1971)
- 4.5 Dependency/Addiction- where the user has adapted physically and/or psychologically to the presence of substances and would suffer if it were withdrawn abruptly.
- 4.6 Company Premises – to include all premises the Company has responsibility for and all Company vehicles. This policy also applies to all occasions where the Companies employees are on Company business including but not limited to conferences, training events, sales meetings etc.
- 4.7 Impaired/Intoxicated – (Alcohol) In terms of this policy, any person who has Breath Alcohol Concentration that exceeds 35micrograms per 100 millilitres of breath (to be confirmed by an appropriate test) is deemed to be intoxicated and therefore be impaired.
- 4.8 Impaired - (Drugs) In terms of this policy, any persons found to have consumed illegal drugs or used drugs in an unsanctioned or unreported way (as determined by an appropriate test) will be deemed to be impaired through drugs.

- 4.9 Misuse (of substances) – this applies to using substances in an unsanctioned way. For example any illegal drug use, or using drugs for non-medical purposes without proper direction to do so from an appropriately qualified person such as a medical doctor or pharmacist. It also applies to substances that are harmful or hazardous to the individual or to others and is likely to distort perception and response to the users' environment and can impair normal functioning and development.
- 4.10 Nominated Company Representative – person who has received certificated Information, Instruction and Training from an approved organisation.
- 4.11 Approved Laboratory – An independent UKAS accredited laboratory nominated to verify test results.

## **5. GUIDELINES & RULES**

- 5.1 The purpose of screening and testing is to ensure that due diligence is exercised in compliance with the Health and Safety at Work Act 1974 and to deter and detect individuals working on Company premises whilst being impaired due to alcohol or drugs.
- 5.2 The Companies Policy is that the working environment should be free from the negative influence of substances. This will help to ensure that the health and safety of our employees and others with whom they come into contact. To maintain the efficient and effective operation of the business, and to ensure our customers receive from us the quality service they require. For those reasons the following rules will be strictly enforced.
- 5.3 No employee or contractor shall:-
- 5.3.1 Report or try to report to work whilst impaired through alcohol or drugs (whether illegal or not, as previously defined).
- 5.3.2 Be in possession of alcohol or illegal drugs in the workplace.  
Note: any prescribed medication or purchased medication must where possible be in its original container.
- 5.3.3 Consume alcohol, illegal drugs or take any substances in an unsanctioned way whilst at work or whilst representing the Company.
- 5.3.4 Attempt to sell, distribute or supply alcohol whilst on Company premises or whilst representing the Company.
- 5.3.5 Persons found to be in possession, attempting to sell, distribute or supply drugs in contravention of the Misuse of Drugs Act 1971 and the Medicines Act 1968, whilst on Company premises or whilst representing The Company will, without exception, be reported to the regional Police Force.
- 5.4 Contravention of these rules is a very serious matter and the Company will take disciplinary action, which may include dismissal, in the event of infringement.  
Where an employee contravenes the Company's rules stated above, that contravention will be dealt with under the Company's disciplinary procedures.

## **6. SCREENING AND TESTING**

- 6.1 **Based On Reasonable Belief** - Where it is suspected that an individual is impaired through alcohol or drugs or if that individuals' performance is impaired through a dependency to either alcohol or drugs they may be required to undergo a test.
- 6.2 **Random Testing** - Employees will be randomly selected each month for testing and required to provide a breath and/or oral fluid sample. The random selection is applicable to all employees regardless of the employee's status or job function. Where this test is carried out by the Supplier, the Supplier must submit a monthly summary report, without names, to the Company.

## **7. CONSENT/REFUSAL TO PERFORM TEST**

- 7.1 Individual's will be required to complete and sign a consent form to enable the test to take place.
- 7.2 Any refusal by an employee to sign the consent form or provide a sample will be treated as a positive test result and the employee will be suspended on full pay pending the conclusion of a full investigation, including an interview with the employee, which may lead to disciplinary proceedings.
- 7.3 Any refusal by a contractor to sign the consent form or provide a sample will result in that individual being removed from the Company premises and disallowed from returning to work on any of the Companies premises. Their employer will be notified of this decision.

## **8. SCREENING AND TEST PROTOCOLS - ALCOHOL TESTING**

- 8.1 The procedure for the administration of this test is as follows:-
- 8.2 This test will be performed by the nominated Company representative who has received certificated instruction.
- 8.3 The test will comprise of a breath sample collection using a calibrated digital breathalyser, similar to those employed by the regional Police Force.
- 8.4 The individual will be removed from their duties and escorted to a designated private area where they will be required to undertake a breath test. The employee being tested has the right to be accompanied by a Trade Union Representative or another person of their choice.
- 8.5 The individual will be asked to complete and sign a consent form to enable the test to take place.
- 8.6 The test will be performed by a nominated Company representative and the result will be recorded and verified by the individual, their representative (if applicable) and another Company representative.
- 8.7 If the test is positive, (i.e. over 35 micrograms per 100 ml breath alcohol concentration) the test will be repeated at least 20 minutes later. If the second test is also positive and therefore confirms the first, the employee will be safely removed from Company premises and the employee will be suspended on full pay pending the conclusion of a full investigation, including an interview with the employee, which may lead to disciplinary proceedings.
- 8.8 If the test shows a breath alcohol content below 35 micrograms per 100 ml but above zero, a further test will be performed at least 20 minutes later to ensure that the alcohol is not in ascendancy. Employees will not be allowed to resume any work which the Company considers to be safety critical or otherwise likely to be affected by the consumption of alcohol but will either be deployed to other work or be sent home on full pay.
- 8.9 Depending upon the circumstances, action may be initiated under the disciplinary procedures.

## **9. SCREENING AND TEST PROTOCOLS - DRUG TESTING**

- 9.1 The procedure for the administration of this test is as follows:-
- 9.2 This test will be performed by the nominated Company representative who has received certificated instruction.
- 9.3 The individual will be asked to complete and sign a consent form to enable the test to take place.
- 9.4 The drug test requires that the individual provide a fresh sample of their own oral fluid (serum).
- 9.5 The nominated Company representative will collect the oral fluid specimen (swab) in accordance with strict chain of custody procedures and verified by those present.
- 9.6 The oral fluid sample will firstly undergo an initial screen. If the sample is negative the employee will be informed accordingly and required to return to work.
- 9.7 If the result is positive a Gas Chromatography and Mass Spectrometry (GC/MS) analysis at an approved laboratory will be required to ascertain the exact identity of the substance found. The employee shall be suspended from work on full pay pending the outcome of the analysis.
- 9.8 If the result of the laboratory analysis is negative the employee will be informed accordingly and required to return to work.
- 9.9 If the result of the laboratory analysis is positive the employee will remain suspended on full pay pending the conclusion of a full investigation, including an interview with the employee, which may lead to disciplinary proceedings.

## **10. CONFIDENTIALITY**

- 10.1 At all times, where it is identified that an employee has a problem with misuse of alcohol or drugs/substances the matter will be treated with the strictest of confidence, subject to the provisions of the law.
- 10.2 Employees who are concerned that a colleague is exhibiting symptoms of an alcohol or drug related problem should notify the Personnel Department, such information to be treated with the strictest of confidence. All information will be treated in good faith; employees passing on information known to be false and in bad faith will render them liable to disciplinary action.

## **11. HELP & ASSISTANCE**

- 11.1 Early identification and treatment is essential if problems for the employee and the Company are to be avoided. Employees who feel they have a problem are encouraged to come forward and seek assistance.
- 11.2 Employees who it is believed may have or who are identified as having an underlying problem of alcohol or drug/substance misuse may be offered guidance and assistance to aid recovery from their problem. The Personnel Department can arrange for the employee to receive counselling at which time the options available to the employee can be explained and a course of treatment or rehabilitation agreed.
- 11.3 Employees absent from work to undertake an agreed course of treatment will be entitled to normal payment arrangements for medical appointments.
- 11.4 In the event that an agreed or recommended course of treatment is not followed by an employee or it is ineffective and there is lapse in the employee's performance/attendance the matter will be dealt with in accordance with Company's normal disciplinary procedure.
- 11.5 Any employee who when tested or when asked to take a test for alcohol or drugs, then declares they have a dependency problem will be subject to the same disciplinary procedures as any other employee who fails an alcohol or drug test.

## **12. PRESCRIBED & 'OVER THE COUNTER' (OTC) MEDICATION**

- 12.1 It should be recognised that prescribed and over-the-counter medicines may cause impairment to an individual's performance at work. It is therefore the employee's responsibility to seek advice from their GP or pharmacist on any medicines they are taking. They should inform their line manager or any other manager, of any possible side effects of their medication. They must also contact the Occupational Health department for advice. All information divulged will be treated in confidence.



## **Addendum 2 to CONDITIONS OF PURCHASE**

### **AGENCY LABOUR CONDITIONS**

1. All personnel are to be qualified and competent to undertake the duties for which they are engaged. Charges will not be accepted where personnel fail to substantiate and demonstrate their ability during their first operating shift.
2. The Company is to notify the Agency in respect of all engagement terminations whether instructions have been given to or received from personnel. Notification is to be made during the next normal office working period.
3. The Company will not knowingly re-engage any personnel through another Agency during the Contract period stated on our Purchase Order. However the Company accepts no responsibility for any subsequent engagement of any personnel through another agency with whom they may be registered.
4. The Company will not knowingly employ any personnel who have previously been employed by the Company through an Agency during the previous 3 months unless that person has taken up residence local to the Company and makes application for employment.
5. Personnel will be required to record working hours utilising the Company time card procedures and payment will only be made in accordance with the recorded hours worked.
6. Shift starting and finishing times are at the discretion of the Company to suit operational demands.
7. The rate that the Company pays the Agency will be notified to the Agency by the Company. This will be for all hours worked by the Agency personnel.
8. Personnel are to provide their own personal equipment including safety footwear, boiler suits and tooling as appropriate and in compliance with current HSE legislation for the time being in force. Any equipment loaned to personnel must be returned to the Company upon termination of engagement.
9. The Company reserves the right to charge the Agency for all equipment issued to personnel for personal use which is not returned upon termination of employment. Notification of any impending charges will be made at the time of termination notice to the Agency.
10. All personnel are to make themselves available at the discretion of the Company to attend an induction safety seminar detailing working practices and procedures to be observed whilst working on the Company's site. The time spent in attending the seminar to be without cost to the Company.
11. The Agency shall ensure that all personnel supplied are required to fully understand all statutory instruments, orders and regulations relating to the work upon which they are engaged.
12. The Company accepts no responsibility whatsoever for any loss or damage to personal equipment, property or belongings of Agency personnel howsoever caused.
13. The Company reserves the right to recover from the Agency all costs attributable to repair or replacement of plant or equipment wilfully damaged or stolen.
14. Accommodation, subsistence and associated costs are the responsibility of the Agency or the individual. Personnel are not permitted to lodge on any part of the Company's site or on any vessel in port. The Company will assist with travel costs on a scale as agreed with the Agency
15. The Company accepts no responsibility or liability for any claim emanating from the Inland Revenue, National Insurance Agency or other bodies in respect of any individual or employing Agency.
16. The engagement of personnel shall not be deemed to have commenced until all these conditions have been met to the satisfaction of the Company. Any associated costs to comply with these requirements are to be accepted by the Agency against invoices submitted by the Company who in turn accept no responsibility for their apportionment or recovery in respect of any individual.
17. These conditions are in addition to the Company's Conditions of Purchase, a copy of which is available on request, and are not intended as replacements. In the event of a conflict between these Agency Labour Conditions and the Conditions of Purchase, the Conditions of Purchase take precedence.