

## **Standard terms and conditions: managing safely in ports course**

### **1. DEFINITIONS**

- 1.1. PSS: Port Skills and Safety Ltd.
- 1.2. Client: The person, firm or company, to whom or which the Proposal to which these terms and conditions are attached is addressed.
- 1.3. Contract: The Contract between PSS and the Client completed by acceptance by the Client of the Proposal and these terms and conditions.
- 1.4. Parties/Party: Parties shall mean both PSS and the Client, and Party shall mean either PSS or the Client.
- 1.5. Proposal: The written document setting out the details of the work to be undertaken by PSS for the Client together with any supporting schedules.
- 1.6. Services: The work to be performed by PSS in accordance with the Proposal.
- 1.7. Background Intellectual Property: Intellectual Property, proprietary information or confidential know-how relevant to the Services which is in the possession of a Party prior to the commencement of the Services or generated after commencement of the Services but independently of them.
- 1.8. Intellectual Property: Intellectual property shall include but not be limited to Patents, registered and unregistered trademarks, copyright material including computer software, technical know-how and other information arising out of the Services.
- 1.9. Contract Price: The total amount payable to PSS by the Client for undertaking the Services as specified in the Proposal.
- 1.10. Force Majeure: An occurrence beyond the control of a Party including but not limited to an Act of God, decree of Government, fire, flood, explosion, sabotage, riot, rebellion, war, civil war, armed conflict, terrorism, nuclear, chemical or biological contamination, disease, quarantine, official strike or similar official industrial action or dispute, which directly causes a Party to be unable to comply with all or a material part of its obligations under the Contract.

### **2. ACCEPTANCE OF OFFER**

- 2.1. These terms and conditions together with the Proposal constitute an offer, and if duly accepted by the Client shall constitute a Contract between PSS and the Client whereby PSS is to carry out the Services specified for the price stated or calculated in accordance with the Proposal. No other terms and conditions shall be accepted unless agreed in writing.
- 2.2. No representation whatsoever whether oral or written made prior to the date of the Contract shall be deemed to be incorporated into the Contract or to have any binding effect on PSS.
- 2.3. Acceptance of the Proposal must be in writing. The Proposal shall remain open for a period of thirty (30) days from the date on which it is posted unless prior to acceptance the Client has been specifically notified in writing that the Proposal has

been withdrawn. Where such notification of withdrawal is given in writing it shall be effective from the date of posting.

### 3. INTERPRETATION

If there shall be any apparent inconsistency between these terms and conditions and the Proposal, the Proposal shall prevail.

### 4. CONFIDENTIALITY

4.1. All Information which a Party (“the Receiving Party”) receives from the other Party (“the Disclosing Party”) which the Disclosing Party specifically designates in writing to be confidential prior to disclosure, whether in tangible or visible form or whether communicated orally, shall be treated by the Receiving Party as confidential and the property of the Disclosing Party, and such confidential information shall not be used by the Receiving Party for any purpose other than the performance of the Contract without the written consent of the Disclosing Party.

4.2. This obligation of confidentiality shall not apply to any information:-

4.2.1. in the public domain at the time it was disclosed or which thereafter enters the public domain without breach of the terms of the Contract,

4.2.2. already known by the Receiving Party at the time of disclosure by the Disclosing Party,

4.2.3. which becomes known from a source other than the Disclosing Party without breach of the terms of the Contract,

4.2.4. independently developed by an employee of the Receiving Party to whom no disclosure of any such disclosed information has been made,

4.2.5. which is required to be disclosed by Court Order but only to the extent required by the Order on condition that the Disclosing Party is informed promptly of the Court Order.

4.3. Upon completion of the Services or (if earlier) termination of the Contract, or at any time upon request, the Parties shall promptly return all documents containing confidential information, including all information reduced to writing which was originally disclosed orally, and all copies of the same in its possession.

4.4. The obligations of confidentiality contained in this clause shall expire five (5) years after the date of completion of the Services or earlier termination of the Contract.

### 5. COURSE PERSONNEL

Where any teaching staff or guest speakers are specified in the Proposal, PSS reserves the right to substitute these with suitable alternatives if circumstances so demand.

### 6. TERMINATION AND SUSPENSION OF CONTRACT

6.1. PSS shall have the right to terminate or suspend the Contract and, in such unlikely event, shall promptly notify the Client accordingly. Unless it can be agreed that the Services can be rescheduled to commence within fourteen (14) days of their original

commencement date, any advance payment already made to PSS shall be refunded to the Client in full.

- 6.2. In the event that the Client, by giving notice, terminates or suspends the Services less than fifty-six (56) days in advance of the agreed delivery date a fifty (50) per cent charge of the Contract Price will be payable by the Client. In the event that the Client by giving notice, terminates or suspends the Services less than thirty-four (34) days in advance of the agreed delivery date a seventy-five (75) per cent charge of the Contract Price will be payable by the Client. In the event that the Client, by giving notice, terminates the Services less than fourteen (14) days in advance of the agreed delivery date then the Client shall be liable to PSS for the full Contract Price.
- 6.3. Either Party may without prejudice to any other rights and remedies in respect of any breach or non-observance of any of the covenants or obligations herein contained by notice in writing to the other Party terminate the Contract forthwith if:-
- 6.3.1. the other Party shall commit any breach of any of the terms (including without limitation terms concerning the time for payment of the Contract Price) of this or any other contract between them and on its part to be observed or performed PROVIDED if such breach is remediable that notice thereof has previously been given and the same has not been remedied within seven (7) days thereafter;
- 6.3.2. if the other Party shall present a petition or have a petition presented by a creditor for its winding-up or shall convene a meeting to pass a resolution for voluntary winding-up or shall enter into any liquidation (other than for the purposes of a bona fide reconstructions or amalgamation) or shall call a meeting of its creditors to seek the protection of the court from action by its creditors or any insolvency process or shall have a receiver or any administrative receiver of all or any of its undertakings or assets or an administrator appointed, or shall be deemed by the applicable statutory provisions to be unable to pay its debts or shall suffer any process equivalent or analogous to any of the aforesaid under any jurisdiction;
- 6.3.3. if the other Party, being an individual shall die, or present or have presented against him a petition for a bankruptcy order, or if an effective interim order shall be obtained in respect of him or a voluntary arrangement in respect of him is approved;
- 6.3.4. if the other Party permits any judgement against it to remain unsatisfied for fourteen (14) days.

## 7. FORCE MAJEURE

- 7.1. Except for payment of money due, neither Party shall be liable for failure to perform its obligations under the Contract, nor give rise to any claim for compensation or damage nor be deemed to be in breach of the Contract, if such failure arises from an occurrence or circumstances reasonably beyond the control of that Party (Force Majeure).

7.2. If either Party is affected by Force Majeure that Party shall give written notice without delay to the other Party of the nature and extent of the circumstances and the date and anticipated duration of the suspension.

7.3. If such Force Majeure causes a delay of sixty (60) days or more, and that such delay may reasonably be anticipated to continue, then either Party may terminate the Contract in accordance with the provisions of Clause 6 above.

7.4. The Party serving notice pursuant to Clause 7.2 shall notify the other in writing as soon as the performance of its obligations is no longer affected by Force Majeure and the Parties shall resume the performance of their respective obligations each to the other with effect from the date so notified.

## 8. PAYMENT

8.1. Unless otherwise stated in the Proposal, PSS shall submit an invoice in advance of the Services and payment shall be due prior to course attendance or within thirty (30) days from the date of invoice, whichever is soonest.

8.2. Notice provided less than fifty-six (56) days in advance of the agreed course date a fifty (50) percent charge of the contract price will be payable.

8.3. Notice provided less than thirty-four (34) days in advance of the agreed delivery date a seventy-five (75) per cent charge of the contract price will be payable.

8.4. Notice provided less than fourteen (14) days in advance of the agreed delivery date the full contract price will be payable.

8.5. In the event of late payment interest may be charged.

## 9. INTELLECTUAL PROPERTY AND USER RIGHTS

9.1. For the avoidance of doubt nothing in the Contract shall be construed as affecting the ownership of Background Intellectual Property.

9.2. All Intellectual Property arising from performance of the Services shall belong to PSS. The Client undertakes that it will not copy or permit the copying of any course notes or other materials provided by PSS, nor disclose or permit the disclosure or sell, or hire the same to third parties, nor use the same for running the Client's own courses or workshops.

## 10. LIABILITY

10.1. Whilst PSS shall use all reasonable endeavours to provide a high standard of teaching and the accuracy of any materials provided in conjunction with the Services, PSS shall not be responsible for any inaccuracies or omissions in the work or materials unless such inaccuracies or omissions are the result of negligence on the part of PSS and its employees.

10.2. PSS hereby expressly excludes all conditions, warranties and other terms which might otherwise be implied (whether by common law, by statute or otherwise) as to any of the matters in Clause 10.1. Without prejudice to the generality of the foregoing, PSS expressly excludes any terms, conditions or warranties which would otherwise be implied by sections 3 to 5 of the Supply of Goods and Services Act

1982 (as amended), or by any statutory modifications, amendments or re-enactments thereof.

- 10.3. In the event that PSS terminates or suspends the Contract in accordance with Clause 6.1, PSS accepts no liability for any indirect or consequential loss(es) incurred by the Client.
- 10.4. The Parties agree that PSS and its employees shall have no liability whatsoever to the Client for any direct, indirect, or consequential losses incurred by the Client or any third party arising from the application, adoption, dissemination (or other such action) of information and materials received during the course or workshop.
- 10.5. PSS's total liability in respect of all breaches of the Contract and/or the matters set out in Clause 10 shall in no circumstances exceed the sum of £500,000 in the aggregate.
- 10.6. Neither Party shall be liable to the other for any death or injury unless it is caused by the negligence of that Party or its representatives, nor shall it be liable to the other for any other loss or damage whatsoever unless it is caused by negligence or that of its representatives.

## 11. INDEMNITY

The Client agrees to indemnify and keep indemnified PSS and its employees' servants and agents from and against any and all liabilities, claims, demands, loss, costs, damages or expenses including legal fees resulting from, in connection with, or arising out of any claim asserted against PSS relating to or associated with: -

- 11.1. the Client's use and/or third-party use of the any information supplied by PSS;  
or
- 11.2. use by PSS of any Background Intellectual Property supplied by the Client.

## 12. RELATIONSHIP OF THE PARTIES

The relationship of the Parties is exclusively that of independent contractors and nothing contained in the Contract shall be construed as creating any partnership, consortium, joint venture, agency or any other legal relationship.

## 13. DATA PROTECTION

- 13.1. Data protection and data processing

13.1.1. In this clause:

- 13.1.1.1. "Personal Data", "Controller", "Processor", "Data Subject" and "Processing" "Third Country" and "International Organisation" have the same meaning as in the Data Protection Legislation; and
- 13.1.1.2. "Data Protection Legislation" shall mean the Data Protection Act 2018 and the Privacy and Electronic Communications (EC Directive) Regulations and any guidance or codes of practice issued by the

Information Commissioner from time to time (all as amended, updated or re-enacted from time to time).

13.1.1.3. “Data Controller” shall mean the Party that transfers Personal Data to the other Party.

13.1.1.4. “Data Processor” shall mean the Party that receives Personal Data from the other Party.

## 13.2. Responsibilities

13.2.1. The Parties undertake to comply with all relevant requirements of the Data Protection Legislation. This clause is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Legislation. Either Party can be a Data Controller or Data Processor if passing personal data to the other Party

13.2.2. The Data Controller will ensure that all required consents and notices are in place to legally transfer of the Personal Data to the Data Processor for the duration and purposes of this Contract.

13.2.3. Without prejudice to the generality of this clause the Data Processor shall perform its Data Processing obligation under this Contract by:

13.2.3.1. processing Personal Data on the written instructions of the Data Controller unless otherwise required by the laws of any member of the European Union or by the laws of the European Union applicable to the Data Processor Applicable Data Processing Laws (“ADPL”) to process Personal Data. When relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Data Processor shall notify the Data Controller prior to performing the processing as required by the ADPL unless those ADPL prohibit the Data Processor from notifying the Data Controller;

13.2.3.2. having appropriate technical and organisational measures in place, approved by the Data Controller, to protect against unauthorised or unlawful processing of Personal Data together with protection for accidental loss, destruction, or damage, to Personal Data, as is appropriate to the harm that might result from the unauthorised or unlawful processing, accidental loss, destruction, damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored quickly after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

13.2.3.3. ensuring that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and



13.2.3.4. not transferring any Personal Data outside of the European Economic Area to a Third Country or an International Organisation, unless the prior written consent of the Data Controller has been obtained and the following conditions are fulfilled:

- 13.2.3.4.1. the Data Controller or the Data Processor has provided appropriate safeguards in relation to the transfer;
- 13.2.3.4.2. the Data Subject has enforceable rights and effective legal remedies.
- 13.2.3.4.3. the Data Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- 13.2.3.4.4. the Data Processor complies with reasonable instructions notified to it in advance by the Data Controller with respect to the processing of the Personal Data;
- 13.2.3.4.5. assist the Data Controller, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 13.2.3.4.6. notify the Data Controller without undue delay on becoming aware of a Personal Data breach;
- 13.2.3.4.7. at the written direction of the Data Controller, delete or return Personal Data and copies thereof to the Data Controller on termination of the agreement unless required by Applicable Data Processing Law to store the Personal Data; and
- 13.2.3.4.8. maintain complete and accurate records and information to demonstrate its compliance with this clause.

13.3. The Data Controller consents to the Data Processor appointing a third-party processor of Personal Data under this Contract should it be necessary. The Data Processor confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement substantially on that third party's standard terms of business.

13.4. Either Party may, at any time on not less than thirty (30) days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Contract).

#### 14. NON-ASSIGNMENT

Neither Party may assign, transfer or otherwise dispose of the Contract in whole or in part or any interest therein without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed. However this shall not restrict the

right of PSS where it considers it appropriate to employ or appoint sub-contractors to carry out work relating to the Services provided such sub-contractors are bound by a confidentiality obligation equivalent to that contained in Clause 4 herein.

#### 15. NOTICE

Any notice which may be required to be given by either Party under the Contract shall be deemed to have been duly given if left at or sent by recorded delivery post or facsimile transmission (confirming the same by post) if to PSS sent to PSS, 30 Park Street, London SE1 9EQ, and if to the Client to the Client's last known place of business or its registered office or to such other address as the Client shall have previously designated in writing.

#### 16. ENTIRE AGREEMENT

The Contract represents the entire agreement between PSS and the Client relating to the Services and shall supersede all representations, agreements, statements and understandings made prior to the date of the Contract whether oral or in writing other than those representations, agreements, statements and understandings which have been expressly incorporated into the Contract.

#### 17. VARIATIONS TO CONTRACT

No variation or modification expressed to be an amendment to the Contract shall have any effect unless made in writing and signed by a duly authorised representative of each Party.

#### 18. HEADINGS AND SEVERABILITY

The clause headings are for convenience only and shall not affect their interpretation. If any part of the Contract shall be held to be unenforceable to any extent, the remainder of the Contract shall nevertheless remain in full force and effect.

#### 19. NON-WAIVER

Failure to terminate the Contract following a breach or other failure to comply shall not be deemed to be a waiver of a Party's defences rights or causes of action arising from such or any future breach or non-compliance. Nor shall failure on the part of either Party at the time or from time to time to enforce or to require the strict adherence and performance of any of the terms and conditions shall affect or impair its right to enforce such terms or conditions in any way.

#### 20. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

For the purposes of the Contracts (Rights of Third Parties) Act 1999, it is agreed that nothing in the Contract shall confer or purport to confer on any third party and right to enforce or any benefit of any term in the Contract.

#### 21. SURVIVAL

The provisions of the following Clauses shall remain binding upon the Parties after the expiry or any termination under the Contract, 4, 5, 7, 8, 9, 10, 11, 12 and 22.

#### 22. GOVERNING LAW





This Contract shall be governed by and construed in accordance with the Law of England and Wales and shall be subject to the jurisdiction of the Courts of England.