



## **CONTRACTOR RULES & REGULATIONS**

### **1.0 SCOPE**

This specification covers Rules and Regulations for the successful bidder or supplier (hereinafter termed Contractor) working at Odfjell Terminals (Charleston) LLC (hereinafter termed Owner) which shall be binding upon both parties.

### **2.0 CONTRACT DOCUMENTS**

- a. The Contract Documents shall consist of the Owner Purchase Order, the Drawings, Specifications and Contractor List of Bid Documents, Contractor clarifications and exceptions, if any therein identified and incorporated by reference, including these Rules and Regulations, the insurance policy in favor of Odfjell and such Drawings and Specifications as necessary for the proper execution of the work, all of which form the complete Contract. The Contract Documents shall supersede all negotiations, proposals, and representations by and between the parties.
- b. The intent of the Contract Documents is to include all labor, equipment and services of every kind necessary for the proper execution of the work to be performed, and the terms and conditions of payment therefore. The Contract Documents are to be considered as one, and whatever is called for by all. When Contract Documents are accepted by both Owner and Contractor, a Contract will have been consummated and will require no additional formal Contract on either part.

### **3.0 GENERAL CONDITIONS**

- a. The Contractor represents that it has had full opportunity to examine the site of the work and determine the scope and character of work, including site conditions, material, labor, and equipment required, as described in the Drawings and/or Specifications and assumes full responsibility for the performance of the work in a manner adequate to meet the conditions encountered.
- b. Contractor, having had full opportunity to examine the site of work and determine the scope and character of the work, waives any objections or claims Contractor may have for the site of the work and the scope and character of the work being anything other than that which is specifically described and for which Contractor has undertaken to perform. Owner will make best endeavors to define scope of all and any works undertaken by Contractor

#### 4.0 GUARANTEE

- a. If applicable, the Contractor guarantees that all work performed and all materials furnished shall be free from defect or faulty design and shall be of sufficient size, capacity, and quality to fulfill the specified operating conditions provided accurately described by the Owner.
- c. Contractor shall not be obligated to repair or replace any materials becoming defective solely as a result of ordinary wear and tear.

#### 5.0 PLANS, SPECIFICATIONS AND DRAWINGS

Where applicable, the Owner shall furnish the Contractor with an adequate and reasonable advice pertaining to the scope of the service to be performed.

#### 6.0 PERMITS AND REGULATIONS

Contractor shall notify Owner in writing if the work prescribed to be affected is at variance with the requirements of any applicable law, ordinance, rule and regulation. Where permits are required to complete works, Owners procedures and permit disciplines shall be those that govern. This Clause does not infer the Contractor is to conduct any works that are not entirely safe to do so and the onus for such decision rests with the Contractors personnel. In the event Contractor conducts unsafe works by their own device then Owner will not be held responsible for accident or injury that is specifically a result of Contractors own safety omission.

#### 7.0 OWNER'S PERSONNEL

In its relationship with the Contractor, the Owner shall act by and through a Project Manager and such Field Representatives as may be needed in the judgment of the Owner. All Communications, directions and instructions hereunder from Owner shall be communicated to Contractor by such Project Manager, or his/her designee, and all communications of any kind by Contractor to Owner hereunder shall be communicated to such Project Manager, or his/her designee by the Contractor. Such Project Manager, or his/her designee shall at all times have access to the premises for the purpose of inspecting the work to be performed by the Contractor hereunder in order to judge whether in Owner's opinion such work is being performed by Contractor in accordance with the provisions of the Contract.

#### 8.0 WORKMANSHIP

All of the work shall be executed by none but experienced personnel, and shall be of the highest quality and complete in all respects and appearance, whether finally concealed or exposed.

## 9.0 ACCEPTANCE OF WORK

- a. All work of Contractor must be accepted by Owner prior to any payment to Contractor by Owner for the work as completed. Prior to demobilization from the project site by Contractor, Owner shall examine the condition of the work and accept or reject the work. Owner will notify Contractor in writing, as to any particulars in which it believes the work has not been completed in accordance with the contract Documents. Except as so specified by Owner, the work shall be deemed accepted at the time of payment of invoices as submitted by Contractor. As to those items so specified by Owner, Contractor shall continue to work on those items that do not comply with the Contract Documents, and Owner shall accept each such item as it so complies. Where works conducted are at the behest of Owners Client and completed work is subject to inspection by the Client or their appointee, then this criteria will be that which governs the quality of the completed works and such works will not be declared complete until the Client or their appointee expresses satisfaction.
- b. Final acceptance of the work by Owner and payment of the invoice as submitted, or modified, shall constitute a release of all claims by Owner against Contractor for any further efforts on the part of Contractor on that particular segment of the work except for (a) Contractor's responsibilities as set out in Odfjell Terminals (Charleston) LLC Contractor Rules and Regulations; and (b) any other claims specifically reserved by Owner, in writing, at the time of final acceptance and other warranties or guarantees by Contractor in other Contract Documents.

## 10.0 INSPECTION

- a. General Inspection
  1. Owner shall have the right, at all times, to make inspections to check the progress of the work, the quality of the materials and workmanship, and the Contractor's equipment, tools, records and facilities and that all requirements of the Contract Documents are being met. Inspection or failure to inspect by Owner shall not relieve Contractor of its responsibility or liability regarding the materials or workmanship nor constitute acceptance thereof by Owner. If upon inspection, any work or materials are found not to be up to acceptable standards in the opinion of the Owner, then Contractor shall replace such unacceptable work or materials to Owner's satisfaction; if Contractor fails to replace any unacceptable work or materials, then Owner may replace the work or materials itself at Contractor's expense and deduct the cost thereof from the Contract price.
  2. If the Specifications, Owner's instructions, laws, ordinance, or any public authority require any work to be especially tested or approved, then

Contractor shall give Owner timely notice of its readiness for inspection and of any date and time fixed for such inspection.

b. Shop Inspections

The Contractor shall be responsible for thorough inspection of all materials it furnishes to ensure compliance with this Contract. Owner reserves the right to make its own shop inspections, at any time.

11.0 WORK HOURS

The Contractor shall perform its work during Owner's normal working hours, from 8 a.m. until 5 p.m., Monday through Friday except Owner may approve an alternate schedule by request of Contractor. In the event of a cost plus Contract, no work will be permitted during other than normal working hours except by permission of the Owner. Special arrangements shall be made with the Owner concerning work during holidays observed by the Owner.

12.0 CHANGES

- a. Modifications to the work may be requested by Owner or Contractor from time to time, in writing, during the course of the work. RFI (Request for Information) should be submitted as "Modifications", as used herein, shall mean, any addition or deletion to the work whether or not it involves additional, or less, costs. Modifications that affect the price, time, functionality, quality or products or project must be in writing.
- b. Without invalidating this Contract, the Owner may, at any time or from time to time, order additions, deletions or modifications to the work; such changes shall be authorized by a change order to be prepared by the Project Manager for execution by the Project Manager and the Contractor. No adjustment in price or time of performance shall be made for changes unless such changes would significantly affect Contractor's costs or time of performing. The change order shall set forth the basis of any change in Contract price, thereafter set forth for extra work, and any change in Contract time which may result from the change.
- c. "Extra Work" shall mean work added by change order or for which a claim for extra work is made by the Contractor and shall be made not contemplated by the Contract Documents. The basis of compensation to the contractor for work either added or deleted by change order or for which a claim for extra work is made shall be approved by the project manager.
- d. No change shall be made by Contractor in its work or performance without approval from the Owner in a written change order specifying the change in Plans, specification, procedures, time, sequence, and/or other requirements of the Contract and specifying whether there is to be an adjustment in price or time for performance

and how any such adjustment shall be determined. The change shall be made in writing prior to undertaking the work. In the event an oral request is made by Owner, then no later than ten (10) business days after the change work is done, the change order in the aforementioned format must be presented and noted that it was done pursuant to an oral request giving the date and the person making the request and to whom the request was made. In the event any orders or instructions appear to Contractor to involve extra work for which he should receive compensation or adjustment in construction time, he shall make written request to the Project Manager for written order authorizing such extra work. Should a difference of opinion arise as to what does or does not constitute extra work, or as to payment thereof, and Project Manager insists upon its performance, Contractor shall proceed with the work after making written request for written order and shall keep an accurate account of the actual field costs thereof as provided above. The Contractor would thereby preserve the right to submit the matter of payment to arbitration, as herein below provided.

- e. It is further agreed by both parties hereto that all questions of dispute or adjustment presented by the Contractor shall be in writing and filed with the Project Manager within ten (10) days after the Project Manager has given any directions, order or instruction to which the Contractor desires to take exception. The Project Manager shall reply to such written exceptions by the Contractor in writing. In case the Contractor should appeal from the Project Manager's decision, any demand for arbitration shall be filed with the Project Manager in writing within ten (10) days after the date of delivery to Contractor of the Project Manager's reply. It is further agreed that final acceptance of the work by the Owner and the acceptance by the Contractor of the final payment shall bar any claims by either party, except where noted otherwise in the contract document.

### 13.0 WORK AREA

The work area for storage of materials and equipment shall be as designated by the Owner's Project Manager. The Contractor shall be responsible for keeping this area and the area of work in a clean and orderly manner at all times.

### 14.0 CONTRACTOR'S RESPONSIBILITY

- a. The Contractor shall give adequate attention to the faithful prosecution and completion of this Contract and shall keep on the work, during its progress, a competent superintendent and any necessary assistants. The superintendent shall represent the Contractor in his absence and all directions given to him shall be as binding as if given to the Contractor.
- b. The Contractor is at all times and shall remain an independent contractor, solely responsible for the manner and method of completing his work under this Contract, with full power and authority to select the means, method and manner of

performing such work, so long as such methods do not adversely affect the completed improvements, the Owner being interested only in the results obtained and conformity of such completed improvements to the Plans, Specifications and Contract.

- c. Likewise, the Contractor shall be solely responsible for the safety of himself, his employees and other persons, as well as for the protection of the safety of the materials, supplies and equipment, and of the improvements being erected and the property of himself or for any other person, as a result of his operations hereunder.

Contractor shall be fully and completely liable, at his own expense, for design, construction, installation, and use, or non-use, of all items and/or injury incident thereto, either to person or property, including without limitation, the adequacy of all temporary support, shoring, bracing, scaffolding, machinery or equipment, safety precautions or devices, and similar items or devices used by him during construction.

- d. Subcontractors

Contractor shall have the freedom of selecting subcontractors; however, these subcontractors shall be acceptable to the Owner. All subcontractors shall be bound by the terms and conditions of the Contract, and Contractor warrants strict compliance therewith on the part of each of his subcontractors. Nothing contained in the Contract Documents shall create any contractual relation between the Owner and any subcontractor, but Contractor shall be as fully responsible to the Owner for all acts and omissions of his subcontractors, their agents and employees as he is for the acts and omissions of persons directly employed by him and that said Subcontractors shall be covered by any insurance policies provided by Contractor in favor of Owner, that names Owner as additional insured as otherwise provided for within this contract.

- e. It is understood and agreed that the Contractor has, by careful examination but subject to the extent visible or discernable, satisfied himself as to the nature and location of the work, the confirmation of the ground, character, quality and quantity of the materials to be encountered, the character of equipment and facilities needed preliminary to and during the prosecution of the work, the general and local conditions, and all other matters which can in any way affect the work under this Contract. No verbal agreement or conversation with any officer, agent or employee of the Owner either before or after the execution of this Contract shall affect or modify any of the terms or obligations herein contained.  
In the unlikely event that subsurface, concealed or hidden conditions which impact job performance shall constitute grounds for a request for additional services and/or a change in scope to be mutually agreed to by the Owner and Contractor in accordance with the Contract Documents.

f. Protection of Work and Property

Contractor shall be liable for any and all losses or damages suffered by Owner resulting from or arising out of the negligent act or omission of Contractor, or its agents, employees or subcontractors.

15.0 PROFESSIONAL STANDARDS

- a. Contractor agrees that it will provide in connection with the work contemplated hereunder the standards of care, skill, and diligence normally provided by a professional in the performance of the same or similar services. In the event Contractor fails to exercise such standards of care, Contractor shall re-perform any such deficient engineering or construction without costs or fee to Owner. In the performance of such construction or construction management services, Contractor shall be responsible for the direct damages arising from the acts negligence of its officers, directors, agents or employees.
- b. Regardless of the kind or character of liabilities that may occur in the performance of the work, the damages for which Contractor shall be liable are those covered by the insurance proceeds hereinafter defined. Contractor shall be liable for all direct damages resulting from any failure on the part of the Contractor to exercise the proper standards of care, skill, and diligence, and whether due to breach of Contract or other including negligence.
- c. The provisions immediately herein before set out shall not be construed to relieve any insurer of its obligations and liabilities under the policies issued pursuant to the provisions of this agreement.

16.0 DEFECTS AND THEIR REMEDIES

It is further agreed that if the work or any part thereof, or any material brought on the site of the work for use in the work or selected for the same, shall be deemed by the Project Manager as unsuitable or not in conformity with the Specifications, the Contractor shall, after receipt of written notice thereof from the Project Manager, forthwith remove such material and rebuild or otherwise remedy such work so that it shall be in full accordance with this Contract. The Project Manager shall not have the power to waive the obligations of this Contract for furnishing by the Contractor of good material, and of his performing good work as herein described, and in full accordance with the Plans and Specifications. No failure or omission of the Project Manager to discover, object to, or condemn any defective work or material shall release the Contractor from the obligations to fully and properly perform the Contract, including without limitations, the obligation to at once tear out, remove and properly replace the same at any time prior to final acceptance upon the discovery of said defective work or material; provided however, that the Project Manager shall upon request of the Contractor, inspect and accept or reject any material furnished, and in the event the material has been once accepted by the Project Manager, such

acceptance shall be binding on the Owner, unless it can be clearly shown that such material furnished does not meet the Specifications for this work.

#### 17.0 DAMAGE TO OWNER OR CONTRACTOR

In the event the Owner is damaged in the course of work by the act, negligence, omission, mistake or default of Contractor, or should the Contractor unreasonably delay the progress of the work so as to cause loss, then the Contractor shall reimburse the Owner for such loss. Unless otherwise specified, all loss or damage to Contractor arising out of the nature of the work to be done, or from the action of the elements or any unforeseen circumstances in the prosecution of same, or from unusual obstructions or difficulties which may be encountered in the prosecution of work, or for interference or delays caused by other contractors delaying completion of their portion of the work shall be sustained and borne by the Contractor at his own cost and expense.

#### 18.0 MULTIPLE CONTRACTORS

It is expressly understood and agreed that Contractor may be required to work simultaneously with other contractors and in those occasions will be responsible for coordination of his work with any other contractors during the work. Although Owner may assist and be involved in scheduling, this does not relieve Contractor of its obligation to coordinate his work with other contractors.

#### 19.0 INDEMNIFICATION BY CONTRACTOR AND ALL SUBCONTRACTORS

- a. Contractor and all of Contractor's subcontractors shall defend, indemnify and save the Owner, its respective officers, directors, agents and employees, harmless from and against all damages, claims, losses, demands, suits, judgments and costs, including reasonable attorney's fees and expenses, arising out of or resulting from the performance of the work, which:
  1. **Is attributable to personal injury, sickness, disease or death, or to property damage (other than the work itself) including the loss of use resulting therefrom; and**
  2. **Is caused in whole or in part by any negligent act or omission of Contractor, any subcontractors, anyone directly or indirectly employed by anyone of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.**
- b. The obligation of the Contractor under this paragraph shall not extend to the liability of the Owner, his agents or employees arising out of the preparation or approval of the maps, Drawings, reports, surveys, changes orders, Designs or Specifications, or the giving of or the failure to give directions or instructions by



the Owner, his agents or employees, provided such giving or failure to give is the sole cause of the injury or damage.

- c. Contractor agrees to reimburse Owner for, and to indemnify, save, and hold Owner free and harmless from and against, any and all loss, expense, claims demands, charges, liens, liability, or causes of action or proceedings of whatsoever nature on account of any and all damage to or loss or destruction of any property (including property of Owner) or injury to or death of any person (including employees of Contractor, and subcontractors, and Owner) arising directly or indirectly out of or in connection with the performance of this Contract, or the operations of Contractor or its subcontractors.
- d. Owner shall indemnify, defend and hold harmless, and hereby forever releases, Contractor and its affiliates, directors, officers, shareholders, employees, agents and subcontractors from and against any claims, costs (including but not limited to reasonable attorney's fees, court and arbitration costs and liability to a third party), expenses, causes of action, fines, penalties, liabilities, losses and damages (hereafter collectively referred to as "Claims") actually sustained and incurred by Contractor, or for which Contractor is legally liable, to the extent such Claims are caused directly or indirectly, by: (a) the acts, errors or omissions of Owner, its employees or agents which constitute negligence or willful misconduct; (b) Owner's material breach of any term or provision of the Agreement; and/or (c) the failure of any warranty or representation of Owner to be true, accurate and complete. The above indemnification does not include liabilities, claims, demands and causes of action that occur as a result of Owner's failure to comply with and fulfill its obligations under this Agreement or as a result of the negligent or wrongful acts of Owner, its employees or agents or of third parties.

## 20.0 INSURANCE

- a. For the purpose of this section, the activities of Contractor's agents or employees on and about the Owner's premises during the life of this Contract shall be deemed to relate to the performance of the work whether or not such activities are within the scope of their agency of employment.
- b. For the purpose of physical installations, maintenance and other related service, the Contractor, at his own expense, shall effect and maintain insurance throughout the term of any Contract with carriers approved by the Owner and in compliance with local regulations and shall submit to the Owner prior to commencement of work under this Contract certificates acceptable to the Owner evidencing the following forms of insurance with coverages as indicated below or as otherwise required by Owner. For the purpose of regulatory matter, writing of facility plans at the Owners request, conducting hazard reviews and other non-physical works where the majority of said work is conducted off-site this insurance, other than personal,

business, vehicle coverage, is not required provided Odfjell is held harmless for any claimable occurrence that may occur on their property howsoever caused.

- c. The policies shall be endorsed to name Owner as an additional insured under such policies, with coverage that is co-extensive to that of the primary insured thereon. Furthermore, the policies maintained in force shall be endorsed with a pollution buyback endorsement rescinding any exclusion for pollution liability under policies on which Owner is named. It is expressly understood that Contractor shall procure said insurance that names owner as additional insured and that will provide coverage, including but not limited to, accidents involving any type of exposure of persons to chemicals or other substances and sort of related claim, or connected therewith. It is expressly understood that such damages and risks should expressly not be prohibited by any policy language, such as a pollution exclusion, or other type of exclusionary or limiting language.

None of the policies may be cancelled or modified except upon thirty (30) days prior written notice to Owner. The certificates shall name Owner as an additional insured, will state that such coverage shall not be canceled or modified except upon thirty (30) days prior written notice to Owner. Contractor shall make available upon Owner's demand copies of the insurance policies and shall purchase insurance, which as an additional assured gives Owner the same rights, coverage and protection as afforded to Contractor under the policy.

- d. Owner is not obligated to review and confirm the terms of entry, and the responsibility to provide proper coverage as required under this agreement is solely that of the Contractor. Contractor's insurance shall be primary in relation to Owner's insurance, shall waive subrogation rights (and Contractor and subcontractors for Contractor, hereby waive such rights) against Owner and Owner's employees, agents, and invitees with respect to injury, loss or damage covered by such policies, regardless of cause, including negligence of such parties, and shall otherwise be acceptable to Owner.

In the event that said insurance policies found not to provide coverage to Owner, this does not relieve Contractor of his contractual obligations, including but not limited to, indemnification under Section 21, and such failure to provide as insurance coverage to owner covering risks, in connection with this contract, shall be deemed as a breach of said contract.

- e. Coverages  
In consideration for admittance to the Odfjell premises, or as a condition of any contract between Owner and Contractor, Contractor as identified above agrees that in addition to and separate from any other obligation indemnification, Contractor shall obtain and maintain continuously in effect during the term of Contractor's presence on the Odfjell premises the following types and amounts of insurance, with insurance companies satisfactory to Owner.

1. Workers Compensation Insurance - Including Occupational Disease, in accordance with the laws of the state of Texas. U.S. Longshore & Harbor Workers Compensation Act, Employers liability insurance and Maritime Employer's Liability (if applicable) with the limits of \$1,000,000 per person per occurrence.
2. Commercial General Liability Insurance - Including, but not limited to, contractual liability and pollution with a limit of not less than \$1,000,000 for any one occurrence, and \$2,000,000 Aggregate.
3. Automobile Liability Insurance - Covering owned, non-owned, hired, and all vehicles used by Contractor with a limit of not less than \$1,000,000 applicable to bodily injury, sickness, or death and loss or damage to property in any one occurrence.
4. Umbrella (if applicable) - Excess liability (Occurrence Form) to be a minimum of \$5,000,000.00. Excess of and following Terms and Conditions of below underlying coverage: Employer's Liability and Maritime Employers Liability; Commercial General Liability (including pollution); Commercial Automobile Liability. Coverage to be as broad as underlying coverage.
5. Subrogation - All policies identified in 1, 2 and 3 above shall be endorsed to provide that underwriters and insurance companies of Contractor shall not have any right of subrogation against Owner, employees, invitees, servants, or underwriters, or the insurance companies of any of the foregoing.
6. Certificates - Contractor shall furnish Certificates of Insurance to Owner evidencing the insurance and waiver of subrogation required by 1, 2, 3, 4 and 5 above. In addition, policies under 2 and 3 shall list Owner as an additional assured. The additional assured shall provide identical coverage to Owner as is provided to the Contractor and failure of the provided policy shall be a material breach of the agreement. Policies under (1) above shall have the Alternate Employer Endorsement.
7. Primary Insurance - Any coverage provided Odfjell by Contractor's insurance is primary insurance and shall not be considered contributory insurance or co-insurance with any insurance policies of Owner.
8. Subcontractors -Should sub-contractors be permitted to perform any work hereunder requiring their presence on the premises, Contractor shall at its own expense provide insurance coverage for such sub-contractors as required under 1, 2 and 3 above; or shall have sub-contractors provide Certificates of Insurance with waivers of subrogation as required in 4 and 5 above, except naming Contractor and Owner as Additional Assureds.

- f. Should any of the work involve Contractor-owned or operated watercraft or aircraft, Contractor shall maintain protection and indemnity, and Jones Act (Maritime Employers Liability) or aircraft liability insurance respectively with a combined single limit of not less than \$1,000,000.00 each occurrence or each policy.
- g. Any additional insurance required by the law of the place where the work is to be performed.
- h. If any of the work involve Contractor providing design, engineering or other professional services, Contractor shall maintain professional liability insurance with a combined single limit of not less than \$1,000,000.00 for each occurrence.
- i. Completion date, for purposes of coverages required herein shall be that date established by Owner under Paragraph 4.0 Guarantee.
- j. Contractor shall require of all subcontractors and shall obtain from all subcontractors and provide to Owner certificates of insurance coverages as required by Contractor herein.
- k. Owner shall have the right, exercised at their sole option, to review said insurance policies, and the identity and background of the prospective underwriter of said policy, before Contractor performs work under this contract, approval of said policy not to be unreasonably withheld.

## 21.0 SAFETY AND SECURITY

### a. Compliance with Safety Regulations

Contractor shall take all necessary precautions for the safety of employees on the work and shall comply with all applicable provisions of federal, state and municipal safety laws and building codes to prevent accidents or injuries to persons on, about or adjacent to the premises where the work is being performed, including the erection, where appropriate, of all necessary safeguards and cautions. Contractor warrants and represents that Contractor has read and is knowledgeable of such rules, regulations, requirements and laws, and particularly with the provisions and penalties set forth in and pursuant to the Williams-Steigner Act. (Also known as the Occupational Safety and Health Act - OSHA). In the event of the violation of any such rule, regulation, etc., by a Contractor which results in any cost or expense to Owner as a result thereof, Contractor agrees to reimburse Owner for such cost or expense.

- b. Contractor shall see to it that his employees and his subcontractor's employees, if any, comply with and observe Owner's safety regulations and precautions while

working on Owner's premises. Owner's "Basic Safety Rules and Regulations for All Contractors and Outside Services" shall apply.

- c. The treatment of injuries sustained by Contractor's employees shall be the sole responsibility of the Contractor. Owner's emergency first-aid facilities and services, if any, will be available to Contractor for treatment of his employees in case of injury; however, Owner makes no representation or warranties as to the availability, sufficiency or intended use of any facilities or services.
- d. The Contractor shall provide affidavits (by fax or by mail) to Odfjell, attesting to the following for each employee (by employee name and employee identification number) prior to that employee coming on Odfjell property:
  - 1. Has successfully complied with the contractor's pre-employment and continuing employment drug policy. At minimum, testing must be annual.
  - 2. Has undergone a pulmonary capacity test, as part of the Contractors pre-employment screening. At minimum, this PFT must be performed annually.
  - 3. Has undergone a criminal background check and has had no felony conviction within the last seven (7) years.

e. Confidential Information

The bidder and/or supplier is hereby made aware that any Drawing and/or Specifications containing submittal by Owner are of a strictly confidential nature. No part of this inquiry is to be printed, published, or advertised in any manner whatsoever, nor is the information contained therein to be divulged to any third party without the prior express written permission of the Owner. All Drawings and/or Specifications remain the property of the Owner and all bidders and/or suppliers will be required to return them upon request.

22.0 SCHEDULES

- a. Time is of the essence in Contractor's performance of his Contract with Owner. If the project is delayed due to Contractor's fault, Owner will lose the use of its intended facility and will lose the ability to generate income. The Contractor shall begin the work on the day as mutually agreed between the Project Manager and the Contractor and proceed to completion without undue delay caused by lack of equipment, faulty equipment, lack of personnel, and/or lack of materials. If Contractor delays in the progress of its work, then it shall promptly give notice thereof to Owner. Delay caused by circumstances beyond the reasonable control of Contractor and not reasonably foreseeable by Contractor in time to be prevented

shall, upon the approval of Owner, be the basis for an extension of the time of completion.

- b. The schedule provided by Owner is intended to be the best information Owner has, but always subject to change due to the nature of the project.

### 23.0 DELAYS

The Contractor shall receive no compensation for delays or hindrance to the work, except when direct and unavoidable extra cost to the Contractor is caused by the failure of the Owner to provide information, access to the work site or materials, if any, which is to be furnished by the Owner.

### 24.0 MEDIATION AND ARBITRATION

- a. All questions of dispute under this Contract shall be submitted to arbitration at the request of either party in dispute. Any disputes under this Contract must be submitted to non-binding mediation before proceeding to arbitration. The parties shall agree to a mediator and if they cannot agree then one shall be chosen by a District Judge of Charleston County South Carolina. Mediation shall be governed by South Carolina law and procedures, including the confidentiality provisions.
- b. The parties may agree upon one arbiter, otherwise, there shall be three (3), one named in writing by each party, and the third chosen by the two arbiters so selected; or, if the arbiters fail to select a third within ten (10) days, he shall be chosen by a District Judge of Charleston County South Carolina unless otherwise specified. Any arbiter must be a business person with experience in the area in dispute. Either party may object to the arbiter's selection if not so qualified. Should the Contractor demand arbitration and shall fail to name an arbitrator within ten (10) days of the demand, his right to arbitrate shall lapse, and the decision of the Project Manager shall be final and binding on him. Should a party fail to choose an arbiter within ten (10) days, an arbiter shall be chosen by a District Judge of Charleston County South Carolina. Should either party refuse and neglect to supply the arbiters with any papers or information demanded in writing, the arbiters are empowered by both parties to take *ex parte* proceedings.
  - 1. The arbiters shall act with promptness. The decision of any two shall be binding upon both parties to the Contract. The decision of the arbiters upon any questions submitted to arbitration under this Contract shall be a condition precedent to any right of legal action. The decision of the arbiter or arbiters may be filed in Court to carry it into effect.
  - 2. The arbiters, if they deem the case demands it, may award any party such attorney's fees and expenses as they may deem proper. The awarding of attorney's fees and expenses are not mandated and are within the arbiter's

sole discretion. The arbiters shall fix their own compensation unless otherwise provided by agreement and shall assess the costs and charges of the arbitration upon either or both parties. The award of the arbiters must be made in writing and be a reasonable award. The award should be issued within 30 days of the final hearing.

## 25.0 MISCELLANEOUS

### a. Retired Equipment and Material

Retired equipment, piping, etc. shall be removed from the construction area and deposited in a storage area designated by Owner. Storage of items shall be coordinated with Owner's Project Manager.

### b. Owner Furnished Materials

All materials to be furnished to the Contractor by the Owner shall be made available to the Contractor at the Owner's site. The Contractor shall be responsible for withdrawing said materials and for transporting said materials to the area of work. The Contractor shall assume full responsibility for the proper storage, protection and security of all materials delivered to Contractor.

### c. Contractor's Tools

Contractor's tools shall be passed onto and off Owner's premises under the supervision of the Owner's Project Manager. Owner will not assume any responsibility for loss, damage, security, or malicious mischief in connection with Contractor's tools, equipment, supplies and/or materials in the custody of the Contractor while Contractor is on site.

### d. Sales and Use Taxes

Proof of payment of Sales and Use Taxes paid by Contractor shall be provided to Owner.

### e. Contractor Personnel Vehicles

Contractor will be permitted only supervisor's personnel vehicles in the work area, as agreed between the Contractor and the Owners Representative. Parking areas for additional Contractor Employees will be designated by the Owner, suited to the needs of the project.

### f. Spare Parts List

Price recommended spare parts lists obtained from equipment suppliers will be delivered to Owner within fifteen (15) days after receipt of said lists.

g. Correspondence

1. Correspondence shall be defined as letters, faxes, e-mails and memorandums. It shall not include Drawings or the associated transmittal memorandum.
2. All correspondence shall be consecutively numbered. The numbering system will be described in the "Instructions to bidders" section of these bid documents.

h. Oral Communication

All oral communication, which affects any aspect of the Contract shall be confirmed promptly in writing by the Contractor of either what they advised Owner or what was advised to them by Owner. Failure to confirm in writing shall preclude Contractor from relying on any purported oral communication either to or from Owner.

i. Purchase Orders

Unpriced purchase orders of all major equipment will be submitted to the Owner for his information.

j. Distribution Schedules

A tentative distribution schedule for Drawings, requisitions, manufacturer's Drawings, miscellaneous reports and other documents shall be included in the Instruction to Bidders. This list shall be finalized between the Owner and successful Contractor. Such schedule as finalized will be for the purposes of planning and scheduling but is understood by Contractor is not a warranty of deliveries but is the best attempt to estimate the time. Any impact or change in schedule may have on Contractor must be presented as a change order as required above.

l. Passage of Title

Ownership of all material and equipment becoming or to become part of the work shall pass to Owner when it is attached and installed as a permanent part of the Owner's facilities. Title of ownership of all material, which has been invoiced, shall pass to Owner upon payment of same.

m. Independent Contractor



Contractor shall act as an independent contractor and not as agent of Owner, with the exclusive control of the manner and means of performing the work in accordance with the Contract Documents. Contractor shall maintain complete control over Contractor's own employees and operations and those of subcontractors. No personnel furnished by Contractor shall be deemed under any circumstances as agents or servants of Owner. In the event that Owner should, at the request of Contractor, furnish workmen to Contractor for any purpose to work under the direction and supervision of Contractor, then such employees of Owner shall be deemed to be "borrowed servants" of Contractor, and Contractor shall be responsible for their actions while so engaged.

n. General Terms and Conditions

The General Terms and Conditions appearing on the reverse side of Owner's Purchase Order do not apply to this Contract. Contractor will be required to furnish proof of compliance with Presidential Executive Orders 11246, 11625, 11701, and 11758.

o. Contractor's Hurricane Preparations

As part of Odfjell's hurricane preparations Plans, ALL CONTRACTORS, upon notification by Owner of a pending hurricane, winds of high velocity or possible flooding conditions, are subject to the following regulations which are mandatory:

1. The Contractor must have adequate personnel to perform and must carry out the following:
  - a) Clean up job site and work area.
  - b) Remove all ladders, scaffolds and loose boards, and secure same to ground or permanent structure with #9 wire, cable, or rope, or place in tool shed.
  - c) Remove or anchor all construction offices, buildings, etc., with cable to ground anchors or to some permanent structure or pipe rack.
  - d) Secure all partially erected materials or dismantle, if required.
  - e) Lash or tie down any material subject to rolling, floating, loose on ground, etc.
  - f) Remove all vehicles and equipment from Owner's property. Drag lines or cranes must be boomed down and lashed if they remain on site.

2. Any Contractor equipment either personal property or on a rental basis, that remains on Owner's premises during the above conditions will be done so at risk of the Contractor. Owner will not be liable for any loss or damage to same.

p. Cellphone Usage

1. Primary form of communication shall be radio.
2. Odfjell issued intrinsically safe cell phones are permitted.
3. Non-intrinsically safe cell phones are permitted with an Odfjell issued Safe Work Permit.
  - a) Pictures cannot be taken without prior approval of the FSO.
4. Contractor Supervisors/Foreman (ONLY) can utilize their cell phones in a truck (with windows up) for company business.
  - a) All other contractor team members must leave their cell phones in their vehicles and not in lunch boxes/backpacks coming into the terminal.
5. Any contractor identified using an unauthorized cell phone in the terminal will be escorted out.

26.0 LIENS

- a. Contractor shall from the funds provided under this Agreement, promptly pay all suppliers, subcontractors, and those providing labor used by Contractor in the performance of the work. To the extent of such funds, Contractor shall maintain the project premises and structures free and clear of mechanic's liens.
- b. Contractor agrees to indemnify, defend and hold harmless Owner from all claims, demands, causes of action or suits of whatsoever nature arising out of the services, labor, equipment, and materials furnished by Contractor, its subcontractors or derivative claimants.
- c. Contractor shall immediately pay and discharge, or shall provide sufficient and satisfactory security to pay and discharge any obligation or alleged obligation which Contractor, his subcontractors, or derivative claimants may have, in aid of the enforcement of which, a lien or right of any kind is established, or is attempted to be established, upon or against the real property and improvements upon which the work was performed.

- d. Owner may, as a condition precedent to any payment hereunder, require Contractor to submit complete waivers and releases of any and all claims of any person, firm, or corporation.

## 27.0 FORCE MAJEURE

Contractor shall not be liable or responsible for delays or costs in completion of the work resulting from or caused by occurrence beyond its control, including without limitation, changes ordered in the work and other effects of action taken by Owner; actions of other Contractors employed by Owner; acts of God; storms; floods; fires; explosions; or other casualty losses; unusual weather conditions; strikes, boycotts, or other labor disputes; lock-outs; delays in transportation and delivery of material and equipment; and acts of the Government, its agencies or officers, federal, state or local. Contractor shall give timely notice to Owner of such occurrence. However, if as a result of such cause Contractor is unable to perform for a period of more than thirty (30) days, then Owner may cancel the Contract; and neither party shall be liable to the other for costs incurred by the other as a result of force majeure or such cancellation. If Owner does not cancel the Contract, then the time for performance by Contractor shall be extended by the number of days Contractor is unable to work.

## 28.0 ABANDONMENT OF THE CONTRACT BY CONTRACTOR

In the case the Contractor shall cease work and should abandon and fail or refuse to resume work within ten (10) days after written notification from the Owner, or if the Contractor fails to comply with the orders of the Project Manager, when such orders are consistent with the Contract Documents, then, and in that case, where performance and payment bonds exist, the sureties on these bonds shall be notified in writing and directed to complete work, and a copy of said notice shall be delivered to the Contractor.

The Owner may thereupon employ such force of men and use such materials and supplies as said Owner may deem necessary to complete the work and charge the expense of such labor, machinery, equipment, tools, materials and supplies to said Contractor, and expense so charged shall be deducted and paid by the Owner out of such monies as may be due, or that may thereafter at any time become due to the Contractor under and by virtue of this Contract. In case such expense is less than the sum which would have been payable under this Contract, if the same had been completed by the Contractor, then said Contractor shall receive the difference. In case such expense is greater than the sum which would have been payable under this Contract, if the same had been completed by said Contractor, then the Contractor and/or his surety will pay the amount of such excess to the Owner; or

The Owner may let the Contract for completion of the work under substantially the same terms and conditions which are provided in this Contract. Owner shall attempt to obtain competitive bidding, but is not required to, and is only required to use reasonable means to have the work completed in a commercially reasonable manner. In the case of any increase in costs, under the new contract, as compared to what would have been the cost under this

Contract, such increase shall be charged to the Contractor; and the Contractor, as well as the surety, shall be and remain bound therefore. However, should cost to complete any such new contract prove to be less than that what would have been the cost to complete under this Contract, the Contractor and/or his surety shall be credited therewith. When the work shall have been substantially completed, the Contractor and his surety shall be so notified. A complete itemized statement of the current accounts, certified by the Project Manager as being correct, shall be prepared and delivered to the Contractor and his surety, whereupon the Contractor and/or his surety, or the Owner as the case may be, shall pay the balance due as reflected by said statement within fifteen (15) days after the date of such notification.

In the event the statement of accounts shows that the costs to complete the work is less than that which would have been the cost to the Owner had the work been completed by the Contractor under the terms of this Contract; or when the Contractor and/or his surety shall pay the balance shown to be due by them to the Owner, then all materials or supplies left on the site of the work shall be turned over to the Contractor and/or his surety. Should the cost to complete the work exceed the Contract price and the Contractor and/or his surety fail to pay the amount due the Owner within the time designated herein above, and there remains materials, or supplies on the site of the work, notice thereof, together with any itemized list of such equipment and materials, shall be mailed to the Contractor and his surety at their respective addresses designated in this Contract, provided, however, that actual written notice given in any manner will satisfy this condition. After mailing or other giving of such notice, such property shall be held at the risk of the Contractor and his surety subject only to the duty of the Owner to exercise ordinary care to protect such property. After fifteen (15) days from the date of said notice, the Owner may sell such materials, or supplies and apply the net sum derived from such sale to the credit of the Contractor and his surety. Such sale may be made at either public or private sale, with or without notice, as the Owner may elect. The Owner shall release any materials, or supplies, which remain on the work site and belong to persons other than the Contractor or his surety, to their proper owners. The books of all operations provided herein shall be opened to the Contractor and his surety.

## 29.0 ABANDONMENT BY OWNER

In the case the Owner shall fail to comply with the terms of this Contract, and should fail or refuse to comply with said terms within ten (10) days after written notification by the Contractor, then the Contractor may suspend or wholly abandon the work, and may remove therefrom all machinery, equipment, tools, and all materials on the site of the work that have not been included in payments to the Contractor and have not been brought into the work. And thereupon the Project Manager shall make an estimate of the total amount earned by the Contractor, which estimates shall include the value of all work actually completed by said Contractor (at the prices stated in the attached proposal where unit prices are used), the value of all partially completed work at a fair and equitable price, and the amount of all extra work performed at the prices agreed upon, or provided for by the terms of this Contract, and a reasonable sum to cover the costs of any provisions made by the Contractor to carry the whole work to completion and which cannot be utilized. The Project Manager shall then make a final statement of the balance due to the Contractor by

deducting from the above estimate all previous payments by the Owner and all other sums that may be retained by the Owner under the terms of this Contract and shall certify same to the Owner who shall pay the Contractor on or before thirty (30) days after the date of the notification by the Contractor under the terms of this Agreement. This shall be Contractor's sole remedy with the properly submitted change orders, and it will be presumed that Owner has complied with the terms of the Contract unless the Contractor has submitted written modification of some specified failure to comply with the terms of the Contract.

### 30.0 MENDING AND REPAIR OF PLANT ROADS, GROUNDS, AND SURFACES

All extraordinary ruts and scarifications of plant roads, grounds and surfaces resulting from the Contractor's work and/or equipment shall be mended and repaired to the same appearance and condition which existed at the time work was begun or at the time equipment was moved on to the job site. Any and all materials needed to mend or repair said roads, grounds and surfaces shall match and be suitable to the existing materials which comprise said road, grounds and surfaces in all particular shapes, forms, fashions and Specifications. The Owner's Project Manager shall approve all materials, method of mending and repairing of said roads, grounds and surfaces. Any and all expenses incurred in mending and repairing said roads, grounds and surfaces shall be borne by the Contractor.

### 31.0 CLEAN-UP

The Contractor shall at all times keep the work site free from accumulations of waste materials or rubbish caused by his employees in the performance of work. The Contractor shall during the course of the work remove all waste materials and rubbish from and around the job site and at the completion of the work. The Contractor shall remove all rubbish from and about the job site together with all its tools, equipment, scaffolding and surplus materials and shall leave the work area clean and ready for use. Such removal must be made under the supervision of the Project Manager and any such material or equipment belonging to the Owner shall be transported by the Contractor to the appropriate storage place or places within the site premises designated by the Project Manager. Should the Contractor fail to complete the required removal, the Owner may do so, charging the cost thereof to the Contractor.

### 32.0 SITE

This site of the work will be on the Odfjell Terminals (Charleston) LLC property at 1003 E. Montague Ave. North Charleston, S.C. 29405

### 33.0 PROGRESS PAYMENTS AND FINAL PAYMENT

Contractor agrees to accept the specified compensation as full and complete Compensation for performing all of its duties under its Contract with Owner.

#### 34.0 ODFJELL TERMINALS (CHARLESTON) LLC. Safety Indoctrination

Due to safety requirements, all Contractors and their employees working at Odfjell must speak English fluently and undergo annual training on Odfjell Terminals (Charleston) LLC's Safety Indoctrination. Odfjell will issue an identity tag valid for one year that certifies that this training has been successfully undertaken by individuals covered herein. The id tag will need to be produced by the holder at every visit to the Terminal. Failure to produce the id tag, loss or destruction thereof, will require the Indoctrination to be sat again before entry to the facility will be permitted.

The contractor shall undertake a Job Safety Analysis (JSA) for each task that they intend undertaking onsite (PRO 3823 (4.7)).

An Odfjell terminal employee responsible for the area shall decide to participate in the JSA if deemed necessary (PRO 3823 (4.7.1))

The relevant JSA shall be reviewed at the start of each shift to ensure its relevance and that all hazards are adequately identified and controlled (PRO 3823 (4.7.2))

The contractor shall be responsible for maintaining and enhancing the safety awareness of its employees and subcontractor's personnel. Relevant personnel shall participate, as appropriate, in safety meetings held by Odfjell or its other contractors. (PRO 3823 (4.8))

The contractor shall not bring onto site any chemical that is not approved by the Odfjell Terminal person in charge. (A Safety Data Sheet must be provided and presented by the contractor). (PRO 3823 (4.9))

Contractor employees shall not enter any area, other than where assigned work is being performed, without permission from the Odfjell Terminal person in charge. (PRO 3823 (4.10))

Contractor personnel shall not operate any Odfjell Terminal equipment, valves, machinery or other devices without approval from the Odfjell Terminal person in charge. (PRO 3823 (4.11))

Contractors shall not tie into any line, pipe, or equipment without prior specific approval of the Odfjell Terminal person in charge. (PRO 3823 (4.12))

Under no circumstances shall contractors work on, adjacent to, or connect into any Odfjell Terminal electrical systems without securing prior written approval from the Odfjell Terminal person in charge. (PRO 3823 (4.13))

The contractor shall not conduct any lifting operations with a crane unless a lift study has been undertaken and a work permit or lifting permit is approved by the person in charge. (PRO 3823 (4.14))

The contractor must provide and use own tools. The tools must be in such a condition to comply with relevant regulations. (PRO 3823 (4.15))

The facility may inspect the contractor's tools and equipment, prohibiting the use of any equipment that in the inspector's opinion is deemed to be unsafe. (PRO 3823 (4.15.1))

The contractor shall ensure that their tools and equipment are secure and safe. (PRO 3823 (4.16))

The contractor may only use the facilities' tools if permission has been sought and given. Tools and Equipment provided by the facility will be returned after use. (PRO 3823 (4.17))

The contractor shall have an incident reporting system compatible with that of Odfjell. (PRO 3823 (4.18))

The contractor is required to report all incidents immediately, including near misses and hazards to the person in charge so that appropriate action can be taken. A written investigation shall be completed for each significant incident and submitted to Odfjell with 72 hours (initial report).

\_\_\_\_\_  
Purchasing Manager  
ODFJELL TERMINALS (CHARLESTON) LP

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name of Representative

\_\_\_\_\_  
Date

Representative Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Company Name \_\_\_\_\_