

SOUTHAMPTON MARINE SERVICES LIMITED (SMS GROUP)

TERMS OF BUSINESS

THESE TERMS OF BUSINESS APPLY TO ALL CONTRACTS FOR WORK AND SUPPLY OF GOODS AND SERVICES BY SOUTHAMPTON MARINE SERVICES LIMITED (SMS GROUP)

1. DEFINITIONS

In these Terms of Business the following expressions shall have the following meanings, except where the context otherwise requires:-

“Contractor”	Southampton Marine Services Limited, incorporated in England (Number 10111491) with its registered office at Kintyre House, 70 High Street, Fareham, Hampshire, PO16 7BB;
“Customer”	the counterparty to the Contract which has contracted the Contractor to undertake the Work;
“Contract”	the agreement between the Contractor and the Customer for the performance of the Work comprising the Special Terms and these Terms of Business;
“Payment Terms”	the terms of payment of the Price agreed by the Contractor and the Customer as part of the Special Terms or otherwise as provided in the Contract;
“Price”	the amount payable by the Customer to the Contractor for the performance of the Contractor's obligations under the Contract;
“Scope of Work”	the description of the Work including specifications, data, drawings, plans and lists of equipment as agreed between the Contractor and the Customer at the time of entering into the Contract, as the same shall have been updated, amended, varied or supplemented at any time thereafter by agreement between to Contractor and the Customer or in accordance with the Contract.
“Special Terms”	the Price, the Payment Terms, the Scope of Work and all other terms and conditions (other than these Terms of Business) contained in the Contractor's quotation for the Work and otherwise as agreed between the Contractor and the Customer in relation to the Work;
“Vessel”	any existing vessel or other structure belonging to the Customer to which the Work is applied or into which the Work is incorporated, whether the Vessel is located at the Contractor's premises or elsewhere;
“Work”	all the work comprising the supply of services, goods and materials to be undertaken by the Contractor in connection with this Contract as described in the Scope of Work.

2 THE WORK

- 2.1 The Contractor shall provide all such facilities, labour, design, materials, supplies and equipment and all other goods and services required in order to perform and complete the Work in all material respects. The Work shall not include any goods or services which are not included in the Scope of Work, and the Contractor shall have no responsibility for any goods or services (whether or not related to the Work) which are supplied by another contractor of the Customer.

- 2.2 The Contractor shall report in such form and at such times as shall be agreed with the Customer, with information relating to progress of the Work and identification of issues which affect or may affect the same.
- 2.3 The Contractor shall have the right to make any changes to the Work which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Work.
- 2.4 The Customer shall provide such information or approvals reasonably requested by the Contractor for the purposes of the Work in good time so as not to cause any delay in the Work.
- 2.5 Any changes to the Work requested by the Customer shall be effective only following agreement of a written variation order between the Contractor and the Customer on the scope of the change and any consequential effects on the Price and other terms of the Contract. The Contractor may raise a variation order to quantify provisional items which were not fixed in the Scope of Work.
- 2.6 Where the Work includes work on a Vessel or the Customer's other equipment, or the installation of equipment or material to be supplied by the Customer, the Customer shall deliver the Vessel and/or such equipment or material at the time(s) and to the place(s) as specified in the Contract or otherwise agreed by the Contractor.
- 2.7 Where the Work includes a survey of the Vessel or the Customer's other equipment the Contractor shall use reasonable endeavours to gain access to the subject matter of the survey in order to inspect and report on its condition so far as can reasonably be established from a visual inspection of accessible areas at the time of survey. The Contractor shall not be liable for any loss or damage caused by or to, or resulting from a failure to inspect or identify the condition of, any hidden, unexposed or inaccessible areas including (without limitation) any machinery, equipment, fittings, linings or other internal systems.

3 PRICE AND PAYMENT TERMS

- 3.1 The Price for the Work shall be as set out in the Special Terms. In the absence of express agreement as to the Price of any part of the Work it shall be calculated on a reimbursable basis comprising the following elements:-
 - Cost of all materials, supplies, services and equipment used by the Contractor in connection with the Work + 15%; and
 - Cost of labour at rates determined by the Contractor from time to time, set out in a schedule of rates which the Contractor shall make available on request.
- 3.2 Any part of the Price which is fixed shall be subject to adjustment to take account of the cost to the Contractor of incorporating any changes to the Work requested or required after the date of the Contract, including where such changes are required as a result of incomplete or incorrect information relating to the Work or its subject matter provided by the Customer before the Price was agreed.
- 3.3 The Price is exclusive of VAT and any other sales or similar tax which shall be payable by the Customer if applicable.
- 3.4 The Price is exclusive of costs of delivery and special packaging of any goods and of travel and accommodation of Contractor's personnel performing any services away from their usual workplace.
- 3.5 Unless otherwise agreed in the Special Terms the Price shall be invoiced monthly, each invoice to be submitted together with supporting schedules in respect of reimbursable charges.
- 3.6 Invoices shall be payable within 30 days and time shall be of the essence in relation to payment of amounts due. Late payment shall incur an interest charge of 4% above HSBC base rate and entitle the Contractor to suspend the Work until payment has been received and to require advance payment of any further part of the Price as a condition of continuing with the Work.

3.7 Any estimate or indication of the Price shall be given in good faith but unless any part of the Price is agreed to be fixed or to be subject to a maximum the Price will not be limited to the amount of such estimate or indication. Quotations are valid for 30 days unless otherwise stated.

3.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law).

4 INSPECTION, ACCESS & SAFETY

4.1 The Customer and/or its representative(s) may visit and inspect the Work during normal business hours on reasonable prior notice (not less than one day).

4.2 The Customer shall, and shall ensure that its representative(s) shall, follow any instructions and regulations provided by the Contractor in relation to health and safety at the Contractor's premises or in any parts of the Vessel in which the Work is being carried out. The Contractor shall have no liability for any loss of or damage to any personal property or injury or death if the same results from a breach of this clause 4.2.

4.3 No work or services shall be carried out in any parts of the Vessel in which, and while, the Work is being carried out by any other party on behalf of the Customer except with the Contractor's prior agreement.

4.4 The Customer shall co-operate with the Contractor in the performance of the Work and shall ensure that the Contractor and its personnel are provided with access to all parts of the Vessel as required for performance of the Work and that any of the Customer's personnel or other contractors on board the Vessel or elsewhere where the Work is being performed do not interfere with or hinder the Contractor's performance of the Work. If the Contractor is prevented or hindered or delayed in any way in its performance of any part of the Work as a result of the Customer's failure to comply with any of its obligations under the Contract, the Customer shall be liable for all related delay, costs and expenses and in addition, but without prejudice to its rights under clause 12.2 or otherwise, the Contractor shall have the right to suspend the Work until such prevention, hindrance or delay has ceased and the Contractor is able to recommence the Work.

4.5 Nothing in the Contract shall release the Customer from its obligations under statutory requirements for health and safety on board the Vessel or at the Customer's premises and to provide prior written notice to the Contractor of any health or safety hazards associated with any equipment, materials or other substances supplied to the Contractor by the Customer or Customer facilities used by the Contractor in the performance of the Work. The Contractor reserves the right to inspect such equipment, materials or other substances and to remove them from use if it considers them to be unsafe or pose unacceptable risks of injury or damage to persons or property. The Contractor shall not be liable for any additional costs or delays to the Contract resulting from any decision under this clause 4.5 and the Customer shall indemnify the Contractor for all costs incurred by the Contractor resulting from the rejection of such items.

4.6 The Work shall be carried out in accordance with the Control of Asbestos at Work Regulations 2012 (Regulations) as amended from time to time and any applicable codes of practice. The Customer acknowledges that it is the "duty holder" for the purposes of those Regulations as they apply to the Vessel or the Customer's premises and, as such, remains solely responsible for determining whether asbestos is present or is likely to be present, assessing the risk of the presence of asbestos or likelihood of it being present and managing any such asbestos. The Customer shall notify the Contractor of the existence of any asbestos relevant to or in the vicinity of the Work on the Vessel or at its premises prior to the commencement of the Work or immediately on becoming aware of the same and shall make a full declaration of the type and location of such material and present the Contractor with a copy of the asbestos register. Any liability under the Regulations arising in respect of asbestos or other hazardous substances in, on, under or emanating from the Vessel or the Customer's premises shall be the sole responsibility of the Customer and the Contractor reserves the right to suspend the Work and/or revise the Price and/ or the date for completion of the Work as a result of the discovery of asbestos or asbestos containing materials which had not been notified to the Contractor prior to the Contract.

5 DELAYS TO THE WORK

- 5.1 Any time provided for completion of the Work shall be given in good faith but unless expressly stated in the Special Terms the Contractor does not guarantee any date for completion of the Work and shall have no liability for delays. Any agreed damages for delay shall be the Customer's sole and exclusive remedy for delay.
- 5.2 Where a fixed date for completion of the Work is agreed the Contractor shall use its reasonable endeavours to complete the Work within that date. The Contractor shall not have any liability for any delay resulting from any event or circumstance outside the Contractor's reasonable control or which is not caused directly and exclusively by the Contractor's wilful default or negligence, including (without limitation): any act of God, fire, flood, earthquake, explosion, extreme weather, accident, civil disturbance or emergency, major plant or equipment failure, unavailability of materials or equipment, strikes or labour disturbances not confined to the Contractor's own workforce or postponement of any trial or test as a result of adverse weather conditions or conditions being otherwise unsafe. The Contractor shall be entitled to terminate the Contract if the Work is delayed by more than 60 days as a result of any of the events referred to in this clause.
- 5.3 The Contractor shall not have any liability for any delay which is caused by the Customer's failure or delay in performing any of its obligations under the Contract, or which results from the Contractor suspending the Work in accordance with any of clause 3.6, 4.4 or 4.6.

6 PROPERTY AND LIEN

- 6.1 All goods and equipment which are supplied independently of installation on any vessel or structure shall be delivered to the Customer Ex-Works (Incoterms 2010), unless otherwise agreed. Title to all goods, equipment and materials supplied by the Contractor to the Customer shall remain with the Contractor until full payment has been received for them.
- 6.2 Unless otherwise agreed title in the Vessel shall remain with the Customer for the duration of the Work. The Contractor shall have a lien over the Vessel and all other equipment and materials owned by the Customer and in the Contractor's possession for any amounts owed to the Contractor under this Contract.
- 6.3 The Contractor shall have the right to sell the Vessel and other equipment owned by the Customer in circumstances where the Customer has failed to collect or accept delivery thereof following completion of the Work, in accordance with the Torts (Interference with Goods) Act 1977.

7 RISK, INSURANCE & LIABILITY

- 7.1 All risk in goods and equipment supplied by the Contractor under the Contract shall pass to the Customer on delivery. The Customer shall inspect all goods and equipment on delivery and the Contractor shall have no liability for any shortage in delivery or damage which existed prior to delivery which is not notified to the Contractor within 7 days of delivery.
- 7.2 The Contractor shall take reasonable precautions to secure its premises and to maintain its facilities and equipment in reasonable working order and shall use reasonable endeavours to keep the Vessel and other property of the Customer securely provided that storage of any equipment off the Vessel at the Contractor's premises shall be expressly agreed in writing and may be subject to additional charges. In the absence of negligence or other breach of duty on the part of the Contractor the Vessel and all other property of the Customer is left with the Contractor at the risk of the Customer who shall keep the same insured in its name and at its own expense, including third party liability cover for not less than £3,000,000. The Customer shall provide evidence of such insurance within 7 days of being so requested by the Contractor.
- 7.3 The Contractor shall maintain Ship Repairer's Liability Insurance and Public Liability Insurance each in the maximum amount of £10,000,000 until the Work has been completed.
- 7.4 If the Vessel by reasons of damage or for the purpose of insurance is declared an actual constructive compromised or arranged total loss prior to completion of the Work the Contract shall

terminate immediately and all monies (if any) due under the insurance policy shall be paid to the Customer without prejudice of the Customer's liability to pay any final amounts due under this Contract to the Contractor.

- 7.5 The Contractor's liability to the Customer for any claims or losses in connection with the Work or the Contract shall not in any circumstances howsoever arising, whether in contract, tort, breach of statutory duty or otherwise (including by reason of negligence or wilful default), exceed the total Price payable under the Contract.
- 7.6 The Contractor shall not be under any duty to salvage or preserve the Vessel or any other property of the Customer from any consequences of any defect therein or other occurrence not caused by the Contractor unless the same forms part of the Scope of Work, however the Contractor shall be entitled to take such steps as it may consider appropriate in relation thereto particularly where there is a risk to the safety of property or personnel or to the environment.
- 7.7 The Contractor shall not have any liability to the Customer for any loss of profit, loss of revenue, loss of business or loss of opportunity or for any indirect or consequential loss, in any such case howsoever arising.
- 7.8 The Customer shall indemnify and hold harmless the Contractor, its subcontractors and their respective employees, servants and agents against any and all costs, claims, expenses and liabilities brought against any of them by any of the Customer's crew or representatives arising out of or connected with the Work, save to the extent that such claim arises from the negligence or wilful default of the Contractor or those for whom the Contractor is responsible.

8 GUARANTEE

- 8.1 The Contractor warrants for a period of 3 months from the date on which the Work is completed and delivered to the Customer that the Work is free from substantial defects in materials or manufacture and that any services provided in the course of the Work were carried out with reasonable skill and care. The date on which the Work is completed and delivered for the purposes of this clause 8 shall be the date on which, in the case of the supply of goods, they were delivered to the Customer and, in the case of the supply of services, they were rendered.
- 8.2 In case of any breach of the warranty in clause 8.1 the Contractor shall (in its option) either repair or (if reasonably necessary) replace such parts of the Work that are defective or deficient or refund that part of the Price attributable to such parts of the Work, subject always to the following conditions:
- (i) the Customer shall have given the Contractor written notice specifying the defect(s) as soon as reasonably practicable and in any event within 30 days after discovery;
 - (ii) the Customer shall have paid the Price attributable to the relevant parts of the Work and any other monies then owed to the Contractor in full;
 - (iii) the Customer shall allow the Contractor such access to the Vessel as the Contractor may reasonably require for the purpose of inspection and repair or replacement;
 - (iv) defective goods are delivered to the Contractor (carriage paid) within 7 days of the Contractor's request;
 - (v) the Contractor shall not be required to colour-match wood, paint, gelcoat or other materials beyond reasonable tolerances having regard to the effects of ageing, normal manufacturing tolerances and the differences between manufacturers' colour-card and the product and the like, nor shall the Contractor be required to compensate for the effects of fading, moisture absorption, discoloration or degradation through ultra-violet light; and
 - (vi) the Contractor shall have no liability for defects in any finished equipment or materials purchased by the Contractor and incorporated into the Work in circumstances where the defect is not caused by any act or omission on the part of the Contractor or its

subcontractors (other than the manufacturer of the relevant item) and the Contractor shall assign to the Customer the benefit of any manufacturer's warranty in relation thereto.

- 8.3 The Contractor's obligations under this clause 8 shall, save to the extent otherwise provided by applicable law, be the sole and exclusive remedy of the Customer in relation to any defect or deficiency in the Work arising after completion and delivery to the Customer and all statutory and other implied warranties, conditions and terms are excluded. Without prejudice to the generality of the foregoing, the Contractor shall not be liable to the Customer in respect of any defect, failure, injury, damage or loss attributable to fair wear and tear, wilful damage, neglect, misuse, failure to maintain, negligence on the part of the user or any third party, abnormal conditions, failure to observe instructions, performance of anti-fouling coatings, or repair or alteration without the Contractor's approval.
- 8.4 Repairs and replacements in accordance with this clause 8 shall be the subject of the Contractor's warranty for a further three months from completion of the repair or replacement services or delivery of the replacement goods, as the case may be.
- 8.5 Warranty work shall on any Vessel shall be carried out at the Contractor's premises unless it is impractical for the Customer to bring the Vessel to the UK, in which case the Contractor may at its option send its own or other personnel to the place where the Vessel is located to perform the required repairs and the Customer shall be responsible for and shall pay for all travel, accommodation and subsistence reasonably incurred by the Contractor in connection therewith. Alternatively, the Contractor may arrange for the required repairs to be made in a suitable yard or other place located conveniently to the Vessel, in which case the Contractor's liability shall be limited to the costs that the Contractor would charge for such work in the UK.

9 INTELLECTUAL PROPERTY AND CONFIDENTIALITY

- 9.1 All specifications, drawings, technical data, plans and the like incorporated into or forming part of the Work and all intellectual property in them, but excluding any intellectual property in the Vessel which existed prior to the commencement of the Work or provided by the Customer to the Contractor for the purposes of the Work, shall remain the property of Contractor or its designers and shall not be reproduced or used or disclosed to third parties by the Customer or others on its behalf without the prior written consent of the Contractor. The Contractor grants to the Customer a non-exclusive and assignable licence to use the Contractor's intellectual property relating to the Work in connection with the Customer's ownership and use of the Work and the Vessel.
- 9.2 In clause 9.1 "intellectual property" means copyright and related rights, moral rights, patents, supplementary protection certificates, petty patents, utility models, trademarks, trade names, service marks, domain name registrations, design rights, database rights, semi-conductor topography rights, plant variety rights, rights in unfair competition, rights in undisclosed or confidential information (such as knowhow, trade secrets and inventions (whether patentable or not)), and other similar intellectual property rights (whether registered or not) and applications for such rights as may exist anywhere in the world, together with any rights of action for infringement of such rights, whether existing or arising in the future
- 9.3 The Contractor and the Customer undertake that the nature and content of the Contract and the Work shall be and remain confidential and (except insofar as the same shall be in the public domain or was lawfully received from a third party) shall not be disclosed to third parties without the written consent of the other party. Notwithstanding the foregoing, either party may disclose such information or documents to its sub-contractors, suppliers and professional advisers, as necessary in the proper performance of its and/or their business, or as required by law.

10 SUBCONTRACTING

- 10.1 The Contractor shall be entitled to subcontract all or any part of the Work provided that the Contractor shall remain responsible for the Work and performance of the subcontractor.

11 ENTIRE AGREEMENT/THIRD PARTIES

- 11.1 The Contract constitutes the entire agreement between the parties with respect to the performance of the Work and related obligations all prior agreements; representations and understandings whether written or oral are superseded hereby and expressly excluded.
- 11.2 These Terms of Business apply to the Contract to the exclusion of any other terms that the Customer may seek to impose or incorporate, or which may be implied by trade, custom, practice or course of dealing
- 11.3 No failure or delay on the part of the Contractor in exercising any right, power or remedy will operate as a waiver of it nor will any single or partial exercise of any such right, power or remedy preclude any other or further exercise of such right, power or remedy.
- 11.4 If any term or provision of the Contract is to any extent held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining terms or provisions (and any other application of the said terms or provisions) shall not in any way be affected or impaired.
- 11.5 No person who is not a party to the Contract shall have any right whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce or enjoy the benefit of any term of this Contract.

12 TERMINATION

- 12.1 The Customer shall be entitled to terminate this Contract at any time on written notice to the Contractor specifying the date on which the Work shall cease, and the Customer shall pay to the Contractor:-
- (a) all costs incurred by the Contractor (assessed in accordance with clause 3) in respect of the Work up to the date of termination; and
- (b) by way of indemnity, all other costs and liabilities of the Contractor incurred after the date of termination in connection with the Work and termination of this Contract, including (without limitation) the costs relating to any equipment leased by the Contractor for the purposes of performing the Work, and any break costs in relation thereto, and the cost of cancellation of any other contracts entered into for the purposes of performing the Work.
- 12.2 Either party may terminate this Contract if the other party:-
- (a) becomes insolvent so that it is unable to pay its debts as they fall due or has a receiver or administrator or trustee or equivalent individual appointed over its undertaking or assets or enters into a compromise with creditors; or
- (b) fails to perform any material obligations under this Contract and such failure has not been remedied to the reasonable satisfaction of the party not in default within 14 days after notice of default has been given to it; or
- 12.3 Following termination of this Contract for any reason:
- (a) the Customer shall immediately pay to the Contractor all of the Contractor's outstanding invoices and interest (if applicable) and the Contractor shall be entitled to submit an invoice to cover the value of all other parts of the Work performed and all goods, equipment and materials for the Work procured or on order, which shall be payable by the Customer immediately on receipt; and
- (b) the Contractor shall cease to have any responsibility for berthing, safekeeping or security of the Vessel or any expenses in relation thereto which shall become the sole responsibility of the Customer and for which the Customer shall indemnify the Contractor, and if at the time of termination the Vessel is in the Dry Dock the Customer shall be responsible for her removal to a safe berth and shall compensate the Contractor for all costs and losses resulting from any delay in vacating the Dry Dock (including any disruption to the Contractor's business).

13 NOTICES

13.1 Any notice or other communication under this Contract shall be in writing and shall be delivered personally or by first class post or by email to the relevant party to the following addresses (or such other address as the relevant party shall notify to the other) :-

To the Customer: As specified in the Special Terms

To the Contractor Southampton Marine Services Limited
Ocean Quay, Belvidere Road, Southampton SO14 5QY
info@southamptonmarineservices.com

13.2 A notice delivered personally or by email shall be deemed delivered at the time of proven delivery, and a notice sent by post shall be deemed delivered three days after posting.

14 LAW AND ARBITRATION

14.1 The Contract and any non-contractual obligations arising out of or in connection with the Contract shall be governed by and construed in accordance with English law.

14.2 Subject to clause 14.3 any dispute arising out of or in connection with this Agreement shall be referred to arbitration in London under the London Maritime Arbitrators' Association terms and subject to the provisions of the Arbitration Act 1996. The party requiring arbitration of any dispute as aforesaid shall serve upon the other party written notice thereof specifying the issues to be arbitrated and the name of the arbitrator it shall have appointed. Within 14 days after receipt of notice of such notice, the other party shall appoint an arbitrator and give notice in writing of such appointment to the party requiring arbitration. If such other party fails so to appoint an arbitrator as aforesaid, such other party shall be deemed to have accepted and appointed as its own arbitrator the arbitrator appointed by the party requiring arbitration and the arbitration shall proceed before this sole arbitrator who alone in such event shall constitute the arbitration tribunal. The arbitrators so appointed shall determine which party, or the proper proportion which each party, shall pay of the expenses and legal and other costs of such arbitration.

14.3 Any dispute relating to purely technical aspects of the Work may, by agreement between the Contractor and the Customer, be submitted to and finally determined by a marine surveyor appointed by agreement between the parties, acting as a technical expert and not as an arbitrator. The fees of the technical expert shall be paid by the parties in such proportion as he may determine in each relevant case, or in the absence of any such determination they shall be borne in equal shares.

27th March 2019