

In this document, capitalised words have the meaning given to them below.

These terms and conditions are the standard terms and conditions of business of Mourne Marine Surveys Limited, a company registered in Northern Ireland with company number NI 603366 (**Surveyor**) which, together with the Scope of Work provided by the Supplier, form the contract between the Surveyor and the Client in respect of the supply of Services.

THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 6 (LIMITATION OF LIABILITY).

1 Definitions

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| "Client": | the party at whose request or on whose behalf the Surveyor undertakes the services. |
| "Conditions": | these terms and conditions as amended from time to time |
| "Contract": | the contract between the Surveyor and the Client for the supply of Services incorporating these Conditions and the Scope of Work (as defined below) or in the absence of any Scope of Work, any verbally agreed scope of work. |
| "Disbursements": | the cost of all reasonable photography, reproduction of drawings, diagrams, sketches and printing, duplicating and, where applicable, electronic transmission fees, and all reasonable and appropriate expenses including travel, subsistence and hotel accommodation where an overnight stay is necessary. |
| "Fees": | the fees charged by the Surveyor to the Client and including any value added tax where applicable and any Disbursements |
| "Report": | any report or statement supplied by the Surveyor in connection with instructions received from the Client. |
| "Parties": | the Surveyor and the Client. |
| "Services": | surveying and audit services together with expert witness testimony. |
| "Surveyor": | Mourne Marine Surveys Limited. |

2 Application

- 2.1 The Surveyor shall provide its services solely in accordance with these Conditions.
- 2.2 Any marketing material issued by the Surveyor or published on its website and any descriptions or illustrations contained in such material have the sole purpose of giving an approximate idea of the Services described in them and shall not form part of the Contract.

- 2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3 Scope of Work

- 3.1 The Client will set out in writing the services which it requires the Surveyor to provide. The Surveyor will confirm in writing that it accepts those instructions or alternatively what services it will perform in connection with the Client's instructions. Once the Surveyor and the Client have agreed what services are to be performed (the Services) any subsequent changes or additions must be agreed by both parties in writing.
- 3.2 If during the performance of the Services it becomes necessary to alter the Scope of Work the Surveyor will issue a revised Scope of Work reflecting the revised scope of work which shall have the effect of a variation of Contract. Thereafter the Surveyor shall be obliged to perform the Services and the Client shall be obliged to pay the Surveyor on the basis of the revised Scope of Work.
- 3.3 The Surveyor reserves the right to amend the Scope of Work if necessary to comply with any applicable law or regulatory requirement and the Surveyor shall notify the Client in any such event.

4 Payment

- 4.1 The Client shall pay the Surveyor's Fees punctually in accordance with these Conditions and in any event not later than 30 days following the relevant invoice date, or in such other manner as may have been agreed in writing between the Parties. Any delay in payment shall entitle the Surveyor to interest at 8% above the Base Lending Rate of the Bank of England prevailing at the time of default.
- 4.2 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 4.3 The Surveyor shall have a general lien over any property of the Client in its possession at any time including documents and plans which shall be exercisable in the event any sums due to the Surveyor under the Contract or any other contract between the Supplier and the Client remain unpaid.

5 Obligations and Responsibilities

- 5.1 **Client:** The Client undertakes to ensure that full instructions are given to the Surveyor and are provided in sufficient time to enable the required Services to be performed effectively and efficiently and to procure all necessary access for the Surveyor to goods, premises, vessels, installations and transport and to ensure that all appropriate safety measures are taken to provide safe and secure working conditions..
- 5.2 **Surveyor:** The Surveyor shall use reasonable care and skill in the performance of the services in accordance with sound marine surveying practice.

- 5.3 **Reporting:** The Surveyor shall submit a final written Report to the Client following completion of the agreed Services containing the Surveyor's findings unless otherwise expressly instructed by the Client not to do so.
- 5.4 **Confidentiality:** The Surveyor undertakes not to disclose any information provided in confidence by the Client to any third party and will not permit access to such information by any third party unless the Client expressly grants permission save where required to do so by an order of a competent court of law or other lawful obligation.
- 5.5 **Property:** The right of ownership in respect of all original work created by the Surveyor remains the property of the Surveyor.
- 5.6 **Conflict of Interest/Qualification:** The Surveyor shall promptly notify the Client of any matter including conflict of interest or lack of suitable qualifications and experience, which would render it undesirable for the Surveyor to continue its involvement with the appointment. The Client shall be responsible for payment of the Surveyor's Fees up to the date of notification.

6 Limitation of liability

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

- 6.1 Nothing in the Contract shall limit or exclude the Surveyor's liability for:
- 6.1.1 death or personal injury caused by its negligence, or the negligence of the Surveyor personnel
- 6.1.2 fraud or fraudulent misrepresentation.
- 6.2 Subject to clause 6.1, the Surveyor shall not be liable to the Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- 6.2.1 any damages including liquidated damages or any other compensation payable by the Client arising from loss of use of any vessel as a result of the defective or delayed performance of the Services;
- 6.2.2 loss of use;
- 6.2.3 loss of hire or business;
- 6.2.4 loss of profits;
- 6.2.5 loss of agreements or contracts;
- 6.2.6 loss of anticipated savings;
- 6.2.7 loss of use or corruption of software, data or information;
- 6.2.8 loss of damage to goodwill; and
- 6.2.9 any indirect or consequential loss.

- 6.3 In no circumstances shall the Surveyor have any liability arising out of or caused by any error, omission, mis-statement or misrepresentation by the Client including but not limited to late, incomplete, inadequate, inaccurate or ambiguous instructions
- 6.4 Subject to clause 6,1 the Surveyor's total liability to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to £500,000.
- 6.5 This clause 6 shall survive termination of the Contract.

7 Indemnity

Except to the extent and solely for the amount that the Surveyor would be liable under Clause 6, the Client hereby undertakes to keep the Surveyor and its employees, agents and sub-contractors indemnified and to hold them harmless against all actions, proceedings, claims, demands or liabilities whatsoever or howsoever arising which may be brought against them or incurred or suffered by them, and against and in respect of all costs, loss, damages and expenses (including, but not limited to, legal costs and expenses on a full indemnity basis) which the Surveyor may suffer or incur (either directly or indirectly) in the course of the Services under these Conditions.

8 Force Majeure

The Surveyor and/or the Client shall not, except as otherwise provided in these Conditions, be responsible or have any liability for any loss, damage, delay or failure in performance hereunder arising or resulting from act of God (including, but not limited to earthquake, flood, tsunami, volcano, hurricane, tropical storm, cyclone, blizzard or other similar event), act of war, terrorist attack, nuclear contamination, seizure under legal process, epidemic quarantine restrictions, strikes, boycotts, lockouts, riots, civil commotions and arrest or restraint of princes, rulers or people. Following a force majeure event either party may serve notice on the other to terminate the agreement.

9 Insurance

The Surveyor shall effect and maintain, at no cost to the Client, professional liability insurance for such loss and damage for which the Surveyor may be held liable to the Client under these terms and conditions.

10 Surveyor's Right to Sub-contract

The Surveyor shall have the right to sub-contract any of the services provided under the Conditions, subject to the Client's right to object on reasonable grounds. In the event of such a subcontract the Surveyor shall remain fully liable for the due performance of its obligations under these Conditions.

11 Time Bar

Any claims against the Surveyor by the Client shall be deemed to be waived and absolutely time barred upon the expiry of one year from a) the submission date of the Report to the Client, b) where no such Report is provided from the date of the provision of the Services was completed.

12 Entire agreement

- 12.1 The Contract constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 12.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 12.3 Nothing in this clause shall limit or exclude any liability for fraud.

13 Variation

Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

14 Waiver

A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

15 Severance

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

16 Notices

- 16.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by email to the address specified by that party in writing.
- 16.2 Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or, if sent by email, upon written acknowledgement of receipt.

16.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

17 Third party rights

17.1 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

17.2 The rights of the Parties to rescind or vary the Contract are not subject to the consent of any other person.

18 Jurisdiction and Law

These Conditions shall be governed by and construed in accordance with the laws of England and Wales and any dispute shall be subject to the exclusive jurisdiction of the English Courts.