

TERMS OF BUSINESS

1. BASIS OF CONTRACT

- 1.1 Where you instruct us and we agree to carry out work for you on your vessel, we may send you an order form in the form of an email setting out the specifications of the works that we may offer to carry out for you (the 'order' and 'works' respectively).
- 1.2 The order constitutes our offer to carry out works in accordance with these terms.
- 1.3 The order shall only be accepted once we have written (email) acceptance of it and neither party shall owe any obligations to the other until such time. The rights and obligations set out in the order and these terms shall become binding on the parties on your signature and return of the Order (the 'contract').
- 1.4 We reserve the right to vary the works if required by any applicable statutory or regulatory requirement, and we shall notify you in any such event. If any materials are unavailable or cannot be supplied in reasonable period of time we may use alternative materials so long as they are of comparable quality.

2. PRICES AND ESTIMATES

- 2.1 The estimated charges for the works shall be the charges set out in the order. In the absence of express agreement to the contrary the charges for the works shall be based on labour and materials expended and services provided.
- 2.2 We will exercise reasonable skill and judgment when giving an estimate or indication of our charges. However, such estimates shall not bind us to carry out the works at those costs.
- 2.3 We will inform you promptly of any proposed increase in estimated charges and the reasons for it and will only continue to proceed with the works with your approval. You shall remain responsible for the cost of labour and materials already supplied or remaining to be supplied which are not affected by the proposed increase in price.
- 2.4 Notwithstanding clause 2.2 we reserve the right to increase the charges on prior notice to reflect any increase in the cost of parts and materials that is due to any factor beyond our control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs), any request by you to change the specification of the works or any delay caused by your instructions or your failure to give us adequate or accurate information or instructions.

3. PAYMENT

- 3.1 We shall notify you of the completion of each stage of the works for which payment is due in accordance with the schedule set out in the order and give you 14 days' notice or such other time as set out in the order to inspect the relevant stage of the works. No later than expiry of the notice period you shall immediately verify in writing whether the stage of the works has been satisfactorily completed, such verification not to be unreasonably withheld.
- 3.2 Upon confirmation, or expiry of the notice period failing confirmation, that the works have been satisfactorily completed we shall raise an invoice for the works in accordance with the payment schedule set out in the order. We may raise further invoices if the charges increase in accordance with these terms.
- 3.3 Unless otherwise agreed, payment shall be due immediately on the invoice date. Payment shall be deemed to have been made when we receive cash or cleared funds at our bank.
- 3.4 Without prejudice to our rights to terminate the contract, we have the right to charge interest on any sum outstanding for more than 30 days on the outstanding balance at 4% above Bank of England base rate which may be calculated daily up the date of actual payment. In the case of business customers this rate will be substituted with the current rate applicable under late payment legislation.
- 3.5 All amounts due 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. DELIVERY

- 4.1 The date for completion of the works is the date set out in the order.
- 4.2 The date given for completion of the works is an estimate that is given in good faith but is not guaranteed. Time is not of the essence. We shall not be responsible for any delay in completion of the work or for the consequences of any such delay unless it arises from our wilful acts or omissions or from negligence.
- 4.3 You shall inform us of the place of delivery of the vessel no later than 14 days before the estimated date of completion of the works. You shall be liable for all transport costs incurred in transporting the vessel to the place of delivery.
- 4.4 On satisfactory completion of the works you shall pay any final charges due.

5. TITLE AND RISK

- 5.1 Title to all goods, equipment and materials we supply shall remain with us until we have received full payment.
- 5.2 Risk in all goods, equipment and materials supplied shall pass at the time of delivery/completion of works.

6. QUALITY STANDARDS, GUARANTEE AND WARRANTY

- 6.1 We will complete the works to the agreed specification set out in the order with reasonable care and skill and to a satisfactory standard.
- 6.2 On the completion of all work we will leave vessel in a tidy state. The vessel will not be professionally cleaned by us or any external contractor unless specifically requested, and this will be a chargeable service.
- 6.3 You must notify us in writing within 14 days of discovery of any alleged defect, setting out details of the alleged defect concerned. On receipt of such notification, we will have the first right to investigate the alleged defect and determine whether it is a matter for which we are responsible. In order for us to determine whether the alleged defect is a defect, we may conduct a sea trial of the vessel and/or remove the part concerned for inspection. Should the alleged defect concerned be found to be something for which we are not responsible you shall reimburse us on demand for the travel, accommodation and subsistence expenses incurred by us or our representatives or agents in attending the vessel.
- 6.4 We shall promptly repair or replace any defect in the workmanship, materials or equipment supplied for which we are responsible at the same location as the works were supplied by you;

You alter any part of the works carried out without our written consent;
The defect in question arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
or
The works differ from their description or the specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

6.5 The warranty set out in clause 6.1 does not include machinery, equipment, accessories or components we have installed but not manufactured where such items are covered by direct warranties by the relevant manufacturers or suppliers provided that such warranties are valid for no less than 12 months, starting on the date of your payment of our final invoice and provided that the warranties have not been invalidated by any defective installation by us.

6.6 Where you are a business customer:

No works shall carry any express or implied term as to its quality or its fitness for any particular purpose unless prior to the supply you have sufficiently explained the purpose for which the works are required and made it clear that you are relying on our skill and judgement; and

No proprietary article specified by name, size or type by you shall carry any such express or implied term but we will assign to you any rights we may have against the manufacturer or importer of that article.

7. RIGHT OF SALE

7.1 Goods for repair or other treatment are accepted by us on the basis that you are the owner of the goods or the owner's authorised agent.

8. LIABILITY

8.1 We shall not be liable for any loss or damage caused by events or circumstances beyond our reasonable control (such as but not limited to severe weather conditions, the actions of third parties not employed/contracted by us or any defect in your or a third parties' property).

8.2 We shall not be liable for any loss or damage you suffer by following incorrect instructions set out in the manufacturers' manuals provided with the parts to which they relate which we may supply.

8.3 We shall not be under any duty to salvage or preserve your vessel or other property from the consequences of any defect in the vessel or property concerned unless you have expressly engaged us to do so on commercial terms. Similarly, we shall not be under any duty to salvage or preserve your vessel or other property from the consequences of an accident which has not been caused by our negligence or some other breach of duty on our part. However, we reserve the right to do so in any appropriate circumstances, particularly where risk is posed to the safety of people, property or the environment. Where we do so we shall be entitled to charge you on a normal commercial basis.

8.4 You are liable for any loss or damage caused by you or your crew or your vessel and or associated equipment.

9. SUBCONTRACTING

9.1 We may subcontract all or part of the work entrusted to us by you, on terms that any such subcontractor shall have the protection and benefit of all rights and conditions, and of all limitations and exclusions of liability, which exist for us under these terms. Where we exercise this right we shall remain responsible to you for performance of our subcontractor.

10. TERMINATION

10.1 Without affecting any other right or remedy available to us, we may terminate the contract with immediate effect by giving written notice to you if;

You commit a material breach of your obligations under these terms and (if such breach is remediable) fail to remedy that breach within 7 days after receipt of notice in writing to do so;

You take any step or action in connection with entering into bankruptcy or insolvency proceedings;

If you are a business customer you suspend, or threaten to suspend, or cease or threaten to cease to carry on all or substantial part of your business or;

Your financial position deteriorates to such an extent that in our opinion your capability to adequately fulfil your obligations under these terms has been placed in jeopardy.

10.2 Without affecting any other right or remedy available to us, we may terminate the contract with immediate effect by giving notice to you if you fail to pay any amount due on the due date for payment.

10.3 Without affecting any other right or remedy available to us, we may suspend the performance of our obligations to you if you fail to pay any amount due on the due date for payment, you become subject to any of the events listed in clause 10.1 or we reasonably believe that you are about to become subject to any of them.

10.4 On termination of the contract you shall immediately pay all of our outstanding unpaid invoices, in respect of works carried out which no invoice has been submitted, we shall submit an invoice payable by you immediately on receipt.

10.5 The termination or expiry of the contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of contract which existed at or before the date of termination or expiry.

10.6 Any provision of the order and these terms that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

11. CONSUMER RIGHTS

If you are a consumer for the purpose of the Consumer Contract (Information, Cancellation and Additional Charges) Regulations 2013 and we have not agreed the order in person for the purposes of the Consumer Contract (Information, Cancellation and Additional Charges) Regulations 2013, you may be entitled to cancel the order with fourteen (14) days from the date that you signed and returned (or reply of email) to us. If you exercise this right after having instructed us to commence the works, you shall bear all costs and expenses incurred by us and our resulting costs. For the avoidance of doubt by accepting the order you are deemed to instruct us to commence the works immediately unless you notify us to the contrary.

12. GENERAL

- 12.1 Notices to you shall be sufficiently served if personally given to you or if sent by first class post to your last known postal or email address. Notices should be sent by first class post to our trading address or registered office.
- 12.2 Any contract and non-contractual obligations arising out of, or in connection, therewith shall be governed by and construed in accordance with English law.
- 12.3 Each of the parties irrevocably agrees that any and every dispute (and any non-contractual obligations, as aforesaid) arising out of or in connection with a contract shall be subject to the exclusive jurisdiction of English courts.
- 12.4 The order and these terms constitute the entire agreement between the parties and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral. The parties acknowledge they do not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (made innocently or negligently) that is not set out in the order and these terms. The terms of the order shall take precedence if there is any inconsistency between the terms of the order and these terms.
- 12.5 You shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of your rights and obligations without our prior written consent.
- 12.6 If any provision or part provision of the order or these terms 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 this is not possible, the relevant provision or part-provision shall be deemed deleted. Such modifications or deletions under this clause shall not affect the validity and enforceability of the contract.
- 12.7 A waiver of right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under these terms 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 right or remedy. No single or partial exercise of any right or remedy provided under these terms or law shall prevent or restrict the further exercise of that or any other right or remedy.
- 12.8 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.
- 12.9 Except as set out in these terms, no variation of the contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 12.10 These terms shall bind you and the owner of the vessel if you have contracted on the owner's behalf and your and/or the owner's authorised representatives, contractors, employees and associates.