

# EAST COAST MARINE SURVEYS – TERMS AND CONDITIONS OF BUSINESS

## 1. Definitions

- 1.1 The following definitions and rules of interpretation apply to these terms and conditions of business (these “Conditions”):

“Agreed Indemnity Limit” means £250,000 or such higher sum as the Parties shall agree in writing prior to commencement of the Services.

“Contract” means together the Survey Agreement and these Conditions.

“Services” means the services to be provided by the Surveyor in accordance with the Survey Agreement.

“Survey Agreement” means the agreement in the Surveyor’s own form and entered into between the Surveyor and the Client.

“Survey Fee” means the price agreed between the parties within the Survey Agreement payable to the Surveyor in consideration for the performance of the Services.

“Survey Report” means any reporting document provided by the Surveyor to the Client in connection with or upon completion of the Services.

- 1.2 A reference to writing or written includes messages communicated by fax and/or e-mail.
- 1.3 Words and expressions defined in the Survey Agreement shall have the same meaning in these Conditions.

## 2. Application of these Conditions

These Conditions shall apply to and be incorporated into the Survey Agreement and shall prevail over and apply to the exclusion of any other terms or conditions contained, or referred to, in any proposal or specification or other document or implied by the Client or by trade custom, practice or course of dealing.

## 3. The Surveyor’s Obligations

- 3.1 The Surveyor shall perform the Services with reasonable care, skill and diligence.
- 3.2 The Surveyor will inspect the Vessel as thoroughly as is practicable and endeavour to comment on the more important items where, in the Surveyor’s reasonable professional opinion, major costs and/or consequences are considered likely to arise. It follows that the Surveyor cannot comment on every minor matter but the Surveyor will try to point out where small factors may become more serious.
- 3.3. The Surveyor’s intention is to report on the condition of the hull or hulls, superstructure and fixtures of the Vessel so far as can reasonably be ascertained from a visual inspection of the Vessel at its location at the time of survey. The Client accepts that the Survey Report cannot cover hidden, unexposed or inaccessible areas of the Vessel, neither can the Surveyor undertake to investigate areas that the Surveyor believes to be inaccessible at the time of inspection. Where the Surveyor is unable to gain access to areas commonly accessible, the Surveyor will endeavour to point this out.
- 3.4 In every case, the Surveyor recommends a full survey of a Vessel, to include inspection of the Vessel while lifted out and while in the water. Where the Surveyor accepts instructions to survey a Vessel solely on the basis of an inspection of the Vessel out of the water, the Surveyor makes no representation and gives no warranty as to the watertight integrity or buoyancy of the Vessel.

## 4. The Client’s Obligations

The Client undertakes:

(i) to ensure that full instructions are given to the Surveyor and are provided in sufficient time to enable the Services to be performed effectively and efficiently. The Client agrees to disclose to the Surveyor all relevant

information of which they have knowledge, or to which they have access, in relation to the Vessel to be surveyed;

(ii) in consultation with the Surveyor, to procure all necessary access to premises and vessels (including lift-out, trials and facility for inspection ashore and afloat as appropriate) for no less than such a time as shall in each particular circumstance be reasonable to enable all appropriate inspections and tests to be undertaken or performed; and

(iii) to ensure that all appropriate safety measures are taken to provide safe and secure working conditions;

provided always that in the event of any breach of any of the requirements above causing any failure on the Surveyor’s part to perform the Services the Client shall be responsible for all consequential costs incurred by the Surveyor for delay in performance of the Services and in respect of any element of the Services which requires to be repeated.

## 5. Valuations

All valuation work undertaken shall be in accordance with the Scope of Work and, unless otherwise stated in writing, such valuation relates solely to the date and place referred to. Valuations are based on opinions only and are not representations of fact, nor do they carry with them any guarantee of the particulars or information on which opinions are based. Valuations assume a willing buyer and willing seller and market conditions applicable at the time of valuation.

## 6. Fees

- 6.1 The Survey Fee agreed between the Surveyor and the Client for the provision of the Services shall not include out-of-pocket costs of travel, subsistence and accommodation which will be charged in addition and in accordance with this Clause 6.
- 6.2 The Survey Fee and all out-of-pocket expenses shall be invoiced upon completion of the Services. VAT or other EU equivalent shall be payable, if applicable, in addition to all fees and expenses. Invoices will be submitted in respect of all such fees and expenses and the amount of each invoice shall be settled within 28 days. Thereafter, interest shall be payable on all sums owing and unpaid at a rate of 3% over The Royal Bank of Scotland plc base rate.

## 7. Limitation of Liability

- 7.1 The Client agrees that, for reasons of commercial practicality, it is necessary to limit the Surveyor’s potential liability in respect of loss or damage suffered by the Client as a result of any breach by the Surveyor of any of the Surveyor’s obligations under the Contract. As such, the Client agrees that no liability howsoever arising whether under the Contract or otherwise shall attach to the Surveyor except insofar as such liability is covered by the professional indemnity insurance referred to in Clause 7.2 and such liability shall in any event be limited to the Agreed Indemnity Limit.
- 7.2 The Surveyor shall maintain professional indemnity insurance in the amount of the Agreed Indemnity Limit throughout the period of the performance of the Surveyor’s duties hereunder provided that such insurance shall remain available at reasonable market rates.

## 8. Exclusions from Liability

- 8.1 The Surveyor shall not be liable to the Client in contract, negligence, or otherwise for loss of profit, loss of use, loss of business, loss of goodwill or loss of data or for any other consequential or indirect loss.

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- 8.2 The Services (and the Survey Reports provided in connection therewith) are provided for the Client's use only. No liability of any nature is assumed towards any other party and nothing in these terms, or the relationship between the Surveyor and the Client, shall confer or purport to confer on any third party a benefit or the right to enforce any provision of these terms
- 8.3 The Surveyor's liability shall not extend to particulars, data and other information given to the Surveyor by others or obtained from outside sources, publications and the like reasonably relied upon by the Surveyor, including Class records, registry details or other such information and no assurances can be given regarding the accuracy of the same.
- 8.4 The Surveyor shall not be liable for any loss, injury or damage sustained as a result of (i) unforeseeable causes beyond the Surveyor's reasonable control (including an Act of God); (ii) any defect in any material or workmanship; (iii) the act, omission or insolvency of any person other than the Surveyor or (iv) any material breach by the Client of any term of the Contract.

8.5 Notwithstanding any other provision of the Contract:

- (i) unless otherwise stated in writing, no guarantee is given against faulty design, latent defects or of suitability of any vessel or other item for any particular purpose or of compliance with any particular local, national or international requirement or code, and opinions are given without the benefit of running of machinery or opening up or other dismantling whether of interior linings, machinery or other items or systems; and
- (ii) the Surveyor shall have no liability whether in contract, delict or otherwise in respect of the consequences of late, incomplete, inadequate, inaccurate or ambiguous instructions or the non-disclosure by the Client of relevant information.

Unless otherwise stated in writing, the Services and Survey Reports are provided on the basis that they carry no guarantee regarding ownership or title, freedom from mortgages or charges, debts, liens or other encumbrances, or vessel stability, performance or design.

- 8.6 Any claim by the Client in respect of any breach of the Surveyor's obligations under the Contract must be notified to the Surveyor within 14 days of the date on which the Client ought reasonably to have become aware of the existence of such breach. Where any breach is capable of remedy, the Surveyor must be afforded a reasonable opportunity to put matters right at his expense.
- 8.7 The Surveyor's liability shall expire twelve months after the Survey Report is delivered to the Client and the Surveyor shall thereafter have no further liability whether in contract, delict or otherwise.

## 9. Termination

- 9.1 The Surveyor may terminate the Contract if the Client fails for more than 28 days to pay any sum due when demanded, or if the Client fails to respond promptly to requests for information and/or instructions and fails adequately to respond to 28 days notice of such failure, without prejudice to the Surveyor's accrued rights.
- 9.2 Without prejudice to the accrued rights of the other party, either party may terminate the Contract by notice if the other party shall become bankrupt or insolvent, or make any arrangement or composition for the benefit of creditors, or have anything analogous to any of the foregoing under the laws of any jurisdiction occur to it, or cease to carry on business.

- 9.3 No exercise or failure to exercise or delay in exercising any right or remedy vested in either party shall be deemed to be a waiver by that party of that or any other right or remedy.

## 10. Force Majeure

Any delay or failure in the performance by a Party of any obligation hereunder necessarily arising from an event not reasonably foreseeable and beyond the control of that Party shall be deemed not to be a breach of the Contract. If the cause of delay or failure shall continue for a period of 30 days, either Party shall be entitled to terminate the Contract by giving 7 days written notice to the other Party. In the event of such termination the Surveyor shall be paid all fees and costs incurred up to the date of termination, together with all costs of settlement of any outstanding obligations incurred as at the date of termination.

## 11. Variations

Any subsequent changes or additions to the Scope of Work must be agreed in writing by the Parties.

## 12. Assignment

Neither party shall transfer or assign its rights or obligations under these terms without the prior written consent of the other.

## 13. Entire Agreement

Except where expressly stated to the contrary in a written document signed by the Parties on or after the date hereof, these terms form the entire agreement between the Parties and supersede all previous agreements and understandings between the Parties, and no warranty, condition, description, term or representation is given or to be implied by anything said or written in negotiations between the Parties or their representatives prior to the communication of these terms.

## 14. Miscellaneous

- 14.1 In the event that any provision of these terms is held to be a violation of any applicable law, statute or regulation, such provision shall be deemed to be deleted from these terms and shall be of no force or effect and these terms shall remain in full force and effect as if such provision had not been contained herein. Notwithstanding this, in the event of any such deletion the Parties shall negotiate in good faith in order to agree the terms of an acceptable alternative provision.

- 14.2 References to "the Surveyor" include the Surveyor's employees and persons, firms and companies appointed or engaged by the Surveyor as the Surveyor's agents for carrying out any work or services under these terms, all persons, firms and companies to whom performance of any work or services under these terms is sub-contracted or delegated by the Surveyor, and all agents and employees of persons, firms and companies referred to in this Clause.

- 14.3 Any communication required to be given under these terms by either party shall be in writing and shall be sufficiently given either by letter, fax or electronic mail sent to the other at the contact details previously notified and any such notice shall be deemed to have been given at the time at which it would in the ordinary course of transmission have been received.

## 15. Legal

The Contract and any dispute or claim arising hereunder shall be governed by and construed in accordance with the law of Scotland and the Parties irrevocably agree that the Scottish courts shall have exclusive jurisdiction to settle any dispute or claim arising hereunder.