

# MARINE & GENERAL ENGINEERS LIMITED

## TERMS OF BUSINESS

### 1. PRELIMINARY PROVISIONS

- 1.1. These Terms of Business are incorporated into the quotations and contracts of the Company.
- 1.2. These Terms of Business apply to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

### 2. DEFINITIONS

In these Terms of Business:

- 2.1. **'Associated Party'** means i. any person, company or party who is not our Customer but who we expressly agree in writing shall be entitled to rely upon the Work and /or ii. any third party we agree and/or director and/or officer of the Company may work on a Vessel at the request of the Customer.
- 2.2. **'Company'** means Marine & General Engineers Limited
- 2.3. **'Customer'** means the party or parties with whom the Company agrees to perform the Work.
- 2.4. **'Defective Work'** means defects in material and workmanship and work that is not in conformity with the agreed specification of the Order.
- 2.5. **'Order'** means the Customer's Order for the Work, as set out in the Company Quote/Estimate and/or the Company Order Confirmation Letter.
- 2.6. **'Parties'** means the Company and the Customer, each a Party and collectively the Parties.
- 2.7. **'Price'** means the amount set out in the Order or if no price is quoted for the Work, the price will be determined by the hourly rate of the Company as will be advised from time to time whether in writing or orally plus materials, parts or other disbursements.
- 2.8. **'Vessel'** means any pleasure or commercial vessel as well as any other object entrusted to the Company for the Work to be undertaken.
- 2.9. **'Warranty'** means a Company agreement that for 12 months from completion of the agreed work, the Work will be free of defects in material and workmanship and in conformity with the agreed specification in the Order, unless otherwise agreed in writing.
- 2.10. **'Work'** means the goods and services supplied to the Customer and/or work undertaken by the Company pursuant to the quote, estimate, time and materials and these Terms of Business.

### 3. LIABILITY

- 3.1. The Customer agrees that any claim of any sort in connection with the Work shall be brought against the Company and that no claims will be brought personally against any persons involved in the performance of the Work on behalf of the Company.
- 3.2. To the extent possible under the laws, ordinances and regulations of Guernsey, the Company limits our aggregate and total liability to the Customer and any Associated Party whatsoever (including interest and costs) for breach of contract, tort, warranty, breach of duty or fault or negligence or otherwise arising out of or in connection with the Work to the sum specified in the Order Confirmation Letter or if no Order Confirmation Letter has been sent or is not specified, the sum of two million pounds (GBP£2m) (or its currency equivalent).
- 3.3. The Vessel, and all other property of the Customer and Associated Party is left at the Company's premises at the Customer's and Associated Party's own risk. The Customer and Associated Party are jointly and severally responsible for the taking out of insurance to cover any potential loss for theft, damage or loss however arising.
- 3.4. The Company shall not be under any duty to salvage or preserve the Vessel from the consequences of: (a) any defect or want of maintenance in respect of the Vessel and/or (b) an accident which has not been directly caused by the Company. However, the Company reserves and the Customer and/or Associated Party hereby grant the right to salvage or preserve the Vessel, at the Company's sole discretion, in appropriate circumstances including where the safety of people, property or the environment is at risk.
- 3.5. The Customer and Associated Party are jointly and severally responsible for the taking out of insurance to cover any potential loss for theft, damage or loss however arising and shall effect and maintain, at no cost to the Company, liability insurance providing cover for any loss or damage for which the Customer may be liable under these Terms of Business (including third party liability cover and, where appropriate, employer's liability cover in respect of any of its employees).
- 3.6. The Customer and Associated Party shall at the request of the Company produce copies forthwith of insurance policies as evidence of cover and in any case within 48 hours.

3.7. The Company shall under no circumstances whatsoever, be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or damages for loss of use of the Vessel or any indirect or consequential loss arising under or in connection with the Works and these Terms of Business.

#### **4. PRICES AND ESTIMATES & QUOTES**

4.1. Unless otherwise agreed in writing, the Price will not include expenses incurred for pilotage, salvage, tugs, harbour dues and similar charges which shall be invoiced separately to the Customer.

4.2. Quotes are always subject to the accuracy of information provided by the Customer, are often based on a superficial examination and do not include the cost of any emergent work which may be reasonable and/or necessary nor the cost of any extensions to the Work.

4.3. The Company reserves the right to (a) increase the rates under its usual tariff and/or (b) subject to Clause 4.4, increase the Price for the Work after first notifying the Customer in writing of an increase in price.

4.4. The Company will inform the Customer of any proposed increase of 20% or greater in the estimated Price, together with the reasons for such increase, and will proceed with the Work after having obtained the Customer's approval (such approval not to be unreasonably delayed or withheld). The Customer 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 the Price.

4.5. All Emergency Works are subject to these terms and conditions.

#### **5. PAYMENT**

5.1. Unless otherwise agreed between the Parties in writing, payment for all Work provided shall be due immediately upon presentation of the Company's invoice. Payment shall be deemed to have been made when received by the Company in cash or cleared funds at the Company's nominated bank account. Time for payment is of the essence.

5.2. If the Customer fails to make any payment due to the Company by the due date for payment, the Company has the right to charge interest on the overdue amount at the rate set by The Royal Court of Guernsey or 8% whichever shall be the greater. Such interest shall accrue on a daily basis after 14 days of delivery of the invoice from the due date until actual payment of the overdue amount, whether before or after judgment.

5.3. The Customer shall pay all amounts due under these Terms of Business in full without any set-off, counterclaim, deduction or withholding except

as required or permitted by law. To the extent permitted by law the Company may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Company to the Customer.

5.4. To the extent permitted by law, the Customer hereby grants to the Company, a lien and a continuing security interest, and, where applicable, a maritime lien, over the Vessel as security for payment of the Price until full payment of the Price by the Customer, or until the Customer has given security to the Company, in a form and substance acceptable to the Company. The security provided shall be sufficient to cover the debt with interest and, where the debt is contested, a reasonable provision for the Company's prospective legal costs and expenses.

5.5. In the event of a failure to pay the full Price for the Work, the Company may remove any parts fitted to the Vessel and the parts remain the property of the Company until full payment has been made.

5.6. In the event of the Customer failing to pay the full Price for the Work and / or failing to pay the storage fees of the Company the Company shall have the right to sell or otherwise dispose of the Vessel and/or any property situate on or about the Vessel.

5.7. The Company shall be entitled to charge the Customer for storage and the provision of any ongoing services at the Company's normal rates until full payment (or provision of security) by the Customer including the removal of the Vessel from the Company's premises and storage at premises not belonging to or under the control of the Company. The Customer shall be entitled to remove the Vessel upon providing security that has been agreed by the Company or payment of the Price, fees, disbursements and charges of the Company.

#### **6. DELAYS, CONSEQUENTIAL LOSS & LOSS OF USE OF VESSEL**

6.1. Unless otherwise agreed in writing by the Parties, time estimates given for completion of the Work are given without guarantee.

6.2. The Company shall not be liable for any failure or delay in the performance or completion of the Work, or for any such loss or damage resulting therefrom, unless the Company has expressly guaranteed completion by a specific date in writing, or the delay arises from its willful acts or omissions or negligence.

6.3. The Company shall not be liable to pay to the Customer or Associated Party any damages that are caused by the Works or delays to the Works for loss of use of a Vessel.

6.4. The Company shall not be liable to the Customer for any delay or failure to perform its obligations if and to the extent such delay or failure is caused

by an event or circumstance which is beyond the reasonable control of the Company which by its nature could not have been reasonably foreseen by the Company or, if it could have been reasonably foreseen was unavoidable. If such event or circumstances prevent the Company from performing its obligations for more than 12 (twelve) weeks, the Company shall have the right, without limiting its other rights or remedies, to terminate the Order and contract with immediate effect by giving written notice to the other party.

## **7. THE VESSEL'S MOVEMENTS**

- 7.1. The Company shall have the right to order and direct such movements of the Vessel and such sea or other tests as it deems necessary in order to perform and determine the due completion of the Work and/or for reasons of safety, security or good management of the Company's business and premises.
- 7.2. The costs of such movements, sea or other tests including the cost of any bunkers and/or consumables shall be borne by the Customer.

## **8. TITLE AND RISK**

- 8.1. Risk in all goods, equipment and materials supplied by the Company to the Customer shall pass to the Customer at the time of supply to the Customer of such goods, equipment or materials or at the time when such goods, equipment or materials are assigned or affixed to the Vessel, as the case may be.
- 8.2. Title to all goods, equipment and materials supplied by the Company to the Customer, shall not pass to the Customer until the Company receives payment in full (in cash or cleared funds) for the Work.

## **9. WARRANTY, DEFECTIVE AND REPAIR WORK**

- 9.1. The Company gives a Warranty to the Customer, that the Work will be free of defects in material and workmanship for 12 months from completion of the agreed work, unless otherwise agreed in writing.
- 9.2. The Customer shall give notice in writing (as per Clause 12) to the Company of any defects in material or workmanship which may become apparent and shall provide the Company with sufficient evidence as the Company may in its absolute discretion require so as to establish the nature and extent of the Defective Work.
- 9.3. This Warranty applies only to the Customer: a person who is not a Party to these Terms of Business shall not have any rights to enforce these Terms of Business.
- 9.4. On notification by the Customer of the Defective Work, the Company will be given a reasonable opportunity to inspect the Defective Work and the Company at its discretion and election shall repair or re-perform, in whole or in part, the

Defective Work. Unless by other prior written consent of the Company, inspection and repair work shall take place for a Vessel in Guernsey.

- 9.5. Delivery of repairs or re-performance under this guarantee will be made in accordance with these Terms of Business.
- 9.6. The Customer shall, immediately after the discovery of any Defective Work, take all appropriate steps to mitigate any loss or damage and to prevent any Defective Work becoming more serious.
- 9.7. The Company shall not be liable for any Defective Work if the defect arose as a result of: (a) the Customer and/or Associated Party's failure to follow the Company's oral or written instructions; (b) the Company following any drawing, design or specifications supplied by the Customer and/or Associated Party; (c) fair wear and tear, willful damage, negligence or abnormal working conditions; and/or (d) changes made to ensure compliance with applicable statutory or regulatory standards or good practices of the Marine Industry.
- 9.8. The Customer and Associated Party must follow all supplier instructions and recommendations. A failure to do so will invalidate the Warranty.
- 9.9. The Warranty is for a total of 12 months, from completion of the agreed works, unless otherwise agreed in writing. Any repairs conducted for Defective Work is only warrantable for the remaining balance of the initial Warranty period.
- 9.10. Any remedial work which is put in hand by the Customer directly without first notifying the Company and allowing the Company a reasonable opportunity to inspect the Defective Work shall invalidate the Warranty provided under this Clause 9.
- 9.11. These Terms of Business do not contain any express or implied term as to quality or fitness for any particular purpose, unless, prior to the Work being performed, the purpose has been clearly identified in writing to the Company and the Customer has stipulated that it is relying upon the Company's skill and judgment to ensure this purpose has been met.
- 9.12. The Company accepts no liability to the Customer in respect of any loss of profit or turnover which the Customer or its customer or any other person may sustain in consequence of the failure of any faulty or unfit article supplied to the Customer by the Company.
- 9.13. To the extent permissible the Company shall assign to the Customer any and all of its rights against the manufacturer or supplier of any particular part/material/article used in the Work or supplied to the Customer as part of the Work.

## **10. ACCESS TO PREMISES/WORK**

- 10.1. No work or services shall be carried out by the Customer or an Associated Party on the Vessel when the Vessel is at the Company's premises

without the Company's prior consent. The Company's consent may be revoked with immediate effect by serving notice in accordance with the provisions of 12.1 of these Terms of Business.

- 10.2. The Customer and any Associated Party is subject to, best customer practice, the Company's health and safety, environmental and access policies and shall further be obliged to comply with all laws, ordinances and regulations relating to environmental protection and safety. The Customer and Associated Party and their servants or agents are responsible for any damage or loss whether to individuals or property caused directly or indirectly including to property owned by third parties including from any breach of its obligations under these Terms of Business.
- 10.3. The Customer and Associated Party shall take all necessary precautions to avoid pollution of the environment and contamination of any third party property (including that owned by the Company and third parties) and shall indemnify the Company for any loss or damage arising from any Pollution or contamination.
- 10.4. The Customer and Associated Party shall ensure that it does not cause any nuisance or annoyance to the Company, any other customer or person present or residing in the vicinity and does not interfere with the Company's schedule for the Work and/or the good management of the Company's premises and business.
- 10.5. During performance of the Work by the Company (and / or any of the Company's sub-contractors), the Customer and Associated Party shall not have access to the Vessel unless the Company's prior consent has been obtained.

## **11. ASSIGNMENT AND OTHER DEALINGS**

- 11.1. The Company may at any time assign, transfer or deal in any other manner with all or any rights under these Terms of Business and may sub-contract or delegate in any manner any or all of its obligations under these Terms of Business to a third party.
- 11.2. The Customer shall not, without the prior written consent of the Company, assign, transfer, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under these Terms of Business.

## **12. COMMUNICATION AND NOTICES**

- 12.1. All notices given under these Terms of Business shall be in writing. A notice shall be sufficiently served if given by effective means of communication, including but not limited to fax, email, registered or recorded mail or by personal service, to the Customer or the Customer's last known address or to the Company's official email, trading address or registered office.

## **13. SEVERENCE**

- 13.1. If any provision of these Terms of Business 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 13.1 shall not affect the validity and enforceability of the remaining provisions of these Terms of Business.

## **14. GOVERNING LAW AND JURISDICTION**

- 14.1. These Terms of Business, as well as any contract(s) made subject to these Terms of Business, shall be governed by and construed in accordance with Guernsey law.
- 14.2. All disputes arising out of or in connection with these Terms of Business shall be subject to the exclusive jurisdiction of the Guernsey courts.