

BRITISH MARINE FEDERATION

TERMS OF BUSINESS - SCOTLAND. EDITION 12A

1. INCORPORATION OF TERMS OF BUSINESS

- 1.1 These Terms of Business shall be incorporated into and shall apply to all contracts for work and facilities or goods undertaken by us on or after 31 March 2003.
- 1.2 No Variation of any of these Terms of Business shall be effective unless in writing and signed by our duly authorised representative.

2. LIABILITY

- 2.1 We shall not be liable for any loss or damage caused by any event or circumstance beyond our reasonable control (such as extreme weather conditions, the actions of third parties not employed by us, any defect in any part of a customer's or third party's vessel or latent defects in our equipment); this includes, but without limitation, loss or damage to vessels, gear, equipment or other goods left with us for repair or storage, and harm to persons entering our premises or using any of our facilities or equipment.
- 2.2 We shall take all reasonable and proportionate steps having regard to the nature and scale of our business to maintain security at our premises, and to maintain our facilities and equipment in reasonably good working order. Subject to this, vessels, gear, equipment or other goods are left with us at the customer's own risk and customers should ensure that their own personal and property insurance covers such risks.
- 2.3 We shall not be under any duty to salvage or preserve a customer's vessel or other property from the consequences of any defect in the vessel or property concerned unless we shall have been expressly engaged to do so by the customer on commercial terms. Similarly, we shall not be under any duty to salvage or preserve a customer's vessel or other property from the consequences of an accident for which we are not responsible. However, we reserve the right to do so in any appropriate circumstances, particularly where a risk is posed to the safety of people, property or the environment. Where we do so we shall be entitled to charge the customer concerned on a normal commercial basis.
- 2.4 Customers may themselves be liable for any loss or damage caused by them, their crew and/or their vessels and while their vessel or other property is on our premises or is being worked on by us they shall be obliged to maintain adequate insurance, including third party liability cover for not less than £2,000,000, and, where appropriate, Employers' Liability cover in respect of any employee to at least the statutory minimum. The customer shall be obliged to produce evidence to us of such insurance within 7 days of a request to do so.

3. PRICES AND ESTIMATES

- 3.1 In the absence of express agreement to the contrary our price for work shall be based on time and materials expended and services provided.
- 3.2 When we give an estimate or indication of price - in writing or orally - we will exercise skill and judgement in doing so. Such estimates are subject always to the accuracy of information provided by the customer and are usually based only on a superficial examination and will not include the cost of any additional repairs or work found necessary to the vessel and/or gear or equipment during the work nor the cost of any extensions to the work comprised in the estimate.
- 3.3 We will inform the customer promptly of any proposed increase in estimated prices and the reasons therefor and will only proceed with the work with the approval of the customer. In those circumstances the customer's liability for any work already completed or goods already supplied or to be supplied shall be unaffected.

4. DELAYS

- 4.1 The time for completion of our work is given in good faith but is not guaranteed. 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 our negligence.

5. VESSEL MOVEMENTS

- 5.1 We reserve the right to move any vessel, gear, equipment or other goods at any time for reasons of safety, security or good management of our business and premises.

6. PAYMENT

- 6.1 Unless otherwise agreed between us the price of all work, goods and services shall be due immediately on invoice date.
- 6.2 Where a customer delays in payment for more than 30 days or withholds more than a proportionate sum against rectification of any alleged defects we reserve the right to charge interest on the outstanding amount (both before or after any judgment) at 4% over Royal Bank of Scotland plc.
- 6.3 We reserve a general right ("a general lien") to detain and hold onto a customer's vessel or other property pending payment by the customer of any sums actually due to us. We shall be entitled to charge the customer for storage and the provision of any ongoing services at our normal daily rates until actual payment by the customer and removal of the vessel or property from our premises. Title to any replacement equipment or spare parts supplied by us shall remain with us until payment in full of all sums due to us. The customer shall at any time be entitled to remove the vessel or other property upon providing satisfactory security, for example, a letter of guarantee from a Bank reasonably acceptable to us or lodgement of a cash deposit with a professional third party agent or with the British Marine Federation, sufficient to cover the debt with interest and a reasonable provision for our prospective legal costs where the debt is contested. This right does not affect the customer's entitlement to withhold a proportionate part of the price in respect of alleged defects but where that amount is in dispute between us the customer shall be required to provide security for the full amount pending resolution of the dispute.
- 6.4 In certain other circumstances we may be entitled to have vessels or goods of the customer sold through the court for non-payment.
- 6.5 Our customers' attention is drawn also to the note at Clause 12.1 of these Terms of Business regarding other rights which exist at law.

7. CONSUMER GUARANTEE

- 7.1 Advice on whether a customer is "a consumer" or otherwise protected by some or all of the consumer protection legislation in force in the United Kingdom may be obtained from any local Trading Standards Office, the Citizens Advice Bureau, the Office of Fair Trading or any firm of Solicitors (who may charge). Online guidance may be obtained at the Government's Consumer Gateway website at: <http://www.consumer.gov.uk>
- 7.2 Where a customer is also a consumer he has certain minimum statutory rights regarding the return of defective goods and claims for losses. These rights are not affected by these terms.
- 7.3 In addition to the statutory and other common law rights, where the customer is a consumer, we guarantee our work for a period of 12 months from completion against all defects which are due to poor workmanship or defective materials. We shall be liable under this guarantee only for defects appearing during this 12-month period which must be promptly notified to us in writing at our trading address or registered office [set out on our letterhead]. The geographical area within which this guarantee will be honoured is restricted to the United Kingdom.
- 7.4 On notification by the customer of such defects, we will investigate the cause and if they are our responsibility under the terms of this guarantee we will promptly remedy them or, at our option, employ other specialist contractors to do so. Any remedial work which is put in hand by the customer other than through ourselves in accordance with the terms of this guarantee may invalidate this guarantee in respect of such defects if we are not advised beforehand and given the opportunity to inspect and agree such work and its cost.

8. BUSINESS GUARANTEE

- 8.1 Where we supply goods or services to a partnership or company or to a customer who is acting in the course of a business or a commercial operation (a "Business Customer") then:
- 8.1.1 We guarantee to the Business Customer that the work shall be carried out using reasonable skill and care.
- 8.1.2 Where we supply in connection with our work materials or parts, these will be provided by a third party, we do not give any warranty, guarantee or other term as to their quality, fitness for purpose or otherwise but shall, where possible, pass on the benefit of any warranty, guarantee or indemnity given by the manufacturer or importer of such materials or parts.
- 8.1.3 No materials or parts article supplied by us to a Business Customer shall carry any express or implied term as to its quality or its fitness for any particular purpose unless prior to the supply the Business Customer has sufficiently explained the purpose for which it is required and made it clear that he is relying on our skill and judgement.
- 8.1.4 No materials or parts specified by name, size or type by a Business Customer shall carry any such express or implied term but we will assign to the Business Customer any rights we may have against the manufacturer or importer of that article.

9. EXCLUSION OF LIABILITY

- 9.1 Except in respect of death or personal injury caused by our negligence, or liability for defective products under the Consumer Protection Act 1987 or, as expressly provided in these Terms of Business, we shall not be liable to the Business Customer by reason of any representation (unless fraudulent) or any implied warranty, condition or other term, or any duty at common law or otherwise for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise) costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of the provision of the work by us to the customer.

10. QUALITY STANDARDS

- 10.1 We will complete our work to the agreed specification and, in the absence of any other contractual term as to quality, to a satisfactory quality.

11. ACCESS TO PREMISES/WORK ON THE VESSEL

- 11.1 Subject to the terms of Clause 8.2 no work shall be done on the vessel, gear, equipment or other goods while on our premises without our prior written consent other than minor running repairs or minor maintenance of a routine nature by the customer, his regular crew or members of his family not causing nuisance, or annoyance to any other customer or person residing in the vicinity, nor interfering with our schedule of work, nor involving access to prohibited areas.
- 11.2 Prior written consent will not be unreasonably withheld where:
- 11.2.1 The work is of a type for which we would normally employ a specialist sub-contractor; or
- 11.2.2 The work is being carried out under warranty by the manufacturer and/or supplier of the vessel or any part of the equipment to which the warranty relates.
- 11.3 In every case neither the customer nor his invitees shall have access to the vessel during periods of work by us on the vessel without our prior consent, which shall not be unreasonably withheld. In the event of such access being permitted it shall be at the customer's own risk.

12. RIGHT OF SALE

- 12.1 Maritime Law entitles us in certain other circumstances to bring action against a vessel to recover a debt or damages. Such action may involve the arrest of the vessel through the Courts and its eventual sale by the Court. This right of arrest and sale may continue to exist against a vessel following a change of ownership. Sale of a vessel may also occur through the ordinary enforcement of a decree against the Owner of a vessel or other property.

13. SUB-CONTRACTING

- 13.1 We may sub-contract all or part of the work entrusted to us by the customer, on terms that any such sub-contractor shall have the protection and benefit of all rights and conditions, and of all limitations and exclusions of liability, contained in these Terms of Business. Where we exercise this right we shall remain responsible to the customer for the performance of our subcontractor.

14. INVALIDITY

- 14.1 If any provision of these Terms of Business is deemed for any reason to be invalid, void or unenforceable in whole or in part, the validity of these and the remainder of the provision in question, the Terms of Business shall nonetheless remain in full force and effect as if such provision had not originally been included. In such circumstances, we and the customer shall negotiate in good faith in order to agree the terms of a mutually acceptable and satisfactory alternative provision in place of the invalid, void or deleted provision.

15. NOTICES

- 15.1 Notices to a customer shall be sufficiently served if sent by first class post to the customer's last known address. Notices to us should be sent by first class post to our principal trading address or registered office. Any such notices shall be deemed to have been received 48 hours from posting.

16. REGISTRATION

- 16.1 The customer consents to registration of our contract (and any certificate given in respect thereof, for preservation and execution). A certificate signed for and on behalf of us shall be sufficient to fix and ascertain the sums due by the customer to us under our contract and shall be conclusive of the amounts due.

17. WAIVER

- 17.1 No waiver by us of any breach of these Terms of Business by the customer shall be construed as a waiver of any subsequent breach of the same or any other provision.

18. TERMINATION

- 18.1 Without prejudice to any other right or remedy available to us, we shall be entitled to cancel the contract between us and the customer or suspend any further work due under the contract between us and the customer without liability to the customer, and if the work has been carried out but not paid for, the price shall be immediately due and payable, notwithstanding any previous agreement or arrangement to the contrary, in the event of:-
- (i) the customer committing a breach of our contract provided we have notified the customer of the breach and the breach has not been rectified within seven days of receipt of such notice; or
- (ii) the customer (being a body corporate) going into liquidation (other than for the purpose of amalgamation or reconstruction) or having the receiver appointed over any of its assets or undertaking or becoming subject to any administration order or any other insolvency proceedings or (being an individual or partnership) the customer becomes apparently insolvent, bankrupt or grants a trust deed for its creditors or the customer makes any composition with its creditors or ceases or threatens to cease to carry on business.

19. LAW AND JURISDICTION

- 19.1 These Terms of Business shall be governed and construed in accordance with the laws of Scotland and the customer submits to the non-exclusive jurisdiction of the Scottish Courts.

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Published by the British Marine Federation and approved by the Royal Yachting Association, who recommend that minor disputes are submitted to alternative dispute resolution under the Marine Dispute Resolution Rules published by the British Marine Federation.