

The following general terms and conditions (**Conditions**) shall apply to all services performed by Eyemouth Marine Limited and supersede without restriction all other terms and conditions of any kind. Any printed conditions that appear or are referred to elsewhere, including upon any documents issued by the Customer, shall have no legal effect.

1 DEFINITIONS

1.1 In these Conditions:

Company means Eyemouth Marine Limited, registered in England and Wales (Company number: 10870974) having its registered office at Palladium House, 1-4 Argyll Street, London, United Kingdom, W1F 7LD

Contract shall mean the written agreement between the Company and the Customer concerning Services to be performed by the Company, and all appendices, including amendments agreed in writing from time to time

Customer means any person contracting with the Company for the provision of Services

Equipment shall mean the Customer's equipment which is subject to repair under the Contract

Negligence shall mean an act or omission implying a failure to take reasonable care, or a failure to pay due regard to serious consequences, of such act or omission

in writing shall mean by document signed by the Parties or sent by letter or email

Parties shall mean together the Company and the Customer

Services means the services described in Clause 2

Visiting Contractor shall mean a firm or company or person that carries out work on behalf of the Customer at the Yard

Vessel means a ship or boat or craft of every description whether sea going or not which is subject to servicing, maintenance, repair, upgrade or refit under the Contract

Yard means the premises of the Company at Brown's Bank, Eyemouth

2 SERVICES

2.1 Unless otherwise agreed in writing between the Parties, the Company's scope of work shall consist of the provision of specialist manpower experienced in the fabrication and repair and maintenance of vessels and marine and mechanical equipment ashore, including: fault tracing; remedying of defects; provision and replacement of spare parts; functional checking; assistance at testing; electrical works and electrical installations for machinery; upgrades, refits and such other activities as may be provided by the Company from time to time.

2.2 All Services carried out by the Company shall be completed at the Yard, unless otherwise agreed in writing – which may include attendances at Vessels in Eyemouth Harbour, Port of Leith or any other harbour or port as agreed by the Parties.

2.3 The Customer shall not be entitled to procure any independent contractors to work on the Vessel without the Company's consent.

2.4 The Company may provide the Services or may procure that the Services are provided by a subcontractor of the Company. Such subcontracting shall not in any way affect the Company's obligations under the Contract. Unless otherwise expressly agreed, separate subcontracting of any works by the Customer is not permitted.

3 PRICE

3.1 Unless otherwise agreed the Company shall provide the Customer with an estimate in writing after receiving an initial enquiry from the Customer, but before undertaking any work. The estimate is indicative only and shall not be binding.

3.2 If the Customer at any stage chooses not to proceed, or if the repair work is not carried out or completed due to any reason (other than Negligence of the Company) the Customer shall pay the Company for the work performed at the Company's current "Labour Rates" published from time to time, including preparatory work, fault tracing, making the estimate and any documented costs incurred in performing the Services up to and including the date of the notice not to proceed.

3.3 If a lump sum has been agreed and if the Customer chooses not to proceed, then the Company shall receive the lump sum, after deduction of costs in relation to the Services which have not been incurred by the Company.

3.4 A fee will be included in the estimate for any Visiting Contractors used to carry out work on the Vessels in addition to the scope of work to be performed by the Company, fee will be applied per person.

4 DELIVERY

4.1 Unless the Services are agreed to be performed on the Vessel alongside and afloat at Eyemouth, Leith, or any other harbour or port as agreed by the Parties, the Vessel and/or Equipment shall be delivered upon a convenient tide by the Customer at the Customer's cost and risk to the Yard prior to the commencement of the Services.

4.2 Upon completion of the Services, the Vessel is deemed to be re-delivered to the Customer, when the Company notifies the Customer in writing or verbally of the completion of the Services, following which the Customer is obliged to fully pay and remove the Vessel from the Yard promptly upon a convenient tide. Failure of the Customer to take re-delivery and remove the Vessel shall entitle the Company to charge a berthing/shipping or storage fee for each day thereafter.

4.3 Any date proposed by the Company for completion of the Services and the delivery of the Vessel is an estimate only and is not to be the essence of the Contract, as the scope of Services may change as work progresses. The Customer is nevertheless bound to take delivery of the Vessel when duly notified of the completion of the Services in writing by the Company or notification to Customer. The Company shall not be liable in respect of any late dispatch or late delivery of any parts or materials by their supplier howsoever caused.

4.4 The Vessel is to be delivered to the Yard after tank cleaning, de-slopping, de-sludging and removal/disposal of all waste, and in gas free condition, with areas cleaned and ready for work. If the Customer fails to deliver the Vessel in the condition described herein, then the Company at an extra cost shall receive the Vessel and provide Yard personnel to prepare and gas free the Vessel.

5 TECHNICAL DOCUMENTATION

The Customer shall where possible provide the 'as-fitted' technical documentation (up to date drawings, descriptions, charts, instructions and the operation and maintenance logs for the Vessel and Equipment in question) in its possession as necessary for the efficient performance of the Services by the Company. The Company shall not use such documentation for any purpose other than the Contract.

6 TIME FOR COMPLETION

6.1 A time estimated for completion shall be binding only to the extent that this has been expressed as such in writing by the Company, and subject always to weather downtime and tidal constraints and timely payment of the instalments of the price of the services in accordance with Clause 8.

6.2 The Customer shall immediately notify the Company if for any reason the Company cannot obtain access to carry out the Services at the agreed time. Any agreed time for commencement or completion of the Services shall be extended accordingly.

6.3 All parties must be notified immediately if any delays are incurred by Visiting Contractors, if for any reason access to the Vessel cannot be obtained or Company cannot gain access to Vessel, all parties should be notified immediately and any agreed time for commencement or completion of the Services shall be extended accordingly.

7 TESTING

The Customer shall permit and assist the Company and/or Visiting Contractor to carry out such tests as reasonably required in the opinion of the Company and/or Visiting Contractor in order to ascertain that the Services have been successfully completed.

8 PAYMENT

8.1 Unless the Parties have agreed on a lump sum price for the Services, payment shall be due on a time-spent basis. The Company's invoice shall specify the following items separately:

- (a) slipping, un-slipping and craneage;
- (b) labour costs;
- (c) cost of spare parts including carriage;
- (d) costs of other materials and consumables;
- (e) other costs, as applicable;
- (f) fee towards attendances by any Visiting Contractor

8.2 When Services are to be carried out on a lump sum basis, the quoted price shall be deemed to include all the work types mentioned in Clause 2. Any additional work or services carried out by the Company shall be invoiced by the Company to the Customer separately.

8.3 When the Services are to be carried out on a lump sum basis, 25% or otherwise agreed of the lump sum shall be paid at the formation of the Contract and prior to the commencement of any work. The remaining part shall be payable upon completion before the Vessel is returned to the Customer or otherwise agreed in writing.

8.4 When the Services are to be carried out on a time-spent basis, 25% of the estimated sum shall be paid at the formation of the Contract and prior to the commencement of any work. The remaining part shall be made against weekly invoices for the duration of the Services and not later than 14 days after the date of each invoice.

8.5 The price for the Services, whether lump sum or time-spent basis, shall be exclusive of any Value Added Tax and any other taxes, duties and dues levied on the invoice in the Customer's country.

8.6 If the Customer fails to pay by the due date described above, the Company shall claim; (i) interest from the due date in accordance with the Late Payment of Commercial Debts (Interest) Act 1998; and (ii) an administration fee of £40 per week for each week of late payment.

8.7 In the event of a default of payment by the Customer, the Company shall be entitled to charge interest on a daily basis on any outstanding payment at a rate of 8% per annum above the Bank of England base rate and recover any debt collection and legal expenses incurred.

9 LIEN

The Company has a right of lien over the Vessel, Equipment and other property of the Customer in the possession of the Company for all sums due and owing and any damage caused by the Customer to the Company or its property. If such sums and/or damage are not settled within 30 days of the due date for payment, the Company may sell such property as it thinks fit and shall apply the proceeds of sale towards satisfaction of the cost of the sale and outstanding sums and/or damage.

10 INSURANCE

10.1 The Customer shall keep the Vessel (hull and machinery), Equipment on board and other goods owned or held by the Customer adequately insured against any and all risks or liabilities. The Customer shall, if required by the Company, co-operate to secure safety preservation of the Vessel and any expense incurred shall be borne by the Customer.

10.2 The Customer shall keep the Vessel insured throughout the terms of the Contract and during any sea-trials, and any goods which are the Customer's property deposited or stored on the Company's premises shall be left there at the Customer's risk and the Customer is recommended to effect all insurance necessary for such goods. Any property belonging to the Customer shall at the Customer's expense be removed forthwith from the Company's premises either upon re-delivery of the Vessel or at such time mutually agreed between the Parties.

10.3 The risk of loss or damage to Equipment while outside of the Company's premises for the purpose of repair shall be borne by the Customer, unless such loss or damage is due to the Negligence of the Company.

10.4 The Customer shall, at its own expense, insure all the Equipment and its property of every description against insurable risks of physical loss or damage for the duration of the Services to their full replacement value.

10.5 It is the responsibility of the any Visiting Contractor to be adequately insured against any and all risks and liabilities for their respective scopes of work.

10.6 Any goods which are the Visiting Contractor's property deposited or stored on the Company's premises shall be left at the Visiting Contractor's risk and the Visiting Contractor is recommended to affect all insurance necessary for such goods. Any property belonging to the Visiting Contractor shall at the Visiting Contractor's expense be removed forthwith from the Company's premises either upon re-delivery of the Vessel or at such time mutually agreed between the Parties.

11 WARRANTIES & INDEMNITIES

11.1 The Customer warrants that it has full power to enter into an agreement to obtain the Services and to be bound by these Conditions, either to itself or as agent for a principal.

11.2 The Customer hereby indemnifies, and shall keep indemnified, the Company from and against all loss, injury, damage or liability sustained, and all fees, costs and expenses incurred by the Company resulting from information provided by the Customer to the Company which proves to be incorrect and in respect of the Customer's breach of any agreement with the Company or the Conditions, including any act, neglect, omission of fault by the Customer, its employees or its agents, and any fault or defect in the Customer's or its principal's or its customer's Equipment or property of any description.

12 LIABILITY OF THE COMPANY

12.1 Unless otherwise agreed the Company shall only be liable for the Services for a period of six months after a repair was performed. The Company's liability for spare parts provided under the Contract shall only apply to defects which become apparent within twelve months from installation of the part in the Vessel or Equipment.

12.2 The Company will not accept any responsibility for the performance of the repaired parts and/or equipment, unless the Customer proves Negligence on the part of the Company in the execution of the particular work.

12.3 The Company shall not, in any case, be held responsible for any damages resulting from any loss of, use of the Vessel or loss of profit or damages consequential on such loss of use of the Vessel or loss of profit.

12.4 The Customer shall without undue delay (and in any event within seven days of the occurrence) notify the Company in writing of any defect which appears in the Services performed or the parts provided by the Company. If the Customer fails to give such notice it shall be deemed to have waived its rights in respect of the defect.

12.5 If the Company has failed to perform the Services, or if there is a defect in a part which has been provided, the Company shall after receipt of a notice issued under Clause 12.4 as soon as reasonably practicable rectify the Services and/or remedy the defect. Notwithstanding the foregoing, the cost of travel and attendance by the Company for such rectification or remedy, and any dry-docking/berthing/shipping and storage costs, shall be for the Customer's account.

12.6 The Company shall be liable only for damage to the Vessel or Equipment, vessels and all other property caused by the Negligence of the Company in connection with the Services. The Company's liability in respect of such damage shall in every respect, unless otherwise agreed in writing by the Company, be limited to 50% of the value of the Services performed and for which payment has been received by the Company.

12.7 The cost of all investigative, diagnostic and fault tracing works shall in the first instance be for the Customer's account unless otherwise agreed in writing.

12.8 The Company will not accept any responsibility for the performance of the repaired parts and/or equipment of any work carried out by any Visiting Contractor.

13 LIMITATION OF LIABILITY

13.1 The Company's liability under Clause 12 represents the Customer's exclusive remedy. The Company shall have no responsibility for defects or damage due to circumstances for which the Company is not responsible, such as operator error or incorrect use of the Equipment, incorrect daily care or faulty maintenance by the Customer, normal wear and tear or any work carried out by a Visiting Contractor.

13.2 The Company shall have no liability for defective work or defective parts provided under the Contract or otherwise in negligence, except as stated in Clause 12. This also applies to any loss, foreseeable or unforeseeable which may be caused in connection therewith, such as loss of production, loss of use, re-docking, craneage, contract labour, tugs, demurrage, loss of profit or any other consequential economic loss.

13.3 The Company shall have no liability in respect of any verbal instruction intending to vary the Contract unless made in writing and signed by a duly authorised representative of both Parties.

13.4 The Company shall have no liability should the provision of the Services not be carried out as a result of any Company engineer or representative being denied access to the Customer's premises or Equipment for any reason, or being requested to perform additional tasks, before the Services are completed, without a written request from the Customer and acceptance thereof by the Company.

13.5 If the Company incurs liability towards any third party for loss or damage arising in connection with performance of the Contract, the Customer shall indemnify, defend and hold the Company harmless to the extent that the value of any claim exceeds the financial limit of the Company's liability as stated in Clause 12.6.

13.6 If a claim for loss or damage as described in this clause is made against one of the Parties, it shall forthwith inform the other in writing.

14 EVENTS OF DEFAULT

The Customer shall be in default under this Contract upon the occurrence of any of the following events or conditions:

- (a) Default in payment or performance of any of the obligations, covenants or liabilities contained or referred to in this Contract.
- (b) the Customer failing to co-operate in the smooth execution of the works carried out by the Company.
- (c) the Customer abandoning the Vessel either during or after the works carried out by the Company.
- (d) the emergence of legal action or litigation affecting the Vessel during the course of after the works, but before re-delivery of the Vessel.

15 FORCE MAJEURE

The Company shall not be liable to the Customer, or be deemed to be in breach of any Contract by reason of any delay in performing, or any failure to perform any of the Company's obligations in relation to the Services, if the delay or failure was due to any force majeure event which includes but is not limited to: act of God, inclement weather, epidemics, explosion, flood, fire or accident; war (declared or undeclared) or threat of war, sabotage, terrorism, piracy, insurrection, civil disturbance or requisition; acts, restrictions, regulations, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; import or export regulations or embargoes; strikes, lock-outs, or other industrial actions or trade disputes (whether involving employees of the Company or of a third party); difficulties in obtaining raw materials, labour, fuel, parts or machinery; power failure or breakdown in machinery;

pests, insects or vermin; and any other cause beyond the Company's reasonable control, which makes performance of its obligations impossible.

16 ASSIGNMENT

The Customer may assign the Contract to a third party subject to the consent in writing of the Company.

17 CANCELLATION

In the event that the Customer cancels its requirements for the Services at any time, the Company may recover from the Customer the full payment due to it by the Customer or such lesser amount as the Company in its sole discretion may decide. In the event of:

- (a) any default by the Customer in respect of the Contract;
- (b) the Customer having a petition presented for its liquidation or administration (otherwise than a voluntary liquidation for the purpose of amalgamation or reconstruction) or having a receiver appointed over any of its assets or undertakings, or becoming subject to any other insolvency proceedings or process;
- (c) the Customer making any composition with its creditors or ceasing or threatening to cease carrying on business; or
- (d) the Company reasonably apprehending that any of the above mentioned events is likely to occur in relation to the Customer and notifying the Customer accordingly; then without prejudice to any other right or remedy available to the Company, the Company may cancel the Services or suspend any further Services without any liability to the Customer. If the Services have been provided but not paid for, the charges in respect of those Services shall become immediately due and payable, notwithstanding any previous agreement or arrangement to the contrary and if the Customer fails to pay the charges the Company shall be entitled to exercise all or any of the remedies competent to it pursuant to these Conditions. This Clause 17 shall apply equally against the Customer and any agent, trustee, receiver, liquidator or administrator of the Customer.

18 LEGAL

18.1 These Conditions and the Contract shall be governed by the law of Scotland and the Parties hereby agree to the exclusive jurisdiction of the Scottish Courts. If any provision of these Conditions is held to be invalid or unenforceable by any judicial or other competent authority, all other remaining provisions of the Conditions shall remain in full force and effect.