

TERMS OF BUSINESS



Edition 12A

THESE TERMS OF BUSINESS APPLY TO ALL CONTRACTS FOR WORK AND FACILITIES OR GOODS UNDERTAKEN ON OR AFTER 14 OCTOBER 2003

1 LIABILITY

- 1.1 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 or any defect in any part of a customer's or third party's vessel); this extends to 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.
- 1.2 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 and in the absence of any negligence or other breach of duty by us 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.
- 1.3 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 which has not been caused by our negligence or another breach of duty on our part. 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.
- 1.4 Customers may themselves be liable for any loss or damage caused by them, their crew 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.

2 PRICES AND ESTIMATES

- 2.1 In the absence of express agreement to the contrary our price for work shall be based on time and materials expended and services provided.
- 2.2 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.
- 2.3 We will inform the customer promptly of any proposed increase in estimated prices and the reasons therefor and will only proceed with the work or supply with the approval of the customer. 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 price.

3 DELAYS

- 3.1 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.

4 VESSEL MOVEMENTS

- 4.1 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.

5 PAYMENT

- 5.1 Unless otherwise agreed between us the price of all work, goods and services shall be due immediately on invoice date.
- 5.2 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 at 4% over Barclays Bank Plc base rate.
- 5.3 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 (or provision of security) by the customer and removal of the vessel or property from our premises. The customer shall at any time be entitled to remove the vessel or other property upon providing proper 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, where the debt is contested, a reasonable provision for our prospective legal costs. 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.
- 5.4 Our customers' attention is drawn also to the note at Clause 9.2 of these Terms of Business regarding other rights which exist at law.

6 GUARANTEE

- 6.1 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/>
- 6.2 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.

- 6.3 In addition to the statutory and other rights provided by English law we guarantee our work for a period of 12 months from completion against all defects which are due to poor workmanship or defective materials supplied by us. 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].
- 6.4 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.
- 6.5 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:
 - 6.5.1 No 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.
 - 6.5.2 No proprietary article 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.
 - 6.5.3 We accept no liability to indemnify a Business Customer against any loss of profit or turnover which he or his customer or any other person may sustain in consequence of the failure of any faulty or unfit article supplied by us.

7 QUALITY STANDARDS

- 7.1 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.

8 ACCESS TO PREMISES/WORK ON THE VESSEL

- 8.1 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.
 - 8.2 Prior written consent will not be unreasonably withheld where:
 - 8.2.1 The work is of a type for which we would normally employ a specialist sub-contractor; or
 - 8.2.2 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.
 - 8.3 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.

9 RIGHT OF SALE

- 9.1 Where we accept vessels, gear, equipment or other goods for repair, refit, maintenance or storage we do so subject to the provisions of the Torts (Interference with Goods) Act 1977. This Act confers a Right of Sale on us in circumstances where the customer fails to collect or accept re-delivery of the goods (which includes a vessel and/or any other property). Such sale will not take place until we have given notice to the customer in accordance with the Act. For the purpose of the Act it is recorded that:
 - 9.1.1 Goods for repair or other treatment are accepted by us on the basis that the customer is the owner of the goods or the owner's authorised agent and that he will take delivery or arrange collection when the repair or treatment has been carried out;
 - 9.1.2 Our obligation as custodian of goods accepted for storage ends on our notice to the customer of termination of that obligation;
 - 9.1.3 The place for delivery and collection of goods shall be at our premises unless agreed otherwise.
Advice regarding the Act and its effect may be obtained from any of the sources referred to at Clause 6.1 above.
- 9.2 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 judgment debt against the Owner of a vessel or other property.

10 SUB-CONTRACTING

- 10.1 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.

11 NOTICES

- 11.1 Notice to a customer shall be sufficiently served if personally given to him or 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.

12 LAW AND JURISDICTION

- 12.1 Any contract or series of contracts made subject to these terms shall be subject to and governed by English law and
- 12.2 In the case of Business Customers any dispute arising under them shall be submitted to the exclusive jurisdiction of the Courts of England and Wales.
- 12.3 In the case of customers who are consumers or who are not contracting in the course of business any dispute shall be submitted to the non-exclusive jurisdiction of the Courts of England and Wales.