

# TERMS OF BUSINESS

## TWELFTH EDITION

THESE TERMS OF BUSINESS APPLY TO ALL WORK UNDERTAKEN AND FACILITIES OR GOODS SUPPLIED ON OR AFTER 1<sup>ST</sup> AUGUST 1999

### 1. LIABILITY

- A. We shall not be liable for any loss or damage caused by events or circumstances beyond our reasonable control (such as extreme weather conditions, the actions of third parties not employed by us or latent defects); this includes loss or damage to vessels, gear, equipment or other goods left with us for repair or storage, and harm to persons entering the premises and/or using facilities or equipment; customers should ensure that their own personal and property insurance covers such risks.
- B. Customers may themselves be liable for any loss or damage caused by them, their crew or their vessels. Any vessel, gear, equipment or other goods are left with us at the customer's own risk; the customer should maintain adequate insurance which should also cover third party liability of at least £1,000,000.

### 2. PRICES AND ESTIMATES

- A. In the absence of express agreement to the contrary our price for work shall be based on time and materials expended and services provided.
- B. When we give an estimate or indication of price – in writing or orally – we will exercise skill and judgment 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.
- C. We will inform the customer promptly of any proposed increase in estimated prices and the reasons therefor and will only proceed with the work at 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.

### 3. DELAYS

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 willful acts or omissions or from our negligence.

### 4. VESSEL MOVEMENTS

We reserve the right to move any vessel, gear, equipment or other goods at our discretion for reasons of safety or good management.

### 5. PAYMENT

- A. Unless otherwise agreed in writing the price of all work, goods and services shall be due immediately on invoice date.
- B. Pending receipt of payment in full without set off or deduction we reserve the right to charge interest on any sums outstanding after 30 days at 4% over Barclays Bank Plc base rate.
- C. We have the right to keep hold of a vessel, its gear and equipment and any other goods on which we have worked or in respect of which we have provided services pending payment in full of all sums due to us in respect of the provision of any such work or services. During any such period of retention we reserve the right to continue to charge for storage, hard standing and berthing at our usual commercial rates.

### 6. GUARANTEE

- A. Nothing in these terms affects the statutory rights of any customer who contracts with us as a consumer.
- B. 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.
- C. 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.
- D. Where we supply goods or services to a customer in the course of his business:
1. No goods or services shall carry any express or implied term as to quality or fitness for any particular purpose unless prior to the supply

- the customer has sufficiently explained the purpose for which it is required and made it clear that he is relying on our skill and judgment.
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 customer any rights we may have against the manufacturer or importer of that article.
  3. In no event do we accept liability to a business customer for consequential damage beyond replacement of any faulty or unsuitable article supplied by us.

### 7. QUALITY STANDARDS

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

- A. Subject to paragraph B of this Clause 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.
- B. Prior written consent will not be unreasonably withheld where:
1. The work is of a type for which we would normally employ a specialist sub-contractor; or
  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.
- C. Notwithstanding the foregoing, during periods of work by us on the vessel, neither the customer nor his invitees shall have access to the vessel without our prior consent, which consent shall not be unreasonably withheld. In the event of such access being permitted it will be at the customer's own risk.

### 9. RIGHT OF SALE

- A. 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. The 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:
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;
  2. Our obligation as custodian of goods accepted for storage ends on our notice to the customer of termination of that obligation;
  3. The place for delivery and collection of goods shall be at our premises unless agreed otherwise.
- B. In certain other circumstances we may be entitled to have vessels or goods sold through the Court for non-payment of invoices.

### 10. SUB-CONTRACTING

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.

### ANCILLARY PROVISIONS

11. If any provision of these Terms of Business is deemed for any reason to be invalid, void or deleted, 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.
12. Notices to the customer shall be deemed to have been 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.
13. These terms are subject to English law and any dispute arising under them shall be submitted to the jurisdiction of the Courts of England and Wales.