



TERMS & CONDITIONS

FOR THE SUPPLY OF GOODS & SERVICES

1. DEFINITIONS

In these conditions, which include the terms overleaf ("the Conditions"):

- (a) "the Contract" means a written agreement between the Contractor and the Customer for the supply of goods, services and/or use of the Dry Dock;
- (b) "the Contractor" means Small & Co. (Marine & Engineering) Limited;
- (c) "the Customer" means the person who buys or has agreed to buy Goods and/or Services;
- (d) "the Customer's Property" means any Goods belonging to the Customer, its servants, representatives or contractors;
- (e) "the Dry Dock" means the dry dock at 50 Commercial Road Lowestoft leased by the Contractor;
- (f) "Goods" means any machinery, equipment and materials including Vessel(s);
- (g) "Services" means pay work and services conducted by the Contractor;
- (h) "Vessel" means any Vessel or Vessels owned by the Customer subject to the Contract

2. CONTRACT

2.1 The Contract shall be governed solely by these Conditions. Any terms or conditions of purchase of the Customer, and any part of them, whenever and however provided or published, shall not apply to the Contract.

2.2 The Contract embodies the entire understanding of the parties with regard to its subject matter and may be varied or supplemented only by the written agreement between the Contractor and the Customer.

2.3 References to statutory provisions are to those provisions as amended or re-enacted from time to time and subordinate legislation.

2.4 Any illegality or invalidity of any of these conditions, or any part of them, shall not affect the legality, validity or enforceability of the remainder of the Conditions, or other parts of the Conditions.

3. DESCRIPTION AND SPECIFICATION

All specifications, descriptions, designs, drawings, illustrations, measures and/or other information provided by the Contractor, and or attached to or referred to by the Contractor in relation to Goods and/or Services are approximate, howsoever provided, and shall not form part of the Contract and may be subject to reasonable modification after the Contract has been made. Any reasonable modification shall firstly be notified to the Customer for approval.

4. PRICES AND TERMS OF PAYMENT

4.1 All prices and charges ("the Contract Price") are exclusive of:

- (a) VAT and, where applicable, any additional or substitute taxes, fees or appropriate charges whatsoever; and
- (b) all disbursements, including without limitation, towage, pilotage, harbour dues, craneage and transport (which shall firstly be notified to the Customer for prior approval);

all of which shall be paid by the Customer.

4.2 All prices for Goods are ex-works.

4.3 The Contractor may, at its discretion, but acting reasonably, revise the Contract Price at any time before delivery and/or completion to take account of, (i) modification as provided in condition 3, (ii) any variation in the costs of labour, services, materials and/or components, (iii) any increase in costs due to legislation, government orders, charges in any national agreement on employment and in regulations and/or guidelines applying directly or indirectly to goods and/or services and, (iv) changes in currency exchange rates.

Any such change in contract price shall be notified to the Customer as soon as is practicable so that the Customer can decide to agree that change or instruct the Contractor to stop providing the goods or services.

- 4.4 Unless otherwise agreed in writing and subject to Condition 4.5 payment of any invoice raised by the Contractor shall be made without deduction whatsoever within 30 days of the receipt by the Customer of the original VAT invoice, in default of which, interest shall be payable on the amount overdue from time to time at the rate of 2% above Lloyds Bank PLC base rate in force. In the event of a dispute, the undisputed amount shall be paid in full within 30 days of the invoice date, in default of which interest in line with that mentioned clause shall be payable on the undisputed sum above.
- 4.5 All sums due to the Contractor relating to Services on and/or for Vessels in the Dry Dock and/or incurred as a result of exercising their rights under this clause shall, to the extent required by the Contractor, be paid prior to the relevant Vessel leaving the Dry Dock and the Contractor shall be entitled to retain the Vessel and/or any other item(s) being the Customer's Property by way of lien for payment pending satisfaction in full.
- 4.6 In exercising the rights in clause 4.5 the Contractor shall be entitled, on at least 21 days notice in writing to the Customers, to sell or dispose of or deal with the Vessel and/or the Customer's Property as the case may be, as agents for, and at the expense of, the Customer and apply the proceeds in or towards the payment of the sums owed. The Contractor shall be obliged to obtain a good price for the vessel or Customer's property.
- 4.7 The Contractor shall, upon promptly accounting to the Customer for any balance remaining after payment of any sums due to the Contractor, and for the reasonable and proper cost of sale and/or disposal and/or dealing, be discharged of any liability whatsoever in respect of the Vessel and/or Customers Property.

5. DELIVERY, COMPLETION AND RISK

- 5.1 Customer's property to be worked upon shall be delivered to the Contractor by the date specified in the Contract, but such date can be changed by the Customer upon reasonable prior notice.
- 5.2 Risk in Customer's Property shall at all times remain in the Customer who shall keep Customer's Property insured against all relevant insurable risks in its full value throughout the term of the Contract.
- 5.3 Goods will be delivered ex-works except that where Goods are supplied in conjunction with Services where they will be deemed delivered where they are on completion. Services will be completed on the sending of written notice to that effect from the Contractor to the Customer who shall, within 2 days (Saturdays, Sundays and Public Holidays excepted) of receipt of that written notice take redelivery of any relevant Customer's Property at the Contractor's premises.
- 5.4 Risk in Goods shall pass to the Customer on delivery. Title and risk in work performed during the supply of Services shall pass on the completion of those Services as per clause 5.3.
- 5.5 The Contractor may make partial deliveries and/or supplies or deliveries and/or supplies by instalments and these Conditions shall apply to each such delivery and/or supply.
- 5.6 Without prejudice to clause 10 and clause 6.1 all delivery and/or performance dates are approximate. The Contractor will use all reasonable endeavours to deliver and/or perform by the date specified in the Contract, or if none is specified, within a reasonable time; however no liability will be accepted for any loss, damage and/or expense whatsoever occasioned by delay in delivery and/or performance, howsoever caused.

6. TITLE TO GOODS

- 6.1 Title in Goods supplied under the Contract shall not pass until:
- (a) payment by the Customer of the total invoice value of the Contract; and

- 6.2 Until title in Goods passes as above the Customer shall hold them as bailee for the Contractor but may use and/or sell them in the ordinary course of its business provided that so long as they remain in the Customer's possession they shall be kept insured against the usual risks and, were not being used, marked, stored and separate from other property of the Customer and/or any third party so as to be clearly identifiable as the Contractor.
- 6.3 The powers of the Customer referred to in the clause 6.2 shall be terminated by the Contractor:
- (a) if any payment under the contract is due and outstanding for 7 days and/or the Contractor has bona fide doubts as to the Customer's solvency; and/or
 - (b) if the Customer (or when the Customer is a firm, any partner in that firm) is the subject of a petition for a bankruptcy order or of an application for an interim order under Part VIII of the Insolvency Act 1986 or compounds with its creditors or has a receiver or manager appointed in respect of any of its assets or is the subject of an application for an administration order or of any proposal for voluntary arrangement under Part 1 of the Insolvency Act 1986 or enter into liquidation whether compulsory or voluntarily otherwise than for the purpose of amalgamation or reconstruction and in such manner that the company resulting from such amalgamation or reconstruction shall (if a different legal entity) effectively agree to be bound by and assume the obligations on the part of the Customer under the Contract and/or is subject to, or undergoes, any analogous act or proceedings under foreign law
- 6.4 Such termination as described in clause 6.3 shall be by written notice with immediate effect whereupon the Customer shall forthwith place Goods in which title has not passed, and which remain unsold in its possession or under its control, at the disposal of the Contractor who is irrevocably authorised to enter the Customer's premises and/or Vessel and remove them.
- 6.5 Title in all parts and materials removed from the Customer's Property and not re-used shall vest in the Contractor.

7. WARRANTY

7.1 Subject to:

- (i) payment when due of all sums payable under the Contract; and
- (ii) negligent misuse by Customer, misuse or wear and tear;

the Contractor warrants that if, within 6 months of the delivery of Goods and/or completion of Services, the Customer claims that it considers them to be defective, providing a full description of the aspects in which they are allegedly defective, and if the Contractor judges it reasonable to do so, after inspection or otherwise, the Goods and/or Services will be repaired, exchanged and/or reworked as is deemed most appropriate by the Contractor.

No action taken and/or statements made by the Contractor in relation to clause 7.1 and/or any Customer's claim under it shall constitute an admission of any liability whatsoever on the part of the Contractor and/or constitute recognition by the Contractor of any defect in any Goods and/or Services provided by them.

7.2 In relation to a claim under clause 7.1 the Customer will allow the Contractor access (under an agreed regime) to its premises and/or Vessel for inspection purposes. The Customer will reimburse the Contractor for all its expenses incurred in connection with such visit and inspection in the event that the goods/services are found not be defective.

7.3 This warranty shall only be applicable if:-

- (a) There has been no misuse of the relevant Goods and/or to the relevant work performed under the Services; and
- (b) No material alterations or repairs have been made to the relevant Goods and/or the relevant work performed under Services except with the written consent of the Contractor.

7.4 Goods not manufactured by the Contractor (including distinguishable components of Goods manufactured by the Contractor) carry only the warranty, if any, of their manufacturer, to the benefit of which the Customer shall be entitled insofar as the Contractor has the power to assign it. The Contractor shall endeavour to provide the benefit of such warranty to the Customer.

7.5 The Contractor shall bear the costs of forwarding repaired or exchanged Goods and/or Customer's Property (other than Vessels which shall be redelivered in accordance with clause 5.2) upon which remedial work has been performed.

8. CONTRACTOR'S LIABILITY

8.1 The provisions of clause 7 are in lieu of all conditions, warranties and statements in respect of Goods and/or Services whether expressed or implied by statute, trade, custom or otherwise (including, without limitation, any such condition, warranty or statement as to the quality or description of Goods and/or Services or their fitness for a particular purpose) and any such condition, warranty or statement is hereby excluded.

8.2 Without prejudice to the provisions of clauses 5.5, 7; 8.1, 8.3 and 8.5 where the Contractor is held liable for any loss or damage (except loss of, or damage to, Customers Property) sustained by the Customer as a result of any breach or breaches of the Contract, and/or any other liability of the Contractor (including negligence) in relation to the supply of Goods and/or any Services under the Contract, such liability shall in no event exceed the obligation to make compensation (including the value of warranty work and supplied, at the Contractor's normal prices under Condition 7) exceeding that paid by the Customer to the Contractor under the terms of the contract other than in respect of death of bodily injury to third party persons caused by the negligence of the Contractor.

8.3 Subject to the terms of clause 8.5 the Contractor shall not be liable for the following loss or damage howsoever caused.

- (a) loss of profits; and
- (b) special, indirect or consequential loss, damage, and/or expenses; and
- (c) loss of, or damage to, Customer's Property, other than in respect of the Vessel where such loss or damage arises from the sole negligence of the Contractor.
- (d) Any liability whatsoever for consequential loss of any kind including but not limited to loss of use, loss of charter, detention caused by or as a consequence of loss or damage to ships spares of any description whilst held away from the vessel in the care custody or control of the Contractor whether or not such loss or damage was the result of the Contractor's negligence breach of duty of Contractor

8.4 The Customer shall indemnify the Contractor against all loss, (including but not limited to all direct loss, loss of profits, special, indirect and consequential loss) damage, liability, actions claims, costs and expenses (including without limitation, court costs and legal fees on a full indemnity basis) whatsoever arising directly or indirectly as a result of:-

- (a) any claim and/or liability under the Consumer Protection Act 1987 unless such claim and/or liability is caused by the negligent act or omission of the Contractor in the supply of Goods and/or Services; and/or
- (b) any negligent or wilful act or omission of the Customer in relation to the use, sale or supply of Goods and/or Customer Property in relation to which Services have been performed, and/or
- (c) any occurrences during, resulting from and/or connected with any entry into, stay in and/or exit from the Dry Dock and activity on a Vessel whilst in the Dry Dock and/or trials and/or movements of a Vessel in connection with the supply of Goods and/or Services, other than were caused by the sole negligence of the Contractor.

8.5 Nothing contained in these conditions shall purport to exclude or restrict any liability the exclusions or restriction of which is prohibited by sections 2(1) and 6(1) of the Unfair Contract Terms Act 1977 provided that this clause 8.5 shall not apply to any such contract as is described in Section 26(3) of that Act.

9. TERMINATION

At any time after the occurrence of any of the events mentioned in clause 6.4 (a) and (b) the Contractor shall be entitled, without prejudice to its other rights, to terminate the contract or any unfulfilled part of it by written notice with immediate effect.

10. FORCE MAJEURE

The Contractor shall be entitled, without liability on its part, but acting reasonably, to terminate the Contract or any unfulfilled part of it, at its option, but upon at least 7 days written notice to suspend or make partial delivery and/or performance and, in each case, to adjust the price accordingly, if the supply of Goods and/or Services by the Contractor is prevented, hindered or delayed, directly or indirectly, by reason of any cause whatsoever beyond the Contractor's reasonable control, whether such cause existed on the date when the Contract was made or not.

11. INTELLECTUAL PROPERTY

The Contractor shall own and retain the property and all intellectual property rights whatsoever in and/or described in all inventions, improvements, specifications, designs, drawings, patterns, tooling, moulds and other technical descriptions and documents developed, produced and/or supplied (which supply shall; be on the basis of a non-transferable non-exclusive 5 year licence) by it in the course of the supply of Goods and/or Services, all of which, notwithstanding any licence, the Customer shall keep strictly confidential and not disclose, or allow to be disclosed, to any third party.

12. VESSELS

- 12.1 For any trials and/or movements and/or dry docking of a Vessel the Customer shall make available duly qualified crew and/or representative(s), as the case require, who shall be solely responsible for their safe conduct and the safety of the Vessel but who shall not hinder or delay any work to be done by the Contractor under the Contract.
- 12.2 During any trials and/or movements and/or dry docking of a vessel the Customer shall ensure the Contractor is listed as co-insured on the Vessels hull and P & I insurance policies.
- 12.3 All Vessels to undergo work under a Contract shall, unless otherwise agreed, be delivered with sufficient fuel oil, lubricants, fluids and other consumables necessary for the work to be performed for the terms of Contract.
- 12.4 The Customer shall procure in respect of its Vessel and/or all activity carried out on the Vessel and/or in Dry Dock by itself, its servants, representatives and contractors that at all times all relevant legislation, regulations and directives are carried out in full.

13. DRY DOCK

- 13.1 Vessel shall enter and leave the Dry Dock at the times appointed by the Contractor and shall take position in accordance with the Contractor's instructions.
- 13.2 Docking and undocking costs, as the case may be, shall be payable in full for any aborted attempt to enter or leave the Dry Dock save to the extent that the Contactor is solely responsible for the failure.
- 13.3 In the event that a Vessel is in Dry Dock for more than 7 consecutive days, other than because of a delay for which the Contractor is responsible, the Contractor shall be entitled, all at the expense of the Customer, to remove the Vessel from the Dry Dock, and/or to carry out any work on and/or for the Vessel to be put in a condition to leave the Dry Dock, without liability whatsoever and without prejudice to its rights under the Contract accrued at the time. Following removal from the Dry Dock under this clause 13.3 any re-docking shall be entirely at the Customer's cost and expense.

13.4 The Contractor shall be entitled at its absolute discretion, to refuse entry and/or impose conditions on entry to the Dry Dock particularly in relation to the type and/or condition of the Vessel, anything on board, or previously on board a Vessel and/or judged by the Contractor at its sole discretion, the competency of the Vessel's crew, in each case without liability and without prejudice to its right under Contract accrued at the time.

13.5 Whilst a Vessel is in the Dry Dock:-

- (a) the Customer shall ensure that there shall not be on board any petroleum or other explosive, inflammable or dangerous substance except those permitted and required under clause 12.2 above;
- (b) the Customer shall ensure that no fire shall be lit on board and no naked light shall be allowed on board without the Contractor's prior written approval which shall be given at the Contractor's sole discretion;
- (c) the Customer shall ensure that it shall not be broken up or scuttled without the Contractor's prior written approval which shall be given at the Contractor's sole direction;
- (d) it may be removed by the Contractor immediately, at the Customer's expense, in the event of the breach by the Customer of any of the provisions of the Contract;
- (e) the Contractor shall be entitled to have other Vessel enter and/or leave the Dry Dock;
and
- (f) the Customer shall, on a daily basis, procure the removal of all rubbish and waste material relation to the Vessel during the Vessel's period in the Dry Dock, failing which the Contractor shall be entitled to do so and recover the costs of doing so from the Customer.

13,6 Prior to a Vessel leaving the Dry Dock the Customer shall make good any damage done to the Dry Dock, it's equipment, fixtures and fittings, by the Vessel and/or servants, representatives and contractors of the Customer and shall remove any rubbish and waste material relating to the Vessel and her stay, failing which the Contractor shall be entitled to do so and recover the costs if doing so from the Customer.

14. ASSIGNMENT AND SUBCONTRACTING

The Contractor shall be entitled to transfer all rights and obligations arising out of the Contract to a third party upon written notice being provided to the Customer.

Such notice shall be provided no later than 21 days before such assignment shall take effect.

The Contractor has the right to subcontract all or part of any Service or provision of dry docking facilities to third parties provided that written notice is given to the Customer and the Customer and any subcontracting shall not relieve the Contractor from any of it's obligations under the Contract.

15. GOVERNING LAW AND JURISDICTION

The Contract shall be governed by and construed in accordance with English law and the parties hereby submit to the non-exclusive jurisdiction of the English courts.

Should any sums remain outstanding and/or owed to the Contractor and/or a dispute arises under the terms of the Contract, the Contractor may proceed in rem against the Customer.

16. THE CONTRACTOR SUPPLIES CERTAIN GOODS AS AGENT FOR THEIR MAKER, SUCH SUPPLIES ARE MADE ON THE MAKER'S TERMS WITHOUT LIABILITY FOR THE CONTRACTOR