

MARITIME YACHT SERVICES

TERMS OF BUSINESS

All Works performed or to be performed by **MARITIME YACHT SERVICES LTD, UNIT 5 UNIVERSAL MARINA, CRABLECK LANE, SARISBURY GREEN, HAMPSHIRE, SO31 7ZN** (“**MYS**”) shall be subject to these Terms of Business which, together with the Estimate, shall comprise the “Contract” between MYS and the Client.

1. DEFINITIONS

“**Business Day**” means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

“**Client**” means the owner or insurer of the Vessel or any person appointed by the owner or insurer by notice in writing to MYS to act on the owner’s or insurer’s behalf. In the absence of contrary instructions, the Captain of the Vessel shall be deemed to act with the full authority of the Client who shall be bound by all acts and instructions of its Captain and/or other appointed representative(s).

“**Estimate**” means MYS written estimate(s) detailing the scope of the Works.

“**Parties**” means MYS and the Client; and individually a “Party”. “Third Party Works” means all works performed at any time during the Works by persons other than MYS or others on MYS behalf.

“**Vessel**” means the vessel referred to in the Estimate.

“**Works**” means the works to be carried out by MYS as more fully particularised in the Estimate.

2. BASIS OF CONTRACT

2.1. The Estimate constitutes an offer by MYS to provide the Works and any Additional Works as the same may be agreed from time to time, with all reasonable care and skill and in accordance with these Terms of Business.

2.2. The Estimate and the duration of the Works shall be adjusted to reflect any change in the scope of the Works.

2.3. The Client is fully authorised to contract with and give instructions to MYS and to incur charges in relation to the Vessel.

2.4. MYS will have unimpeded access to all relevant parts of the Vessel.

3. PRICES AND ESTIMATES

3.1. MYS will use reasonable care and skill when providing Estimates and indications of price which shall however be subject to the accuracy of information provided by the Client. Estimates and indications of price, being based only on preliminary examination of the Vessel, cannot include the cost of emergent work or extensions to the scope of the Works.

3.2. In order to ensure the accuracy of Estimates, the Client shall, before commencement of the Works, notify MYS of the prior application of any surface treatment (other than normal washing down).

2 3.3. To the extent that Estimates are based on information provided by or on behalf of the Client which subsequently changes or is found to be inaccurate or incomplete, the pricing and duration of the Works shall be subject to adjustment.

3.4. MYS shall promptly notify the Client of any proposed increase in Estimates and the reasons therefore and shall only proceed with related works once the Client has confirmed the same in writing.

3.5. An Estimate price lasts for 30 days from the date shown on the estimate.

4. PAYMENT

4.1. Unless otherwise agreed in writing, payment for the Works, goods and services shall be due immediately on receipt of invoice. Payment shall be deemed to have been made when MYS is in receipt of full payment of the Works.

4.2. Interest shall be due and payable on any sum outstanding for more than 20 Business Days at 5% above Bank of England base rate, compounded monthly.

4.3. MYS reserves a general right ("a general lien") to detain and hold onto the Vessel or other property belonging to the Client in MYS's possession pending settlement of all sums due to MYS. MYS shall be entitled to charge reasonable storage costs and the provision of any ongoing services at its normal rates until payment of all sums due.

5. SERVICES

5.1. MYS shall use reasonable endeavours to meet any performance dates specified in the Estimate, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Works.

5.2. MYS reserves the right to amend Estimates if necessary to comply with any applicable law or regulatory requirement on notice to the Client.

5.3. MYS reserves the right to move the Vessel, gear, equipment or other property belonging to the Client at any time for reasons of safety, security or good management.

6. ADDITIONAL WORKS

6.1. All additional works not included in the Estimate to be performed by MYS, including but not limited to any works that have to be repeated due to the presence of pre-existing silicone-based products or other contaminants not removed through the agreed scope of Works, shall be:

(a) charged on a time and materials (at cost plus 15%) basis plus such additional costs as may be agreed for overtime, plus any displacement costs if working away from MYS's premises (the "Additional Works"). Full details of such rates, as well as other charging details applicable under the Contract, are set out under MYS's normal daily rate sheet, as may be amended from time to time and which is available to the Client on request; and

(b) defined in a MYS works order and signed by the Client (or as otherwise agreed by the Parties in writing). MYS may present interim invoices for such Additional Works or request stage payments, as appropriate.

7. PERFORMANCE

7.1. MYS shall not be liable for any delay in or failure of performance caused by a Force Majeure event described at Clause 12 or the Client's failure to:

(a) make the Vessel available;

(b) notify MYS of the prior application of any surface treatment in accordance with Clause 3.2;
or

(c) provide MYS with accurate or complete information on which Estimates are based.

7.2. MYS may subcontract all or any portion of the Works to appropriately qualified third parties at its discretion, cost and expense.

8. THIRD PARTY WORKS

8.1. The Parties acknowledge that any Third Party Works, whether or not scheduled, may interfere with and/or hinder the Works, whether affecting the cost and/or timing of the Works or otherwise. All Third Party Works shall accordingly be subject to the following conditions:

(a) all Third Party Works shall be included by the Client in a master Third Party Works' list to be approved by MYS prior to commencement of the Works and any material changes shall be notified by the Client from time to time;

(b) MYS may require the Client to cease all or any part of the Third Party Works temporarily at any stage if they interfere in any way with the Works. MYS will have no liability or obligation regarding any Third Party Works or their cessation or interruption as aforesaid, nor for any damage or contamination caused to the Works and/or MYS by the Third Party Works. In the event that any Third Party Works cause any costs or delay to MYS, then MYS will notify the Client of the estimate of such costs and/or delay. Any such costs shall be borne by the Client and MYS shall not be responsible for any such costs or delay;

(c) all Third Party Works shall be carried out by or on behalf of the Client or his representatives in full compliance with MYS's Health and Safety, environmental and access policies (available upon request);

(d) the Client shall ensure that Third Party Works:

- i. shall not cause any nuisance or annoyance to MYS, or to any other customer or person in the vicinity of MYS's premises or the Vessel; and
- ii. shall not interfere with MYS's schedule of work or the good management of MYS's business,

(e) no Third Party Works shall be carried out on the Vessel or other property on MYS's premises without MYS's prior written approval;

(f) MYS shall not be responsible to the Client or its representative(s) or third parties for the consequences of any failure to comply with any of the foregoing provisions of this Clause 8.1; and

(g) MYS may require the immediate cessation of any Third Party Works which in MYS's opinion fail so to comply.

9. WARRANTY

9.1. MYS warrants, for a period of 12 months (the "Warranty Period") following the date of execution by both Parties of the Satisfaction Note (execution of the same not to be unreasonably withheld or delayed by the Client) or payment of the final invoice (whichever occurs first), the Works against defects due to its poor workmanship or that of its employees or subcontractors (the "Warranty").

9.2. Warranty works shall be carried out by MYS at Universal Marina, unless the Client agrees in advance to pay for travel and displacement costs for the Works to be carried out at another location.

9.3. This Warranty shall be subject to MYS's receipt of:

(a) notification of each defect as soon as reasonably practicable after discovery and in any event within the Warranty Period and within 14 days after discovery; and

(b) settlement in full of all amounts owing to MYS, provided always that the Client shall have taken all reasonable steps to mitigate the defect and, at the Client's cost and responsibility, to have made the Vessel available for the necessary remedial works.

9.4. Following redelivery of the Vessel, MYS's liability to the Client shall be limited to the cost of labour and materials necessary to carry out the aforesaid Warranty works and in any event shall not exceed the price paid or to be paid for the Works.

9.5. The following remedial works shall be excluded from the scope of MYS's liabilities pursuant to the Warranty:

- (a) any fault or defect appearing as a result of wear and tear;
- (b) improper maintenance or treatment (including but not limited to the incorrect use of soaps, solvents, polishes or any other cleaning or maintenance product) by the Client or the Vessel's crew or any third party;
- (c) any reaction caused by the presence of silicone-based products;
- (d) tension lines or print-through from previous or new repairs, which are generally caused by a different "Shore D" hardness between the existing fairing and the fairing compound applied to a repair patch. MYS will use reasonable efforts to apply the same or similar filler as the original, which will reduce the risk of tension lines, but MYS is unable to guarantee that old tension lines will not reappear in the future or that new ones will not appear in areas where repairs are carried out;
- (e) any reappearance of any crack or other defect caused by movement of the substrate or any other cause over which MYS has no control;
- (f) correction of faults arising from works undertaken or materials applied to the Vessel prior to the commencement of the Works, unless such faults are identified prior to the commencement of the Works and are accepted to be corrected by MYS and expressly agreed to form part of the Works;
- (g) any blisters which may appear in areas not repaired by MYS or in areas where MYS did not have full access to the source of any corrosion or in areas adjacent to wood, spot welds or any seams of dissimilar materials;
- (h) any impact upon the underlying coatings or substrate of any change in the topcoat colour;
- (i) any third party items such as travel, berthing, hauling, hardstanding, scaffolding, covering, fittings, caulking or teak removal, shed costs and shipyard charges of any kind whatsoever;

(j) any costs of transport or delivery to the location where the warranty works will be carried out;
or

(k) any costs for water, electricity, rubbish removal and other consumables.

(l) Ceramic Coating:

(a) Warranty will only be provided to vessels less than six months old; due to not knowing the history of a vessel's surface and compatibility.

(b) Warranty will only be provided on vessels less than six months old, that adhere to our specific ceramic coating terms.

10. INDEMNITY AND INSURANCE

10.1. The Client shall indemnify, and keep indemnified and hold harmless MYS from and against any losses, damages, liability, costs (including without limitation legal fees) and expenses incurred by MYS as a result of or in connection with the Client's breach of any of its obligations under the Contract.

10.2. The Client shall at all times keep the Vessel, equipment, gear and personal effects fully insured against all risks of physical loss and damage with reputable insurers and shall at all times maintain public and third party liability cover for at least £5,000,000 (five million pounds sterling) and shall provide MYS with evidence thereof promptly on request.

11. LIMITATION OF LIABILITY

11.1. The full extent of MYS's liability under or in connection with the Contract (whether such liability arises in tort, contract or otherwise) shall be as set out exclusively in Clause 9 and this Clause 11.

11.2. Save as expressly provided herein, MYS's total liability arising out of or in connection with the Works shall not exceed the price paid or to be paid for the Works.

11.3. Notwithstanding any other provision of the Contract, MYS shall not be liable for any consequential, indirect or special losses including without limitation any of the following (whether direct or indirect):

(a) loss of profit;

(b) loss of data;

(c) loss of use;

(d) loss of opportunity; or

(e) damage to reputation or loss of goodwill, provided always that MYS's liability for personal injury or death caused by its negligence shall not be limited in any way.

12. FORCE MAJEURE

12.1. "Force Majeure" event means circumstances beyond MYS's control including without limitation acts of god, acts or directives of governmental authorities, any delay in the conduct of tests or trials as a result of adverse weather conditions, war or other hostilities, blockage, revolution, insurrection, mobilisation, civil war, civil commotion, riot, sabotage, epidemic, quarantine, earthquake, extreme adverse weather conditions, explosion, fire, strikes, lockouts, failure of electricity or other services, collision or stranding, import restrictions, destruction of the whole or part of MYS's premises or other facilities of any of its subcontractors or suppliers, destruction of equipment or materials in transit to MYS's premises or other premises as aforesaid, and/or the non- or late delivery of materials or equipment required in connection with the Works.

12.2. Insofar as any Force Majeure event is not evident to the Client or public knowledge and insofar as such event may affect the progress of the Works, MYS shall give the Client notice of any such event promptly following becoming aware of it.

13. DEFAULT AND TERMINATION

13.1. MYS may suspend or terminate the Contract at any time on written notice, if the Client:

- (a) commits a material breach of the Contract and such breach is not remediable;
- (b) commits a material breach of the Contract which, if remediable, is not remedied within 10 Business Days following notice of such breach;
- (c) fails to pay any amount due under the Contract on the due date and such amount remains unpaid for more than 10 Business Days; or
- (d) has a petition presented for its winding up or administration which is not discharged within 10 Business Days of presentation or any other action is taken with a view to its winding up (otherwise than for the purpose of reorganisation or amalgamation without insolvency), or becomes bankrupt or commits an act of bankruptcy, or makes any arrangement or composition for the benefit of creditors, or has a receiver and manager or administrative receiver or administrator or liquidator appointed in respect of any of its assets, or has anything analogous to any of the foregoing under the law of any jurisdiction occur to it, or ceases or threatens to cease to carry on business.

13.2. The Client shall be responsible for all costs, expenses and liabilities incurred as a result of any such suspension, including without limitation dockage, rental of equipment and scaffolding, demobilisation, downtime and remobilisation charges, displacement costs, overtime required to reduce delays, subcontractors' charges, increased costs of insurance and interruption and/or extension of warranties.

13.3. Suspension or termination of the Contract shall be without prejudice to the accrued rights of MYS.

13.4. MYS accepts the Vessel, gear and equipment and other property for repair, refit, maintenance or storage subject to the provisions of the Torts (Interference with Goods) Act 1977 which confers a right of sale on MYS, following appropriate notice, if the Client fails to collect or accept re-delivery of the Vessel, gear and equipment, as the case may be.

13.5. MYS's obligations as custodian of goods accepted for repair, refit, maintenance or storage ends when MYS gives notice of redelivery to the Client.

13.6. The place for redelivery and collection will be at MYS's premises, unless otherwise agreed.

14. LAW AND DISPUTES

14.1. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject-matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

14.2. Any dispute of a technical nature (being disputes or claims regarding any technical matter arising out of or relating to the Works and/or the condition of the Vessel prior to commencement of the Works) that cannot be resolved by agreement may be submitted to a suitably qualified independent expert agreed between the Parties, whose written opinion shall be final and binding.

15. GENERAL

15.1. Assignment.

Neither the Contract, nor any claim or right the Client may have hereunder, may be assigned or otherwise transferred by the Client without MYS's prior written consent.

15.2. Entire Agreement

(a) The Contract constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject-matter.

(b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract.

15.3. Variation.

Except as expressly set out herein, no variation of the Contract shall be effective unless in writing and signed by the Parties or their authorised representatives.

15.4. Waiver.

A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

15.5. Severance.

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this sub-clause shall not affect the validity and enforceability of the rest of the Contract.

15.6. Notices

(a) Any notice or other communication in connection with the Contract shall be in writing and shall be delivered by hand or pre-paid first-class post or other next working day delivery services, as follows:

- i. to MYS: at its registered office address referred to above and as may be amended from time-to-time; and
- ii. to the Client: at its registered office address (if a company), its residence in any other case or to any such other address as may be notified by the Client to MYS from time-to-time.

(b) Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first class post or other next working day delivery service, at 09:00 on the second Business Day after posting or at the time recorded by the delivery service.

(c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

15.7. Third Party Rights.

No provision of the Contract is enforceable under the Contracts (Rights of Third Parties) Act 1999 by anyone other than a party to the Contract.