

## **TERMS OF BUSINESS OF ARDENT MARINE LTD**

### **1. INCORPORATION OF TERMS**

- 1.1. These Terms of Business are incorporated into and form an integral part of all quotations and contracts provided by the Company and, in particular, the Agreement.
- 1.2. These Terms of Business apply to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

### **2. DEFINITIONS**

- 2.1. In these Terms of Business:

‘Agreement’ means the agreement between the Company and the Customer, whether verbal or in writing, whereby the Customer requests and the Company agrees to perform the Work.

‘Applicable Laws on Consumer Rights’ means all applicable laws, rules, regulations, instruments and provisions in force from time to time relating to consumer protection, including but not limited to the Consumer Rights Act 2015.

‘Company’ means Ardent Marine Ltd, as well as any authorised member, agent, employee or representative of the Company.

‘Consumer’ means a Customer who is considered a “consumer” under the Applicable Laws on Consumer Rights.

‘Customer’ means the party or parties with whom the Company agrees to perform the Work and shall include the legal owner of any relevant Vessel, any parent or associated company and/or firm, as well as any authorised member, agent, employee or representative of the Customer. Where the Vessel is under demise charter and the Agreement is with the demise charterer, the Customer shall also include the demise charterer. In the event that the Company enters into the Agreement with more than one party, the obligations of such other parties shall be joint and several, unless otherwise agreed in writing.

‘Parties’ means the Company and the Customer; each a Party and collectively the Parties.

‘Vessel’ means any vessel or a floating craft of any nature (or part thereof), or any other comparable object such as a yacht, a lighter, a barge, a pontoon, a tug, a drilling-platform, a rig as well as any other object entrusted to the Company for the Work to be undertaken.

‘Work’ means the goods and services supplied to the Customer and/or work undertaken by the Company pursuant to these Terms of Business.

### 3. SCOPE OF WORK AND INSTRUCTIONS

- 3.1. The scope of the Work is as agreed between the Company to the Customer in writing or orally at any time and subject to any agreed or express or implied limitations or restrictions.
- 3.2. The Customer undertakes to provide clear and full instructions to the Company and to disclose to the Company all relevant information in their possession or knowledge in relation to the Vessel or otherwise required to enable the Company to perform the Work in sufficient time to enable the Work to be performed effectively and efficiently.
- 3.3. The Company shall be entitled to rely on the information and instructions provided by the Customer to the Company and the Company shall not be responsible for any failure to undertake the Work due to the Customer's breach of clauses 3.3.
- 3.4. Unless otherwise stated in writing, all services and reports are provided on the basis that they carry no guarantee regarding ownership or title, freedom from mortgages or charges, debts, liens or other encumbrances, or vessel stability, performance or design.
- 3.5. Any valuations that may be given by the Company are based on opinions only and are not representations of fact, nor do they carry with them any guarantee of the particulars or information on which opinions are based. Valuations assume a willing buyer and willing seller and market conditions applicable at the time of valuation or such other date as is expressly referred to.
- 3.6. Any survey performed by the Company will be based on an inspection that is performed as thoroughly as is practicable in the circumstances and at the relevant time, bearing in mind any clear and reasonable limitations and restrictions on access. The Company shall endeavour to comment on the more important items where, in the Company's reasonable opinion, major costs consequences are considered likely to arise but cannot comment on every minor matter or any areas outside of its knowledge or which cannot reasonably be ascertained from a visual inspection of the Vessel at the time or survey. Where the Company surveys a Vessel out of the water, the Company makes no representation and gives no warranty as to the watertight integrity or buoyancy of the Vessel.

### 4. INSURANCE

- 4.1. The Customer shall effect and maintain, at no cost to the Company, liability insurance providing cover for any loss or damage for which the Customer may be liable under these Terms of Business (including third party liability cover and, where appropriate, employer's liability cover in respect of any of its employees).
- 4.2. The Company shall effect and maintain, at no cost to the Customer, professional indemnity insurance in the amount of £150,000 or such higher sum as the parties shall agree in writing prior to commencement of the Work ("the Professional Indemnity Insurance") throughout the period of the performance of the Company's duties

hereunder provided that such insurance shall remain available at reasonable market rates.

- 4.3. Each Party shall produce copies of insurance policies as evidence of cover, immediately and (in any case within seven (7) days) upon request by the other Party.

## 5. LIABILITY

- 5.1. No liability howsoever arising whether under this Agreement or otherwise shall attach to the Surveyor except insofar as such liability is covered by the Professional Indemnity Insurance and such liability (including Claims Expenses) shall in any event be limited to the agreed indemnity limit.
- 5.2. Subject to Clause 5.7, the Company shall under no circumstances whatsoever, be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with these Terms of Business.
- 5.3. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from these Terms of Business.
- 5.4. The Company shall not be responsible for loss or damage or any increase in loss or damage resulting from any material breach by the Customer of any term of the Agreement.
- 5.5. The Customer shall take all necessary precautions to avoid pollution of the environment and shall indemnify the Company for any liability, loss or damage arising from any pollution of the environment in relation to the Works.
- 5.6. The Company shall not be under any duty to salvage or preserve the Vessel from the consequences of: (a) any defect in the Vessel and/or (b) an accident which has not been caused by the Company. However, the Company reserves the right to salvage or preserve the Vessel, at its sole discretion, in appropriate circumstances and in particular where the safety of people, property or the environment is at risk.
- 5.7. Nothing in these Terms and Conditions shall limit any liability which cannot be legally limited, including but not limited to liability for death and personal injury.
- 5.8. Where the Customer is not a Consumer:
- 5.8.1. these Terms of Business do not contain any express or implied term as to quality or fitness for any particular purpose, unless, prior to the Work being performed, the purpose has been clearly identified in writing to the Company and the Customer has stipulated that it is relying upon the Company's skill and judgment to ensure this purpose has been met;

- 5.8.2. the Company accepts no liability to the Customer in respect of any consequential or economic loss or loss of profit or turnover which the Customer or its customer or any other person may sustain in consequence of the failure of any faulty or unfit article supplied to the Customer by the Company;
- 5.8.3. The Company's liability for any matters arising from the Work shall expire twelve months after the Work is completed or the subsequent report, if any, is delivered to the Customer, whichever is later. The Company shall thereafter have no further liability whether in contract, tort or otherwise; and
- 5.8.4. The Company shall not be responsible for any breach of its obligations under the Agreement unless written notice thereof is given to the Company within 30 days of the date on which the Client ought reasonably to have become aware of the existence of such breach.

## 6. FORCE MAJEURE

- 6.1. The Company shall not be liable insofar as performance of the Work has been delayed, hindered, interfered with or prevented by events or circumstances beyond its reasonable control (which includes, without limitation, acts of God; wars (whether declared or not); riots; civil commotions; malicious damage; embargoes; trade restrictions; blockades; compliance with any law or governmental order; rule; regulation or direction; breakdown of plant or machinery; explosion; fire; flood; accidents; strikes, lock-outs or other industrial/labour disputes (whether involving the workforce of the Company or any other party); failure or destruction of a utility service or transport network, port or marina facility or obstruction of waterway; chemical or biological contamination; unusually severe weather conditions; plague, epidemic or pandemic; default of suppliers or subcontractors or the actions of third parties not employed by the Parties; or any other circumstances beyond the Company's reasonable control.

## 7. GUARANTEE

- 7.1. Where any engineering or repair work is performed pursuant to the Agreement, the Company guarantees that, for a period of twelve (12) months from completion of the Work (the "Warranty Period"), the Work will be free of defects in material and workmanship and in conformity with the agreed specification.
- 7.2. On written notification by the Customer of any defects in material or workmanship ("Defective Work") together with supporting evidence, the Company will be given a reasonable opportunity to inspect the Defective Work and, at the Company's option, to repair or re-perform, in whole or in part, at its discretion, the Defective Work. Delivery of repairs or re-performance under this guarantee will be made in accordance with these Terms of Business.
- 7.3. Upon discovery of any Defective Work, the Customer shall take all appropriate steps to mitigate any loss or damage and to prevent any Defective Work becoming more serious.

7.4. The Company shall not be liable for any Defective Work if the Customer effects remedial work on the Defective Work itself or if the defect arose as a result of:

- 7.4.1. the Customer's failure to follow the Company's oral or written instructions;
- 7.4.2. the Company following any drawing, design or specifications supplied by the Customer;
- 7.4.3. fair wear and tear, wilful damage, negligence or abnormal working conditions; and/or
- 7.4.4. changes made to ensure compliance with applicable statutory or regulatory standards.

7.5. Notwithstanding any other provision of the Agreement, unless otherwise stated in writing, no guarantee is given against faulty design, latent defects or of suitability of any vessel or other item for any particular purpose or of compliance with any particular local, national or international requirement or code.

## 8. PRICES AND ESTIMATES

8.1. The price for the Work shall be the price quoted in writing by the Company prior to undertaking the Work, or if no price is quoted for the Work, the price will be determined based upon the labour and materials expended and services provided in accordance with the Company's usual tariff at the time when the Work was performed or in the absence of an applicable tariff, a reasonable tariff based on market rates at the time, as duly invoiced to the Customer (the "Price").

8.2. Unless otherwise agreed in writing, the Price will not include expenses incurred for:

8.2.1. pilotage, salvage, tugs, harbour dues and similar charges associated with and necessitated by the Work; or

8.2.2. travel, subsistence and accommodation;

which shall be invoiced separately to the Customer.

8.3. The Company will exercise reasonable skill and judgment when quoting the Price. However, the Price is always subject to the accuracy of information provided by the Customer, is often based on a superficial examination and does not include the cost of any emergent work which may be necessary nor the cost of any extensions to the Work. The Company reserves its right to (a) increase the Price for the Work if the scope of the Work should in fact be more than originally estimated; or (ii) increase the rates under its usual tariff at any time.

## 9. PAYMENT

- 9.1. Unless otherwise agreed between the Parties in writing, payment for the Work shall become due immediately upon receipt of the Company's invoice. Payment shall be deemed to have been made when received by the Company in cash or cleared funds at the Company's nominated bank account. Time for payment is of the essence.
- 9.2. If the Customer fails to make any payment due to the Company within 28 days of the invoice being issued, the Company has the right to charge interest on the overdue amount at the rate of four percent (4%) above the Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment.
- 9.3. The Customer shall pay all amounts due under these Terms of Business in full without any set-off, counterclaim, deduction or withholding except as required or permitted by law. The Company may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Company to the Customer.

## 10. LIEN

- 10.1. To the extent permitted by law, the Customer hereby grants to the Company a lien and a continuing security interest, and, where applicable, a maritime lien, over the Vessel as security for payment of the Price until full payment of the Price by the Customer, or until the Customer has given security to the Company in a form and substance acceptable to the Company (for example a letter of guarantee from a bank reasonably acceptable to the Company or lodgement of a cash deposit with a professional third party agent reasonably acceptable to the Company). The security provided shall be sufficient to cover the debt with interest and, where the debt is contested, a reasonable provision for the Company's prospective legal costs and expenses.
- 10.2. The Company shall be entitled to charge the Customer for storage and the provision of any ongoing services at the Company's normal daily rates until full payment (or provision of security) by the Customer and removal of the Vessel from the Company's premises. The Customer shall be entitled to remove the Vessel only upon providing proper security.

## 11. DELAYS

- 11.1. Unless otherwise agreed in writing by the Parties, time estimates given for completion of the Work are given in good faith and without guarantee.
- 11.2. The Company shall not be liable for any failure or delay in the performance or completion of the Work, or for any such loss or damage resulting therefrom, unless the delay arises from the Company's wilful acts or omissions or negligence.

## 12. THE VESSEL'S MOVEMENTS/TRIALS

- 12.1. The Company shall have the right to order such movements of the Vessel and such tests or trials it deems necessary in order to perform and determine the due completion of the Work and/or for reasons of safety, security or good management of the Company's business and premises.
- 12.2. The costs of such movements, trials and/or tests including the cost of any bunkers and/or consumables shall be borne by the Customer and such movements shall be at the Customer's own risk and liability.

## 13. TITLE AND RISK

- 13.1. Risk in all goods, equipment and materials supplied by the Company to the Customer shall pass to the Customer at the time of supply to the Customer of such goods, equipment or materials or at the time when such goods, equipment or material are assigned or affixed to the Vessel, as the case may be.
- 13.2. Title to all goods, equipment and materials supplied by the Company to the Customer shall not pass to the Customer until the Company receives payment in full and in accordance with the terms of the Agreement for the Work.

## 14. QUALITY STANDARDS

- 14.1. The Company will exercise reasonable care and skill in the performance of the Work in accordance with the provisions of these Terms of Business, the requirements of any relevant regulatory bodies and, in the absence of any other contractual term as to quality, to a satisfactory standard.

## 15. ACCESS TO PREMISES

- 15.1. The Customer shall procure all necessary access to premises and vessels (including lift-out, trials and facility for inspection ashore and afloat as appropriate) for no less than such a time as shall in each particular circumstance be reasonable to enable the Work to be performed and all appropriate inspections and tests to be undertaken and shall ensure that safe working conditions are provided for the Customer.
- 15.2. Whilst on the Company's premises, the Customer is subject to the Company's health and safety, environmental and access policies and shall further be obliged to comply with all laws and regulations relating to environmental protection and safety. The Customer shall ensure that it does not cause any nuisance or annoyance to the Company, any other customer or person present or residing in the vicinity and does not interfere with the Company's schedule for the Work and/or the good management of the Company's premises and business.
- 15.3. During performance of the Work by the Company (and/or any of the Company's sub-contractors), the Customer shall not have access to the Vessel and no work or services shall be carried out by the Customer on the Vessel without the Company's prior written

consent unless the Company's prior written consent has been obtained, which may be revoked at any time.

- 15.4. The Vessel, and any other property of the Customer left at the Company's premises or in the Company's custody, is at the Customer's own risk.

## 16. ASSIGNMENT AND OTHER DEALINGS

- 16.1. The Company may at any time assign, transfer or deal in any other manner with all or any rights under these Terms of Business and may sub-contract or delegate in any manner any or all of its obligations under these Terms of Business to a third party.
- 16.2. The Customer shall not, without the prior written consent of the Company, assign, transfer, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under these Terms of Business.

## 17. CONSUMER RIGHTS

- 17.1. To the extent that these Terms of Business contradict with the Applicable Laws on Consumer Rights, the rights conferred on Consumers under the Applicable Laws on Consumer Rights remain unaffected.
- 17.2. Advice on whether a Customer is a Consumer or is otherwise protected by some or all of the Applicable Laws on Consumer Rights may be obtained from any local Trading Standards Office, the Citizens Advice Bureau, the Office of Fair Trading or any firm of solicitors practising in England and Wales.

## 18. THIRD PARTY RIGHTS

- 18.1. A person who is not a Party to these Terms of Business shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Terms of Business.
- 18.2. All services and reports are provided for the Client's use only. No liability of any nature is assumed towards any other party.

## 19. COMMUNICATION AND NOTICES

- 19.1. All communications and notices given under these Terms of Business shall be in writing. A notice shall be sufficiently served if given by effective means of communication, including but not limited to fax, email, registered or recorded mail or by personal service, to:
  - 19.1.1. the Customer's last known address or email address with which the customer has been communicating with the Company in relation to the Work;
  - 19.1.2. the Company's official email, trading address or registered office.

## 20. SEVERANCE

- 20.1. If any provision of these Terms of Business 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 Clause 15 shall not affect the validity and enforceability of the remaining provisions of these Terms of Business.

## 21. CONFIDENTIALITY

- 21.1. The Parties agree to keep the Agreement and any information disclosed or produced pursuant to the Agreement confidential and not to disclose the same to any third party without the other Party's prior written approval, save where required by law.

## 22. GOVERNING LAW AND JURISDICTION

- 22.1. These Terms of Business, as well as any contract(s) made subject to these Terms of Business, shall be governed by and construed in accordance with English law.
- 22.2. All disputes arising out of or in connection with these Terms of Business shall be subject to the exclusive jurisdiction of the English courts.
- 22.3. The Parties should first seek to resolve disputes arising out of or in connection with the Agreement by negotiation or, with the written agreement of the Parties, by mediation.